

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

March 2009

LEAGUE BOARD VOTES TO PURSUE OFFICE BUILDING PURCHASE

On Thursday, February 12, 2009, the Vermont League of Cities and Towns Board of Directors instructed its staff to negotiate a purchase and sales agreement to buy the building currently housing the Benevolent and Protective Order of the Elks, Lodge 924 of Montpelier. It is hoped that the agreement can be executed by March 1st and that the parties can close on the real estate transaction by early May. Renovations would begin immediately and the building would be ready for occupancy by January 2010.

The VLCT Board started working on this almost three years ago and has been working with the Staubach Company (now Jones, Lang and LaSalle) as our broker since December 2007. We assembled a team to assist us, including Redstone (Burlington) as program manager, Scott and Partners (Essex Junction) as pre-construction architects, and Naylor and Breen Builders (Brandon) as pre-construction advisor.



Prior to beginning the search, the VLCT Board and staff members researched VLCT's future space needs and available options. Their work culminated in the issuance of a Request for Proposals (RFP) last spring that sought bids for 14,000-16,000 square feet of leased space or space available for purchase. This is a modest increase in size over VLCT's current office (13,000 sq.ft.), but we hope that the extra space will accommodate the

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HOW TO CONDUCT EFFECTIVE SELECTBOARD MEETINGS

Your town has elected you to serve on the selectboard. Your responsibility as a board member is tremendous, and you are ready for the challenge. The selectboard is responsible for "the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer." 24 V.S.A. § 872. As a single member, you have very little authority, because a majority vote by the entire board is required before any action is taken. 1 V.S.A. § 172. Therefore, it is crucial to have a solid working relationship with your fellow selectboard members, and to treat them with respect. Understand that at times you may have to compromise to move issues forward, or you may hold a minority

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VTRANS DISTILLERY BREWS UP SOME BRINE

In January, the Vermont Agency of Transportation (VTrans) began distilling salt brine at its Chimney Corners Maintenance Garage in Colchester.

Salt brine is a liquid salt product that if used correctly increases roadway safety during and after a winter storm. The new distillery, constructed last fall with the assistance of grant funds, provides VTrans with a new winter safety tool.

Salt brine can be used several ways. It can be applied as a cost-effective, anti-icing liquid to bare pavement before a winter storm to act as a bond-breaker between the road and snow and ice to help delay roadway accumulation, or it can be mixed with granulated road salt so that the salt better sticks to a roadway surface and is therefore more effective in melting snow and ice. Other chemicals, such as agricultural by-products, can be added to the salt brine to allow it to work effectively at lower temperatures and even reduce the corrosion normally associated with salt.

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DOES THE ECONOMY HAVE YOU STRESSED OUT?

The Employee Assistance Program (EAP) is especially useful during challenging times by offering financial counseling and personal coaching for stress, anxiety and relationship difficulties. Invest EAP is confidential, free for all Health Trust and PACIF subscribers and their household members, and easy to access 24/7 by phone, email or web.

A study by the American Psychological Association revealed that money and the economic downturn were among the biggest stressors for people in 2008. Work, family health problems, housing costs, and job stability followed close behind. Increased stress takes a toll on our physical and emotional health. Typical symptoms of stress include fatigue, irritability, headaches, dizziness, upset stomach, teeth grinding, insomnia, elevated blood pressure and heart rate, and decreased sex drive. Left unaddressed, these symptoms can add up to dissatisfaction at work or home (or both), diminished productivity, depression, shortened lifespan, and major diseases.

Sometimes people slip into managing their stress in unhealthy ways such as drinking, smoking, abusing drugs, gambling, using credit cards unwisely, or over or under eating. These coping strategies will eventually fail, causing damage and worry for everyone involved. If this scenario reminds you of yourself or someone you know, please call Invest EAP or remind others – especially family – about EAP’s services.

Fortunately, there are things we can do to help take control over our stressors. First, think about what is most meaningful to you. If you were suddenly forced into survival mode, what would be more important: your belongings or your relationships? Then start simplifying your life and directing your choices to better serve what is important to you.

Social supports and connections can help stressed-out people stay healthy and positive. Talking, providing emotional support, and lending a hand are good for both the giver and the receiver, so find daily opportunities to interact supportively with other people. At work, this could be a quick hello in the hallway or a taking a few minutes to share a funny story. Other “stress-busters” include exercising, going outdoors for fresh air and sunshine, playing games, laughing, meditating, talking things out with friends or family, playing with pets, getting enough sleep, staying hydrated, and eating healthily.

EAP SERVICES

While we work on balancing our personal and professional lives (as well as our budgets!), Invest EAP staff members work to support us, confidentially and free of charge. Primarily, EAP provides short-term counseling for us and our household members. EAP also provides legal and financial consultations, childcare assistance, resources for elderly par-

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OE
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LEGAL AND REGULATORY NOTES



RECENT CHANGES TO FEDERAL EMPLOYMENT LAWS

Enacting federal employment law is a lot like cooking. What looks good on paper doesn't necessarily translate into the desired finished product. Federal employment law is an ever-evolving field. Laws are written to have general applicability reflecting changes in Congress, the White House, and case law around the country. And, much like recipes, laws need to be tinkered with from time to time to get them just right.

Following is a summary of some recent changes to federal employment laws and practices.

FAMILY AND MEDICAL LEAVE ACT

Federal law requires all municipalities that employ more than 50 employees within a 75-mile radius to post notifications of employees' rights and responsibilities under the Family and Medical Leave Act (FMLA) at a prominent location at all work sites. Municipalities must do more than simply post this notice. They must also actually comply with all that tiny text that resides within its

four corners. A lot of those words changed recently, the result of rule changes ("Final Rule") adopted by the Department of Labor (DOL) in response to the passage of the National Defense Authorization Act (NDAA), federal court cases, 15 years of administering the FMLA, and extensive public comment. Highlights of the Final Rule, which took effect on November 17, 2008, include: codifying the NDAA increase of the standard 12-week FMLA leave to 26 weeks for family members caring for a "covered service member"; defining "any qualifying exigency" arising under the NDAA from one's spouse, child, or parent being on active duty or called to active duty status; new DOL certification forms for military family leave; removing categorical penalties for failure to properly designate FMLA leave; clarifying that "light duty" does not count against an employee's 12 weeks of FMLA leave; permitting employers to require "fitness-for-duty" certifications to ascertain an employee's ability to address reasonable job safety concerns

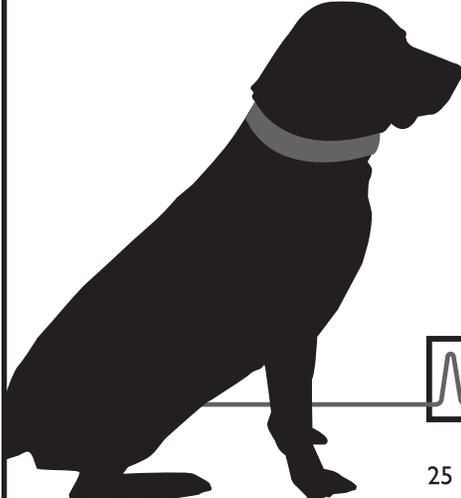
and ensure employees can perform the essential functions of their job; and changing employer and employee notice requirements.

