

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

June 2009

THE DARK SIDE OF THE SUN

It feels great to bask in the warmth after a long gray winter, and showing some skin to the sun is a natural way to get vitamin D. But overexposure to sunlight can be dangerous. Prolonged unprotected sun exposure can damage skin, causing skin cancer or premature aging and wrinkling, and it can damage

eyes, causing cataracts and other problems.

We have such a short summer here in Vermont that it's easy to forget to protect ourselves against too much sun. But even half a day out at a parade or a fair can set a person up for a painful sunburn that could also do long-term damage. Don't think that just because you never needed sunscreen as a kid you're safe without it now. The sun that gets through Earth's ozone layer now is more damaging than it was even ten years ago. So refresh your memory with these tips to help you enjoy the sun while not letting it hurt you.



- Limit direct sun exposure, especially during the middle of the day (11 a.m. to 3 p.m.). Be aware of how long you are in the sun. Remember that ultraviolet (UV) rays can penetrate a hazy

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AMERICAN RECOVERY AND REINVESTMENT ACT UPDATE

A lot has happened in the past few months as far as the American Recovery and Reinvestment Act (ARRA) is concerned, but a lot that *should* have happened by now has not. Funding requirements and guidelines are still lacking in many programs, and ARRA requirements for them – such as “Buy American” – have not yet been defined. As the April issue of *Governing Magazine* explained, “*Cities have the chance to be entrepreneurial about securing funds on their own [from the federal government]. Local officials are trying to tweak their wish lists to fit brand-new criteria, meet tight application deadlines and then deal with new post-grant reporting requirements, all at a time when*

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FLOOD, SWEAT, AND TEARS: SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE UNDER THE NFIP

The National Flood Insurance Program (NFIP) underwrites flood insurance coverage only in communities that adopt and enforce floodplain regulations that meet or exceed NFIP criteria. Among these criteria are “substantial improvement” and “substantial damage” requirements. Substantial improvement is defined as any reconstruction, rehabilitation, addition, or other improvement of a structure whose cost equals or exceeds 50 percent of the structure’s market value before the improvement occurred. Substantial damage is damage of any origin sustained by a structure whose cost to restore would equal or exceed 50 percent of its market value before the damage occurred. Enforcing these requirements can be tricky for local officials who are responsible for issuing or denying permits in compliance with their flood hazard regulations.

According to the Federal Emergency Management Agency (FEMA) community status book report, 228 Vermont cities and towns participate in the NFIP. These communities should all have in effect flood hazard regulations that ensure new buildings will be protected from the flood levels shown on their Flood Insurance Rate Maps (FIRMs) and that new development will not make the flood hazard worse.

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DARK SIDE OF THE SUN

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cloud cover, so don't ignore the sun just because it seems to be ignoring you.

- Wear clothing to protect as much of your skin as possible, keeping in mind that UV rays can still penetrate many lightweight, light-color fabrics.
- Use a sunscreen with an SPF of 15 or higher. Apply it 20 minutes before you get into the sun (this is important because the active ingredients need time to start working) and reapply it as the label instructs.
- SPF values indicate how much longer you can safely stay in the sun with the sunscreen than without it. If you would normally start getting pink in 10 minutes with no sunscreen, using an SPF 15 product will extend that to two and a half hours *if* you use it according to all the package directions. Some sources say that an SPF higher

than 40 is not possible (anything that claims to be higher is misleading you).

- The active ingredients in sunscreens lose their effectiveness over time. Most are good for only one year. Check your package for an expiration date. It is safest to toss out last year's sunscreen and buy a new supply each summer.
- Wear a hat, ideally one with a wide brim to protect your neck, eyes, forehead, nose, and scalp.
- Wear sunglasses that block UV rays. Check the label to make sure they do. UV protection comes from an invisible chemical on the lenses, not from the color or darkness of the lenses.

[Author's Comment: The day after I worked on this piece, I attended the VMHA Expo in Barre and spent half the day in the sun watching the plow and backhoe competitions. Note to self: Put a fresh tube of sunscreen in the map pocket of my car every May 1, so I don't get caught red-faced again!]