For more information regarding the Department of Labor's Final Rule on Family and Medical Leave please visit: <http://www.dol.gov/esa/whd/fmla/finalrule/factsheet.pdf>.

LILLY LEDBETTER FAIR PAY ACT OF 2009

The passage of this Act has been somewhat misconstrued by the general public. Both federal law (Equal Pay Act) and Vermont law (Vermont Fair Employment Practices Act) already prohibit wage-based sex discrimination. Employees must be paid equally for the same or similar work, regardless of their sex, with exceptions for disparate pay based on such factors as seniority, quantity or quality of work, or some other factor besides sex. The Ledbetter Act, which went into effect on January 29, 2009, is actually a number of amendments to preexisting federal laws, including Title VII of the Civil Rights Act of 1964, Age

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RECENT CHANGES

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Discrimination in Employment Act of 1967, Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973. Highlights of this Act include:

- an extension of the time in which employees can file discrimination charges;
- an allowance for employees to seek back pay for a period of two years predating the filing of such charges; and
- clarification that unlawful conduct occurs when a discriminatory compensation decision is adopted, or when an employee is affected by a discriminatory compensation decision or practice, including each time compensation is paid.

For more information regarding the Lilly Ledbetter Fair Pay Act of 2009, please visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN00181:@@D&summ2=m&>.

I-9 EMPLOYMENT ELIGIBILITY VERIFICATION

All employers must complete and retain I-9 Employment Eligibility Verification forms for the purpose of establishing that employees, whether citizens or not, are authorized to work in the United States. Beginning April 3, 2009, the U.S. Citizenship and Immigration Service will require use of a new I-9 Form. Both the new and current I-9 forms are available at www.uscis.gov/portal/site/uscis. (Click on Form I-9 in the left-hand column.)

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VLCT's UPCOMING TRAINING OPPORTUNITIES

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Energy Conservation and the Municipal Plan Thursday, March 5, Vermont Interactive Television

Delivered in the evening via interactive television, this workshop will focus on the requirements and potential of the energy element within the Town Plan. Particular attention will be paid to the connection between energy conservation and land use, energy policy and implementation strategies, and the role of the Energy Coordinator.

Municipal Treasurers Workshop

Tuesday, March 24, Bennington;

Wednesday, March 25, Middlesex; Thursday, March 26, Milton

This half-day workshop is designed for newly-elected treasurers and those who want to improve the skills they use in their jobs. Discussion includes a review of the statutory duties and responsibilities of treasurers and an introduction to governmental accounting and financial reporting, banking services, and payroll and benefits.

SAVE THE DATE(S)

Selectboard Institute, Saturday, April 4, Montpelier
Conducting Effective Tax Appeals, Tuesday, April 7, Milton;
Wednesday, April 8, Bennington; Thursday, April 9, Middlesex



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ASK THE LEAGUE

WHAT THE JAM GOLF DECISION WILL MEAN FOR YOUR MUNICIPALITY

We reported in the October 2008 *VLCT News* that the Vermont Supreme Court had struck down two sections of a South Burlington zoning ordinance on the grounds that the sections were so vague and delegated such standardless discretion to the City's Development Review Board (DRB), that they

violated property owners' due process rights. At that time we predicted that the case, *In re Appeal of JAM Golf, LLC*, 2008 VT 110, would prove to be one of the Vermont Supreme Court's more controversial decisions on municipal land use regulation. That prediction is apparently coming true as *JAM*

Golf buzz grows around the state. Planners, attorneys, and zoning officials are all talking about the case and offering their opinions on what impact it might have on local land use programs. The purpose of this article is to explore what the *JAM Golf* case might mean for Vermont's municipal land use programs and give some practical guidance on how to deal with issues that may arise from the case.

MUNICIPAL EDUCATION GRANTS AVAILABLE – APPLY TODAY!

The Department of Housing and Community Affairs (DHCA) is offering the Municipal Education Grant (MEG) program again this year, and we encourage municipal officials to take advantage of this no cost educational opportunity! Municipalities can submit grant applications before May 15, 2009 to bring MAC staff to their offices for a free on-site training. You may view descriptions of VLCT's Land Use Workshops as well as fill out a MEG application by visiting VLCT's website <http://www.vlct.org/municipalassistancecenter/customworkshops/>. If you would like to schedule a land use training, contact Abby Friedman, MAC Director, at 800-649-7915 or Afriedman@vlct.org. There is more information about the MEG Program on the DHCA website (<http://www.dhca.state.vt.us/Planning/MEG.htm>), or you can contact Brenda Greika at the DHCA Planning Division, 802-828-3243 or Brenda.greika@state.vt.us.

There are 14 VLCT Land Use Training Workshops to choose from, including five new topics (italicized):

- *Adopting Local Act 250 Review*
- *Capital Planning and Budgeting*
- Conducting Effective Meetings and Hearings
- Effective Zoning Enforcement
- Field Guide to Adopting and Amending the Town Plan and Bylaws
- How to Interpret Development Plans
- How to Make and Write an Effective Land Use Decision
- Is a Development Review Board Right for Our Town?
- *Local Regulation of Wireless Telecommunications Facilities*
- Major Types of Development Review
- *Planning for Ancient Roads – What Every Municipality Should Know*
- Should Our Town Adopt On the Record Review?
- Should Our Town Adopt Zoning?
- *Understanding Homeowner's Associations*

What happened in JAM Golf?

The *JAM Golf* case involved the Vermont National Country Club, a planned residential development (PRD) in South Burlington permitted for 296 residential units and an 18-hole golf course. Several years ago, developer JAM Golf, LLC sought approval from the South Burlington DRB to amend the PRD approval. The proposed amendment would allow ten more residential lots in a wooded area bounded by three fairways, another residential development, wetlands, and open space.

The South Burlington DRB denied the proposed amendment, and the denial was then appealed to the Environmental Court. The Environmental Court denied the amendment, holding that the proposal did not satisfy section 26.151(g) of the city zoning ordinance requiring PRDs to "protect important natural resources including ... scenic views" and "wildlife habitats." The Environmental Court also held that the proposal failed to satisfy section 26.151(l) of the zoning ordinance, requiring PRDs to conform to a City plan requirement that residential developments "protect" wildlife habitat.