*Ione Minot
Marketing Specialist*



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LEGAL AND REGULATORY NOTES



ENVIRONMENTAL COURT REINFORCES METHODOLOGY FOR DETERMINING TIMELY NOTICE OF APPEAL

The Vermont Environmental Court recently granted an appellee's (party against whom an appeal is taken) motion to dismiss for the appellant's (party who appeals) failure to file a timely appeal. *In re Jewish Community of Stowe and North Country Animal League*, 15-1-09 Vtec. When filing its appeal, the appellant relied on a zoning administrator's cover letter to a decision stating that the 30-day appeal period began on the date of the letter.

Appellant J.D. Associates, L.P. applied to the Town of Morristown for a conditional use and site plan approval for a cemetery. On December 30, 2008, the Town's Zoning Administrator (ZA) sent a copy of the Development Review Board's (DRB) December 22, 2008 decision to the appellant. The cover letter to the decision informed the appellant that an appeal had to be filed "within thirty (30) days of the issuance of the decision ... beginning today." Appellant J.D. filed its appeal on January 28, 2009. Appellee Jewish Community of Greater Stowe moved to dismiss the appellant's appeal on the basis that it was filed in a timely fashion. Rule 5(b)(1) of the Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.) requires appeals to be filed with the Environmental Court (Court) "within 30 days of the date of the act, [or] decision ... appealed from, unless the Court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure." The appellee argued that the Court should count the 30-day appeal period from the date of the DRB's decision. The appellant argued that the Court should count the 30-day appeal period from the date of the ZA's cover letter.

The Court sided with the appellee, hold-

ing that the appellant's "failure to file a timely notice of appeal, and failure of timely move to extend the time for filing the notice of appeal, deprives this Court of jurisdiction of the appeal." In reaching its decision, the Court reviewed two Vermont Supreme Court cases that address the failure to mail an otherwise timely decision with regard to deemed approval. In *Hinsdale v. Village of Essex Junction*, the Supreme Court de-

termined that a decision is considered "rendered" even when sent outside the prescribed statutory time frame. In *Leo's Motors, Inc. v. Town of Manchester*, the Supreme Court found a decision timely when made within the statutory period, regardless of when it was sent to the appellant "so long as the failure to send a copy is inadvertent and not the result of a policy or purpose to withhold notice of the decision."

The Environmental Court discovered that the Supreme Court's reasoning in these cases was in keeping with its own. In *In Re Charbonneau* the Environmental Court held "[t]he date for appeal does not run from the date on which the applicant receives notice of the DRB decision, but from the date the decision is issued." To hold otherwise the Court reasoned "would require affidavits from the administrative officers of develop-

“What is most revealing about this case is that the Environmental Court seems to care little when a decision is received so long as “excusable neglect or good cause” is shown.”

— Garrett Baxter, Attorney
VLCT Municipal Assistance Center

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LEGAL/REG. NOTES

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ment review boards, zoning boards and planning commissions in every case so that potential appellants could know on what date the issued decision was filed in the municipal file cabinet.”

What is most revealing about this case is that the Environmental Court seems to care little when a decision is received so long as “excusable neglect or good cause” is shown. “Even if Appellant had not been able to file a timely notice of appeal within that three-week period, Appellant could have filed a V.R.A.P. 4 motion to file a late notice of appeal...” Nevertheless ZAs should always try to mail decisions of land use panels as close as possible to the date decisions are rendered so as not to give credence to the argument that it was willfully withholding its decision to prevent the filing of a timely appeal. A copy of the decision can be obtained at: www.vermontjudiciary.org/GTC/Environmental/ENVCRT%20Opinions/09-015z.JCGS.mtd.pdf

*Garrett Baxter, Attorney
VLCT Municipal Assistance Center*

LOCAL TRAINING OPPORTUNITY

The Municipal Assistance Center is currently scheduling on-site workshops. Sign up now!

Sample On-Site Trainings:

- Welcome Aboard: An Orientation for New Selectboard Members
- Conducting Effective Selectboard Meetings
- Field Guide to the Open Meeting Law
- Roles and Responsibilities of Town Officers
- The Selectboard–Town Manager Relationship
- Conducting Effective BCA Hearings
- Conflict of Interest and Ethics Training
- Supervising Municipal Employees
- Developing and Managing the Town Budget
- Financial Reporting and Management

Additional workshops can be scheduled to fit your community’s needs.