JAM Golf appealed the Environmental Court's decision to the Vermont Supreme Court. Among other things, JAM Golf's attorney challenged the Environmental Court's

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JAM GOLF

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interpretation of sections 26.151(g) and 26.151(l), asserting that the record did not support the Environmental Court's conclusions that the project did not protect wildlife habitats or protect scenic views.

The Supreme Court never reached JAM Golf's arguments on these points. Instead, the Supreme Court concluded that section 26.151(g) of the South Burlington zoning ordinance provided "no guidance as to what may be fairly expected from landowners who own a parcel containing wildlife habitat or scenic views – both common situations in Vermont – and who wish to develop their property into a PRD." The Supreme Court then struck section 26.151(g) from the zoning ordinance stating, "Such standardless discretion violates property owners' due process rights."

The Supreme Court also struck section 26.151(l) from the ordinance. It held that while municipalities may require development to conform to a municipal plan, municipal officials may not deny permission for a project where there is not a specific policy set forth in the plan stated in clear and unqualified language that creates no ambiguity. According to the Supreme Court, any development, by necessity, will reduce wildlife habitat and scenic views, but because the municipal plan failed to define what was to be protected and lacked sufficient standards as to how or when development should be restricted to accomplish this protection, it was too vague to be enforceable.

Has this vagueness argument ever been raised before?

Yes, but not often. The notion that a statute or ordinance is void when it forbids conduct in terms so vague that a person of common intelligence must guess at its meaning has actually been part of Vermont law (and the law everywhere else, for that matter) for quite some time. While the "void for vagueness" doctrine has been asserted most frequently in criminal cases, it has been raised in civil cases as well. See, for example, *State v. Dragon*, 133 Vt. 620 (1975)(criminal statute prohibiting theft of something affixed to real property), *State v. Trucott*, 145 Vt. 274 (1984)(criminal statute prohibiting operation of a motor vehicle while intoxicated), *Kimball v. Hooper*,

164 Vt. 80 (1995)(civil lobbying disclosure statute); *In re S.M.*, 175 Vt 524 (2003)(civil home education statute), *Richards v. Nowicki*, 172 Vt. 142 (2001)(municipal septic ordinance).

The Vermont Supreme Court first considered the vagueness argument in the land use context in 1973. At issue in the case of *Westford v. Kilburne*, 131 Vt. 120 (1973) was a Westford zoning ordinance requiring zoning board approval for certain commercial activity. The ordinance only required the board of adjustment to "give due consideration to the public health, safety, convenience and welfare" of the town's inhabitants when issuing a permit and provided no other standards for review. The Supreme Court held that this did not provide the zoning board sufficient standards to guide its decision. "As a consequence of a failure ... to spell out guiding standards, the applicant for a permit is left uncertain as to what factors are to be considered by the board of adjustment." *Id.* at 124. The court noted that a balance must be found. Zoning ordinances "should be general enough to avoid inflexible results," yet "they should not leave the door open to unbridled discrimination." *Id.* at 126.

More recently, the Supreme Court addressed the vagueness issue in the context of a Clarendon zoning ordinance regulating nonconforming uses. *In re: Miserocchi*, 170 Vt. 320 (2000). The Clarendon ordinance required zoning board approval to change

a nonconforming use to another nonconforming use, and for the reestablishment of a nonconforming use after a period of discontinuation. Unfortunately, the ordinance failed to provide any criteria to guide the zoning board in considering these approvals. The Supreme Court said that such a decision "arrived at without reference to any standards or principles is arbitrary and capricious; such ad hoc decision-making denies the applicant due process of law." *Id.* at 325.

So, what makes the JAM Golf decision unusual?

What distinguishes the *JAM Golf* case from the Supreme Court's other land use decisions is the manner in which the court dealt with the ordinance's ambiguity. In the past, the court has dealt with ambiguous zoning ordinances by construing the ordinance in favor of the property owner, reasoning that since zoning ordinances are in derogation of common law property rights, any uncertainty in the ordinance must be decided in the owner's favor. *Appeal of Week*, 167 Vt. 551 (1998). This has allowed the court to issue decisions while preserving the integrity of the offending ordinance.

For example, in *Miserocchi*, the Supreme Court worked around the ambiguous Clarendon ordinance by construing the ordinance narrowly, ultimately allowing the landowner to change the use of the structure

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NEED A WRITTEN LEGAL OPINION?

LOOKING FOR EXPERTISE DRAFTING A NEW ORDINANCE?

NEED HELP UPDATING THAT PERSONNEL POLICY?

VLCT's attorneys can provide your municipality with legal assistance at highly competitive rates. Please call **Abby Friedman** for more information at **1-800-649-7915**.



SAMPLE PROJECTS:

- Water & Sewer Ordinances
- Zoning Bylaws
- Municipal Charter Amendments
- Highway Ordinances



EFFECTIVE MEETINGS

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position. This should not affect your relationship with board members; your objective is to serve the people of the town.

Since you can't act alone, it is also vital to understand how and when the board will conduct its business. A majority of the board's work will be performed in the context of *meetings*. State law defines a meeting as "a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action." 1 V.S.A. § 310 (2). In order for the board to be effective and efficient, it must understand the open meeting law, the importance of adopting rules of procedure, and how to communicate with the public. Whether you are an old-timer or new to local government, the following information and strategies will help you get the most from selectboard meetings.

Open Meeting Law. According to Chapter I, Article 6 of the Vermont Constitution, government officials "exist to aid in the conduct of the people's business" and are accountable to the public for their actions. 1 V.S.A. § 311. The open meeting law, 1 V.S.A. §§ 310-314, implements this order and instructs us how public bodies will transact their business, with its goal being transparency.

All selectboard meetings are "declared to be open to the public at all times." Board business must be conducted in an open

meeting, and any actions taken outside of this forum will not be considered binding. 1 V.S.A § 312 (a). The two exceptions to this rule are executive session and deliberative session. Selectboards use executive session to discuss specific topics, such as personnel matters and negotiation of contracts. A motion and a majority vote are required to go into executive session and no decisions – except those related to securing real estate options – may be made in executive session. 1 V.S.A § 313. The selectboard uses deliberative session when it is acting in a quasi-judicial capacity, such as in abatement hearings and tax appeals. 1 V.S.A. § 312 (e).

A common misconception is that public bodies can hold *work sessions* and that they are not subject to the open meeting law. This is not true. There is no mention in statute of a work session, much less an exemption from the open meeting law. When a quorum of the board gets together to talk about board business, it is a "meeting" and the provisions of the open meeting law apply.

Minutes must be taken of the meetings of all public bodies and address "all topics and motions that arise at the meeting and give a true indication of the business of the meeting." 1 V.S.A § 312 (b) (1). At a minimum, minutes must include:

1. All members of the public body present;
2. All other active participants in the meeting;
3. All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and

4. The results of any votes, with a record of the individual vote of each member if a roll call is taken.

Rules of Procedure. It is true that "the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body," but this does not give the public license to hijack a selectboard meeting. Managing public comment and controlling the meeting are vital to getting work done. The law provides that the chair may establish reasonable rules under which citizens may participate. 1 V.S.A § 312 (h). Any established rules should be codified in adopted Rules of Procedure. This policy may set out the order of business, how and when the board will hear public comments, and how items are placed on a selectboard agenda. Every member of the public has a right to participate in a selectboard meeting. In addition to governing how the public may participate, rules also direct the board – specifically the chair – how to handle the public. A meeting is the only forum in which the selectboard can conduct its business; therefore, it must use its time wisely.

Communicating with the Public. The meeting is not the selectboard's only opportunity to communicate information to the public about a budget, ordinance, or other board business. The agenda notifies citizens of what the selectboard will discuss, time associated with each item, and when opportunities for public comment will be given. Agendas are not specifically required under

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EFFECTIVE MEETINGS

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state law, but an agenda “shall be made available to the news media or concerned persons prior to the meeting upon specific request.” 1 V.S.A. § 312 (d). We recommend an agenda as a tool to manage time and to communicate with the public about board business.

A board may use other means, such as newspaper or radio, municipal website, or email to share information with the public before a meeting. Armed beforehand with information such as a selectboard packet, the board may spend less time introducing proposals and more time taking input and answering questions.

When an issue requires public input, there are strategies a board can use to engage citizens in the conversation. These include creating an environment that facilitates dialogue, following your rules of procedure,

summarizing public comments to confirm public input, and making sure the board itself stays on topic. Finally, the public should be aware of its role in the decision-making process. In most cases, the selectboard makes the final decision; expanding the public’s role beyond what is outlined in the law may lead to unhappy voters.

You will be in the public eye, all your actions will be scrutinized, and you may even be criticized. The stronger the relationship that you build with your constituents through open government, the more effective you will be at carrying out your official duties. For more on the open meeting law and sample rules of procedure, please visit VLCT’s resource library, <http://resources.vlct.org/>, where you can find the *Handbook for Vermont Selectboards* and other pertinent documents. VLCT will also be holding its annual *Selectboard Institute* on April 4, 2009 in Montpelier.

*Stephanie Smith, Senior Associate
VLCT Municipal Assistance Center*

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NEWS TO USE

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PACIF ONLINE U AT ONE YEAR: A VALUED TOOL

A year ago this month, VLCT introduced the PACIF Online University to offer a variety of safety-related courses free of charge to all PACIF members. These online courses provide an excellent knowledge base for municipal employees of all types and levels.

To use this tool, the student logs in (see box for details) and chooses from five professional categories to gain access to all of the courses in that category. The courses are easy to use, with narration as well as printed words and photos in the main panel and outline and search panels beside it. The student can pause or repeat sections and an-

swer quiz-type questions during the lessons. A multiple-choice test at the end determines if the student has passed the course; because the point is to learn, reviewing or retaking a course is always an option. For easy record-keeping, supervisors can print a report of who has passed what courses.

After almost a year of member access, we are happy to note that this resource is being used extensively. As of mid February, 1188 courses were taken and passed. Some members have made it a job requirement to pass a certain course or set of courses. Most members have a computer available for their

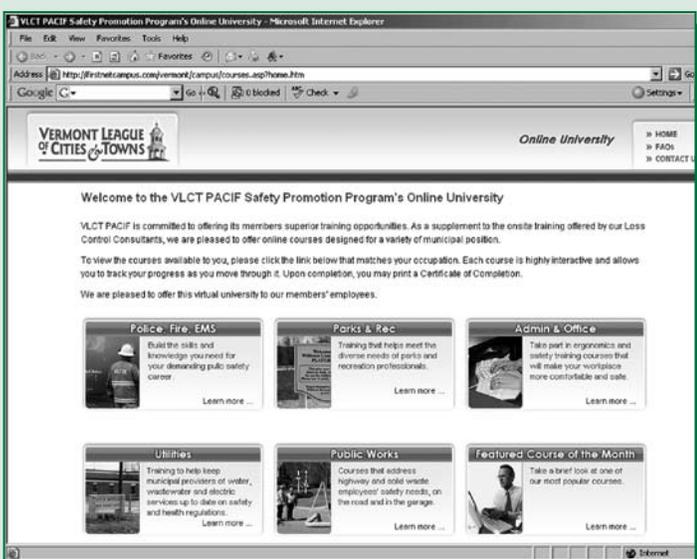
employees to take courses during work hours, yet because the courses are available at any time on any computer that has Internet access and the Flash application, people can take them in a public library or even at home.

Defensive Driving and Bloodborne Pathogens are the most popular courses because they are most often required by members. Other

topics include Hazard Communication, Fall Protection, Stress Management, and Workplace Diversity. Winter Driving, an extra offering this season, has a range of information about how to prepare, act, and react when driving in snowy, windy, icy, or foggy conditions. In all, PACIF Online University offers 20 safety courses and six HR courses free of charge.

Despite some resistance from employees who don't normally use computers, a little one-to-one assistance goes a long way in bridging a technological gap. For example, it helps to see that the course's basic navigation keys – the play, pause, rewind and fast forward buttons at the bottom of the main screen – are like the controls on a DVD remote. Also useful are the Outline and Search views in the left sidebar. In Outline, if you click on a topic, the main screen jumps to the first slide in that topic; in Search, if you type a word or phrase in the box and click on the arrow button, the main screen jumps to the next slide with that text in it. These tools can help someone who got a wrong answer in the test locate the right answer without having to review the entire course. Another very useful trick if you usually use a particular computer is to add your login page to the browser program's Favorites list, so you can get back to the site quickly.

(continued on page 19)



WORK INJURY? BE TIMELY IN FILING YOUR FIRST REPORT!

The Claims staff of VLCT PACIF urges all members to establish and maintain a consistent system for reporting workplace injuries within three days (72 hours) of learning of the injury. This is for both practical and legal reasons: your Claims Representatives can process claims more efficiently if the initial records are complete and accurate, and the State of Vermont can impose penalties for late reporting. Delaying the filing of the First Report of Injury

can complicate and confuse a claim, requiring more time and expense to resolve it. Timely reporting of injuries is a responsibility shared by the employer and the employee.

An injury is defined as any harmful work-related change in the body that requires either medical attention or an absence of one or more days from work. Even a relatively minor injury must be the subject of a first report.