Call **Abby Friedman** at **1-800-649-7915** for more information or to schedule your workshop.

The cost is \$800 for VLCT members and \$400 for VLCT PACIF members. You can also share the fee with nearby towns.

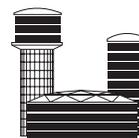
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ASK THE LEAGUE

CIVIL MARRIAGES; RESIDENTIAL WIND TURBINES

Will civil marriages replace civil unions?

Yes. Under the Act Related to Civil Marriage (S.115) recently enacted by the Vermont State Legislature, beginning on September 1, 2009, same-sex couples will have access to the civil marriage laws, but may no longer establish a civil union. Civil union licenses issued and certified before that date will continue to be recognized in Vermont. The act defines civil marriage as "the legally recognized union of two people" who are not related to one another, at least 18 years of age, and not already married to or in a civil union with different person. A couple in a civil union who wish now to be married do not need to dissolve the civil union in order to do so.

The Vermont Department of Health will prescribe new civil marriage license application forms. The cost will be \$45. More information is available at www.leg.state.vt.us/misc/s115faq.pdf.

*Abby Friedman, Director
VLCT Municipal Assistance Center*

A residential property owner proposes to install a small-scale wind turbine. What authority does the town have to regulate this facility?

The attraction of sustainable renewable energy generation is fueling interest in siting small-scale wind turbines in Vermont. Vermont law places substantial limits on municipal authority to regulate wind power generation facilities.

If the facility is "net-metered" (connected to the statewide power grid), the Vermont Public Service Board (PSB) regulates the facility, then municipal regulatory authority is preempted. 24 V.S.A. § 4413 (b), 30 V.S.A. § 248(a)(2). However, towns do have some say in this process. The local planning commission and the selectboard may participate in the PSB's regulatory proceeding on whether to issue a certificate of public good. 30 V.S.A. § 248 (b) (1).

A town also has an opportunity to articulate its values about development of such facilities within its town plan. During the certificate of public good review, the PSB will consider the goals and objectives for development of renewable energy resources found in the energy policy of the town plan. Different opinions on wind power should not prevent a town from exploring the issues and adopting clear policies concerning wind generation facilities in the energy element of its municipal plan.

A town retains the authority to regulate wind turbines that are not connected to the statewide grid within its zoning bylaws. "The height of wind turbines with blades less than 20 feet in diameter ... which are mounted on complying structures, shall not be regulated unless the bylaws provide specific standards for regulation." 24 V.S.A. § 4412 (6). Specific standards could include addressing visual impacts, location of transmission lines and specific setback requirements. If the town does not provide specific standards, then these structures are permitted according to the law. Larger non-net-metered wind turbines must comply with all aspects of a municipal bylaw such as height, setback, noise, or other development standard.

*Stephanie Smith (AICP), Senior Associate
VLCT Municipal Assistance Center*

NEED A WRITTEN LEGAL OPINION?

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SAMPLE PROJECTS:

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



ECONOMIC RECOVERY

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budgets for their existing programs are shrinking.”

This is especially true in Vermont. Notification of criteria for several programs is woefully slow and the deadline for submitting applications is unrealistically short. The Office of Economic Stimulus and Recovery (ESR) has hired several state employees listed on page 9 to handle portions of ARRA funding as it flows through state government.

By the time the legislature adjourned on May 9, the allocation of ARRA dollars in Vermont was somewhat clarified in several bills that passed.

WATER SUPPLY, CLEAN WATER REVOLVING LOAN FUNDS

The capital bill, H 445, appropriated \$19,433,000 in ARRA funds for the state clean water revolving loan fund and \$19,500,000 for the state drinking water revolving loan fund. (See the relevant websites on page 8 for projects to be funded by ARRA money.)