The first step in filing a timely claim is for employees to get in the habit of noticing when they experience an injury at work. An example is getting a splinter or a small cut that is easy to dismiss as trivial, but which could develop a serious infection that requires medical attention.

Next, employees need to follow the procedure for reporting an injury to their employer. A First Report of Injury Form should be accessible through a person who is designated to receive employees' reports and file them with VLCT. The more quickly an employee can identify and report an injury, the clearer and more accurate the information in the report is likely to be.

Employers must file a first report with their VLCT Claims Representative within 72 hours of becoming aware of an injury (or as soon as they learn of the injury if it occurred sometime in the past). The employer must report the injury even if the circumstances of the injury or the relationship between the injury and the employment is in dispute. Filing a first report does not mean that the employer admits liability; in fact, the report can benefit the employer as a clear and timely record of the injury. The employer can provide additional relevant information if appropriate.

Another important detail involves the employee's visit to the doctor. In order for the doctor to know how to bill for the care, the employee must clearly state if the injury is or might be work-related. Otherwise, the employee's health insurance might be billed in error, setting in motion a series of steps that must be reversed if the injury turns out to involve a workers' compensation claim.

(continued on page 13)



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BUILDING PURCHASE

(continued from page 1)

League's needs for the next 20 years or longer. If necessary, this space will allow VLCT to grow from its current 50 staff members to 75. We solicited 17 requests for information and received 10 proposals in writing plus numerous additional verbal proposals, one of which was provided the morning of the Board meeting. Our professional team reviewed the completed proposals, conducted several site visits, prepared test fits and rough renovation costs, and performed structural engineering reviews of the finalists.

The League moved into its current headquarters in City Center in downtown Montpelier in 1997. It originally leased 10,025 square feet for the 25 staff members it employed then. We have expanded three times since then by moving into adjoining areas to accommodate a staff that has doubled in number over the same period. We are hopeful that the new office will allow for a more efficient use of space through a more open and flexible floor plan. We also hope to utilize the plentiful incentives now available to make the building very energy efficient.

The Board's decision rested on several benefits it saw in buying the Elks building at this time. First, of the options under consideration, this gives VLCT the best ability to grow and add staff in the future, with the flexibility to design and work in a space that is more efficient, more effective, and has room for member workshops and trainings. Second, owning rather than leasing is in the best interest of the membership over the long term. If we were to rent for the next 20 years, we would be paying over \$5 million in rent and have nothing at the end to show for it. By buying the building, we will be rent-free at the end of that timeframe. Third, by buying now, we can benefit from the current economic downturn with an attractive purchase price, low interest for borrowing, and less expensive reconstruction and furnishing costs.

The Elks building is located in Montpelier on Country Club Drive off of Route 2. Many VLCT members are familiar with the facility, as VLCT has held many workshops at the location.

*Steve Jeffrey, Executive Director,
VLCT*

EMPLOYEE ASSISTANCE

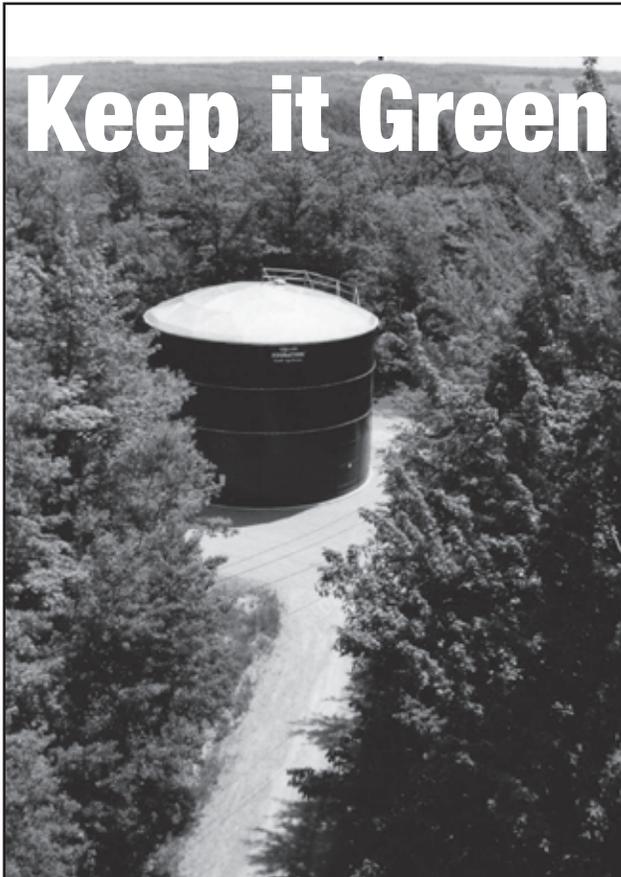
(continued from page 2)

ents, and information and referrals on any subject.

EAP staffers are available to talk anytime, day or night, on any issue, no matter how large or small, to help you figure out your next step. **Call 1-800-287-2173 or email from the website: www.investeap.org** (password: **vlct**). Remember, EAP is free and confidential.

STRESS BUSTERS TO USE AT WORK

- **Make the most of workday breaks.** Even 10 minutes of "personal time" will refresh your mental outlook. Take a short walk, chat with a co-worker about a non-job topic, or simply sit quietly with your eyes closed and breathe slowly.
- **If you feel angry, walk away.** Mentally regroup by counting to 10, then look at the situation again. Walking and other physical activities will also help you work off steam.
- **Set reasonable standards for yourself and others.** Don't expect perfection.



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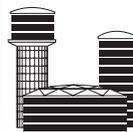
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TIMELY FILING

(continued from page 11)

Extra administrative time only raises contribution rates, and we all pay for that!

The employer has no reason to fear that first reports will lead to damaging claims. In order to receive workers' compensation, the employee must prove that he or she sustained a work injury. Although the first report contains information that may enter into a dispute, the employee is responsible for presenting additional valid evidence in order to win a claim. Of approximately 24,000 first reports of injury that the State of Vermont Workers' Compensation Division receives each year, only one-third turn into workers' compensation claims. Many of the others involve only one medical visit and no lost work time.

A timely filing of a first report is important for a variety of reasons. First, it helps document situations accurately while the circumstances and details are fresh in people's minds. Second, timely filing often encourages early medical attention which may limit longer-term medical care. Third,

in the event a claim is disputed, both parties will have accurate information to help locate witnesses, evidence, or other information relevant to the claim. Fourth, timely filing allows VLCT's claim representatives to investigate efficiently and thoroughly and to determine adjustments more promptly. Although filing a first report of injury may seem like an annoying chore, doing so promptly can decrease potential medical, administrative, and contribution costs.

To access VLCT's First Report of Injury Form online, go to www.vlct.org; under Insurance & Risk Services, select Customer Service Forms; scroll down to Workers' Compensation and click on First Report of Injury Form. You might need to pass one or more security notifications in order to open the form. Complete it and click Send Info to submit it to VLCT. Or fill in a paper form and either fax it to 802-229-2211 or mail it to PACIF WC Claims, 89 Main Street, Suite 4, Montpelier, VT 05602-2948.

*Ione L. Minot, Contributing Editor,
VLCT News*

NEW TREASURERS WORKSHOP

Did you know that paying for uniforms for your employees could result in taxable income to them under certain conditions? Do you understand the treasurer's responsibilities regarding Vermont's education property tax system? Do you know how to make the most of your town's cash flow and maximize your potential for interest income?

The VLCT Municipal Assistance Center, in collaboration with the Vermont Municipal Clerks' and Treasurers' Association (VMCTA), will conduct a Municipal Treasurers Workshop at the end of March. The workshop is designed for newly elected treasurers as well as for those who want to improve the skills they use in their jobs.

Sessions will include:

- statutory duties and responsibilities of the elected municipal treasurer;
- governmental accounting, financial reporting and the chart of accounts;
- Vermont's education property tax system;
- rules and regulations concerning payroll and fringe benefit reporting; and
- managing cash and investments.

This is a half-day workshop, which will allow participants to return to their offices for the afternoon and still receive some valuable training. We will offer the training in three locations across the state on three different days:

- Bennington on March 24,
- Middlesex on March 25, and
- Milton on March 26.

Additional information about the session and registration details can be found on the Events Calendar section of VLCT's website, www.vlct.org, or by calling 1-800-649-7915.

The Municipal Assistance Center and VMCTA plan to collaborate on additional education and training opportunities throughout the year. We will post information in the *VLCT News* and on our website as it becomes available.



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LEARN MORE AT WWW.VEDA.ORG OR BY CALLING 802-828-5627.

SALT BRINE

(continued from page 1)

For \$120,000 (40 percent of which was a federal research grant), VTrans converted part of an existing salt shed at its Chimney Corners Maintenance Garage into a brine distillery that can make up to 5,000 gallons an hour.

Under normal circumstances, about 30 percent of all salt applied to the road ends up in the ditch and therefore never has any positive effect. Salt winds up in the ditch by either bouncing too far upon application or being blown off the road by passing vehicles. Salt brine when applied as a liquid does not bounce or blow, while road salt charged with brine becomes sticky and stays on the road much better. If stuck to the road, the salt will continue to melt falling snow and ice.

Using brine has three basic benefits: (1) it saves money by preventing waste, (2) it is good for the environment because less road salt is used, and (3) it increases roadway safety when used correctly.

This winter, VTrans is experimenting with brine in different ways and with different additives to assess its maximum effectiveness. Early results are very promising, however we have already learned that salt brine has many of the same limitations as granular salt at cold temperatures. Care must therefore be taken not to “wet” a road if temperatures are predicted to fall below the brine’s effective melting range. How brine is applied,

(continued on next page)

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SALT BRINE

(continued from previous page)

and under what conditions, is therefore key in managing its use.

The state has purchased three plow trucks specifically equipped to apply liquid brine and/or salt coated with brine. Trial applications will be conducted in Chittenden, Franklin and Washington counties. VTrans is also working on ways to retrofit existing equipment to spread liquid brine or brine/solid salt mix. Once the agency becomes comfortable in its use, brine eventually will be used all over the state.

Along I-89, our new Road Weather Information Stations (RWIS) equipment will help VTrans target where to apply the brine in advance of icy conditions. Five RWIS locations were recently established along a 65-mile corridor of I-89 between Williston and Royalton. The equipment includes sensors and cameras that allow VTrans to instantly monitor not only snowfall and visibility con-

ditions, but also “real time” data about pavement surface and subsurface temperatures, humidity and wind conditions that will help road crews know when the road surface begins to ice over.

VTrans currently has 10 RWIS stations and hopes to establish 40 more over the next decade. In short, we are aggressively using new technologies to improve our winter maintenance performance. Each effort on its own offers improvement, but when used together, they provide VTrans with not only increased knowledge about what should be done, but the tools to actually go out and do it.

Towns are already requesting that VTrans supply them with brine. We are working on a policy regarding this, and anticipate that in the future we will provide brine (at a price that covers our cost) so towns also can experiment and decide whether its long-term use is something in which they are interested.

Although VTrans envisions sharing brine with towns so they can experiment, the state does not intend to get into the full-time

brine supply business. If this works well, towns will quickly learn whether brine is something they ultimately want to use. If so they will either turn to the private sector for supply or band together to make their own.

VTrans does not plan to erect brine distilleries all across the state. The equipment at the Chimney Corners garage has the capacity to make enough brine for all of our facilities. Individual garages will have to erect storage tanks to house their supply, but they will not need to be equipped to actually produce brine. However, if brine proves to be as good a tool as we hope, VTrans likely will study the cost effectiveness of locating a second distillery in southern Vermont.

VTrans is still working out the inevitable bugs that come with any new operation, as well as learning how this new tool is best and properly used. We will keep municipalities informed as to its progress. At some point in the future, we expect to announce a mechanism for municipal distribution.

*John Zicconi, Communications Director
Vermont Agency of Transportation*



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JAM GOLF

(continued from page 7)

from one noncomplying use to another non-complying use without a permit. In *JAM Golf*, the Supreme Court took the unprecedented step of striking the offending provisions of the ordinance completely. Even in *Miserocchi*, where the Supreme Court expressly recognized constitutional due process concerns arising from the lack of guiding standards, the court did not strike down the offending provisions of the Clarendon ordinance.

What message should local planning officials take from the JAM Golf decision?

While VLCT still does not anticipate widespread invalidation of local zoning by-laws as a result of the *JAM Golf* decision, officials drafting zoning ordinances should give the decision careful consideration. While by-laws should contain goals for protecting a community's important resources against thoughtless development, these goals must be supported by specific standards showing how the goals might be achieved. What was

true in 1973 remains true today. Zoning ordinances must be general enough to avoid inflexible results yet specific enough not leave the door open to unbridled discrimination by local officials.

Planning officials should review their zoning ordinances: Is there guidance as to what may be expected from landowners who wish to develop their property in conformance with the ordinance? Are there standards describing how or when development will be restricted to accomplish the municipality's resource protection goals? Will an applicant know what factors and criteria will be considered by zoning officials when their project is reviewed? Remember, if an ordinance does not contain sufficient standards to guide applicants and zoning officials in the review process, the ordinance may be construed in favor of the applicant or, after *JAM Golf*, struck entirely. The result in either case is likely to be the same: the development will not conform, in some measure, to one or more of the municipality's resource protection goals.

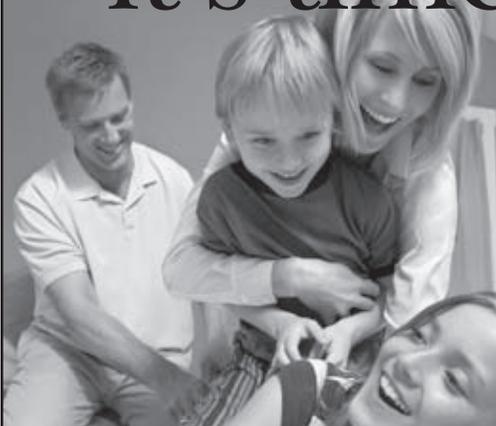
In light of JAM Golf, how should local zoning officials handle the assertion that an ordinance provision is vague?

Given *JAM Golf's* increasing notoriety, it is almost certain that some permit applicants will assert that a particular bylaw provision is so vague that it should be considered void and not applied to their proposed project. Zoning administrators and members of development review boards, zoning boards of adjustment, and planning commissions should remember that municipal zoning by-laws are presumed valid. *McLaughry v. Town of Norwich*, 140 Vt. 49 (1981). While the law is clear that ambiguity in a zoning ordinance must be decided in favor of the property owner, local officials are not required under *JAM Golf* to determine whether a provision might be void. That is a question for the Environmental Court on appeal.

A copy of the case can be obtained at <http://info.libraries.vermont.gov/supct/current/op2006-307.html>. If you have questions about the *JAM Golf* case, your zoning and subdivision ordinances or your town plan, contact the VLCT Municipal Assistance Center. Our team of attorneys and an AICP-certified planner can evaluate your ordinances, bylaws, and plans and recommend language to make them more effective and compliant with the *JAM Golf* decision.

*Jim Barlow, Senior Staff Attorney
VLCT Municipal Assistance Center*

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Classifieds

Please visit the VLCT website to view more classified ads: <http://www.vlct.org/marketplace/classifiedads/>. You may also submit your ad via an e-mail link on this page of the site.

VLCT NEWS 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 \$41 per ad.

Classified ads are generally limited to 150 words and run for one issue. These ads are also placed on the VLCT website for up to one month.

The *VLCT News* is published eleven times per year (the August and September issues are combined) and reaches readers during the first week of the month.

The copy deadline for advertisements is the first Friday of the month prior to the issue date. Space is sometimes available for late additions; please feel free to check with the editor for availability.

For more information on placing classified ads in the *VLCT News*, contact classifieds@vlct.org. For details on display or municipal marketplace advertising, email vlctnews@vlct.org. Instructions for ad requirements may also be downloaded at <http://www.vlct.org/aboutvlct/vlctnewsletter/advertisinginformation/>.

HELP WANTED

Chief of Police. The Town of New Hampton, N.H. (pop. 2,135), seeks a Chief to manage its Police Department, which consists of 5 full-time officers and a part-time administrative assistant. The Chief, who reports directly to a 3-member Board of Selectmen, is responsible for the daily operations of the Department and the preparation and management of the Department's budget. He or she performs regular law enforcement duties, including

patrol, investigations, prosecutions, traffic control and responding to calls for service. The Town's operating budget is just over \$500,000. Requirements. A Bachelor's degree in criminal justice or related field, with 10 years of progressively responsible police experience at the supervisory level is strongly desired, or any equivalent combination of education and experience which demonstrates that the candidate possesses the required knowledge, skills and abilities. Candidates must possess or be able to readily obtain N.H. police certification and a N.H. driver's license. The Chief is required to live within a reasonable radius of the station house. The selected candidate must successfully complete pre-employment requirements, including a psychological and polygraph test, criminal background and reference check. To apply, submit in confidence cover letter and resume, including salary history and requirements, **by February 27, 2009** to Professional Recruitment Service, New Hampton PC, PO Box 617, Concord, NH 03302-0617. (2-10)

Town Manager. The Town of Livermore Falls, Maine is reopening the search for a qualified Town Manager. Livermore Falls (pop. 3,300) has a Board of Selectmen/Referendum Ballot/Town Manager form of government, a municipal budget of \$2.5 million, and 35 full-time em-

ployees. The Board seeks an individual with experience in budgeting and financial management, grant preparation and administration, personnel and labor relations experience, economic development experience and considerable experience with public works operations. Candidates should have several years of management experience and strong interpersonal, communication and leadership skills. Bachelor's degree preferred. Salary based on experience and training. To apply, send resume and cover letter with salary requirement **by February 27, 2009** to Director of Personnel Services, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. You may also fax the information to 207-624-0118, or email it to HumanResource@memun.org. E.O.E. (2-3)

Loss Control Specialist—Workers' Compensation. VLCT's mission-driven organization seeks a senior level consultant to join a team of professionals dedicated to serving and strengthening the municipal membership of our property, casualty, and workers' compensation insurance fund (PACIF.) The Loss Control Specialist's responsibilities include identifying trends and significant sources of loss and potential loss; helping members develop

(continued on next page)



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CLASSIFIEDS

(continued from previous page)

and implement action plans, return-to-work programs, and trainings; delivering safety and other workshops; performing ergonomic evaluations; assisting in all areas of loss control as needed; making presentations to members (including evening selectboard meetings) and crafting informational material, including newsletter articles. Requirements include a relevant bachelor's degree or equivalent experience, knowledge of Vermont workers' compensation laws and a keen ability to interpret state and federal mandates, stellar written and oral communication and presentation skills, loss control

or risk management experience with a workers' compensation emphasis. Familiarity with property, casualty and workers' compensation insurance and knowledge of local government operations preferred. CSP, ARM for Public Entities, CEES or similar professional designation desirable. Must be willing to travel extensively within Vermont. Some evening work necessary. VLCT offers a unique, quality workplace with a member-focused environment. We have an excellent total compensation package whose array of employee benefits includes a choice of health plans as well as defined benefit and defined contribution plan choices with a 12.1% total employer contribution. Qualified applicants should submit

a cover letter, resume, names and phone numbers of three professional references via email to: jobsearch@vlct.org with Loss Control as subject. Review begins immediately; applications accepted until filled. (1-28)

Administrative Officer. The Town of Richmond, Vt. seeks a part-time (16 hours per week) Administrative Officer. The individual must enjoy working independently in a small office and assisting the public and town boards with excellent follow-through and attention to detail. Ideal candidates will have experience working with attorneys, engineers and land development professionals. Proficiency in MS Word and Excel with basic GIS ArcView capability expected. Specific duties include: acting as the Town Administrative Officer as required under Title 24, Chapter 117; answering questions and providing applicants with forms for permits or other requirements; providing technical support to the Town Planner, Planning Commission, and Development Review Board; reviewing subdivision final plats and other zoning documents prior to recording in the land records; and other responsibilities. A full job description is available at www.richmondvt.com. (Click Documents, then 2009 Zoning Admin Officer Job Description.) Direct any questions to Ron Rodjenski, Town Administrator, at (802) 434-5170. Salary dependant upon qualifications and experience, with a minimum starting wage of \$14.28. No health benefits. To apply, please send cover letter, resume and three current references to Administrative Officer Search, PO Box 285, Richmond, VT 05477. EOE. **The first review of applications is February 20, 2009.** Position open until filled. E.O.E. (1-27)

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PACIF ONLINE

(continued from page 10)

Judy Lance, who has been helping to roll out the PACIF Online University in the Town of Shelburne, points out the great flexibility inherent in online training. Traditional training requires many employees to arrange their schedules to be in one place at one time, and often requires two trainings to accommodate different work shifts. Online courses can be taken whenever a person's schedule permits. Moreover, if a single course is too long for one session, the student can easily stop in the middle and resume the course later, even from a different computer. Lance points out that some training will always need to be hands-on and experiential, such as learning how to handle a fire extinguisher. However, the PACIF Online University courses offer a lot of important information which can be accessed – and used – both at work and at home.

*Joe Damiata, Manager,
Safety and Health Promotion*

INCOME TAX RELIEF FOR VOLUNTEER RESPONDERS

A little tax relief is available to members of volunteer emergency response organizations. One provision of federal income tax law changes in 2007 allowed for volunteer firefighters and EMS responders to exclude \$30 per month of any income they receive for those services. The exclusion only applies for those months that a person serves and is only available for the tax years 2008 through 2010.

The Internal Revenue Service (IRS) says that “payments made by a state or local government for providing services as a member of a qualified emergency response organization” qualify as income for this exclusion.

Every little bit helps, so pass this information on to anybody you know who may qualify. More information is available from the IRS website at www.irs.gov/formspubs/article/0,,id=181049,00.html.

Tax relief is also available for reimbursements for firefighters' expenses. Here is that link: www.irs.gov/govt/fslg/article/0,,id=184221,00.html.

HOW TO LOG ON AND USE PACIF ONLINE UNIVERSITY

1. The first time, start at www.vlct.org. Click on the blue Insurance and Risk Services tab near the top of the page and select Programs. Under PACIF, click on Online University. In the first paragraph, click on PACIF Online University to open the university's Welcome page.
2. Find your work category and select it by clicking on either the green bar or “learn more”. This opens your work category page (which you can add to your browser's Favorites list for quick access in the future). Use the blue Login panel on the right.
 - a. If you haven't registered before, click on New User Registration (note: the work category you chose will become part of your user information) and set your username and password. (Note: capitals vs. lowercase matters.)
 - b. For later visits, just type your username and password in the white boxes and click on Login. You'll know you are logged in when you can see four tabs under the VLCT logo near the top of the page.
3. When you are logged in, click on the My Courses tab to see the list of courses in your work category. For each course you can also see its status and the date by which your supervisor has assigned for you to complete it.
4. To view a course, click on the course name once to open its status page, then click on the name again. This will open the course in a new window.
5. To start the course, click on the round play/pause button at the center bottom of the main panel. (Click on play/pause again to pause the slide.) When a slide is finished and you see “Continue” moving in the lower right corner, click on play/pause to start the next slide. Viewing a course can be as simple as that.
6. Other navigation controls help you use the course as effectively as possible.
 - a. Next to play/pause, the rewind and fast forward buttons let you jump to the beginning of either the previous or the next slide.
 - b. In the lower right corner of the main panel is the sizing button (which looks a bit like a baseball diamond). Click it to cycle through three view sizes: regular page with navigation panel, regular page alone, and large page (in which the play/pause button is moved to the lower right corner, and the rewind and fast forward buttons are gone).
 - c. When the navigation panel is showing, it has two tabs: Outline and Search.
 - i. Outline shows you the structure of the course, which always includes an Introduction, two or more Lessons, a Summary, and the Post-Test.
 - ii. In the Search panel, you can type a word or phrase in the Search For box and click on the arrow button to see the list of slides containing that word or phrase, then click on an entry in the list to jump to the slide.
7. When you have completed one or more courses, you can click on the Student Center tab (next to the My Courses tab) to get access to your transcript and certificates of completion.
8. Contact your on-site PACIF administrator if you need any help.



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Calendar

For more information about the following workshops or events, please contact Jessica Hill, Manager, VLCT Administrative Services, tel. (800) 649-7915; e-mail jhill@vlct.org. Or visit www.vlct.org's Events Calendar and select a workshop for more information or to register online. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)

Putting Energy Planning Into Action. Thursday, March 5. Sponsored by the VLCT Municipal Assistance Center and Vermont's Regional Planning Commissions. Delivered in the evening via interactive television, this workshop is designed for all local officials involved in land use planning and regulation. All are welcome, though it is particularly relevant for planning commissioners, the energy coordinator, energy committee members, planners, zoning administrators, and selectboard members.

Municipal Treasurers Workshop. Tuesday, Wednesday or Thursday March 24, 25, and 26. Sponsored by the VLCT Municipal Assistance Center. This training will be held at the Bennington Fire Station, Middlesex Town Hall and the Milton Town Office, respectively, to better serve VLCT members around the state. This half-day workshop (which starts at 8 a.m.) is designed for newly elected treasurers and those who want to improve the skills they use in their jobs. Discussion includes a review of the statutory duties and responsibilities of treasurers and an introduction to governmental accounting and financial reporting, banking services, and payroll and benefits.

Selectboard Institute. Saturday, April 4. Capitol Plaza Hotel, Montpelier. The Selectboard Institute focuses on the fundamentals of municipal governance, such as understanding the municipal organization, essentials of municipal law, running effective meetings, and managing the town budget.

Conducting Effective Tax Appeals. Tuesday, Wednesday, or Thursday April 7, 8, and 9. This training will be held at the Milton Town Office, Bennington Fire Station, and Middlesex Town Hall, respectively, to better serve VLCT members around the state. Sponsored by the VLCT Municipal Assistance Center. Please note this half-day workshop starts at 1 p.m. The property tax is under increasing pressure and is the subject of more and more attention so it is essential that the appeals process be properly administered. Come learn what your town can do to conduct effective property tax grievances and appeals.

Governmental Finance Symposium. Tuesday, June 23. Capitol Plaza Hotel, Montpelier. Sponsored by VLCT and the Office of the Vermont State Auditor. A comprehensive series of educational sessions about governmental accounting and auditing, presented by certified public accountants (CPAs) and state and local government officials. Continuing professional education hours are available for CPAs who attend this annual symposium.