TRANSPORTATION

By the time you read this, David Dill, Secretary of the Agency of Transportation (VTrans), will have mailed to Vermont local officials requirements for applying for ARRA transportation enhancement and non-class 1 roadway paving (2" cold planing and overlay primarily) project funding. But the deadline for submitting those applications is past. The agreement reached by the House and Senate on the state FY10 transportation bill (H.438) included \$10 million in federal stimulus funds for local paving (\$5 million) and bridge projects (\$5 million).

According to VTrans, the mailing is tied to the legislature's decision to direct \$5 million in stimulus funds to local paving projects. Only projects on roads designated as "rural major collectors" or otherwise considered federal aid highways will be eligible. This was not an ideal scenario, given the very expensive and difficult restrictions on the program, many of which federal regulations seem to require.

VTrans will select the bridge projects not via an application process but rather based on bridge condition, location, and the availability of local matching funds. Bridges rated "structurally deficient" and those in eco-

nomically distressed areas will receive priority rankings.

VERMONT APPROPRIATIONS BILL (H.441)

Many of this bill's allocations were specified in the federal legislation and they are reflected in the bill. Altogether, H.441 appro-

priates \$358,659,647 for a variety of purposes, including:

- \$7,461,782 for public safety, \$2.5 million of which is used instead of Transportation Fund dollars;

(continued on next page)

SAVE THE DATE | Governmental Finance Symposium

Tuesday, June 23, Montpelier

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. Presented by VLCT and the Vermont State Auditor's Office.

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ECONOMIC RECOVERY

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- \$31,592,500 for the Clean Energy Development Fund whose goal is to increase development of cost-effective and sustainable electric power resources, primarily renewables and combined heat and power technologies. This money will be maintained in a separate ARRA-only fund and include \$880,000 to the 11 regional commissions to conduct energy efficiency and conservation activities eligible under the Energy Efficiency and Conservation Block Grants;
- \$8,421,288 in weatherization assistance for qualified persons;
- \$38,575,036 in education fund payments to schools;
- \$1,982,000 to the Community Development Block Grants;

- \$117,197,648 to Transportation, including town highway bridges, public transit, per specifications in the transportation bill, H.438; and
- \$3,400,000 for economic development as specified in the economic development bill, H.313.

VERMONT ECONOMIC STIMULUS LEGISLATION, H.313.

The economic development bill specified several funding priorities, including projects at the Burlington Airport (a new aviation technical center facility, customs border protection office, and a green roof on the parking garage), three municipal communications service projects, the North-Link project launched by Northern Enterprises, Inc. in 2007, the East Central Vermont Community Fiber broadband initiative, and replac-

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WEBSITES RELEVANT TO THE AMERICAN RECOVERY AND REINVESTMENT ACT:

- www.recovery.gov Federal website where you can track projects nationally and compare Vermont's performance to other states.
- www.recovery.vermont.gov Vermont's ARRA is just getting started with information about different programs, such as the encumbrance and expenditure of funds.
- www.anr.state.vt.us/dec/fed/financial/docs/CleanWaterIntendedUsePlanARRA2009Funds15April2009.pdf Vermont projects funded through the Clean Water State Revolving Fund.
- www.vermontdrinkingwater.org/DWSRFGuidanceDocuments/FINAL%20ARRA%20PPL_fundable.pdf Projects funded from the Drinking Water State Revolving Loan Fund.
- http://apps1.eere.energy.gov/wip/block_grants.cfm For information and updates on the Energy Efficiency and Conservation Block Grants.
- www.fedconnect.net/FedConnect/PublicPages/FedConnect_Ready_Set_Go.pdf For information and registering with federal government for grants.
- www.vlct.org To view VLCT's list of municipal projects.
- <http://www.leg.state.vt.us/jfo/Federal%20Stimulus%202009.htm> Vermont Legislative Joint Fiscal Office site.
- www.anr.state.vt.us/dec/fed/fms.htm Find pollution control priority list for 2009, 2010 and updates.
- www.rurdev.usda.gov/VT/ For information about the USDA's Housing and Communities Facilities Programs.
- www.grants.gov To find grants from 26 federal agencies.

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ECONOMIC RECOVERY

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ing Vermont Public Television's power line on Burke Mountain.

ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS

This formula grant program allocated Vermont \$10.3 million for a variety of efficiency and renewable energy initiatives outlined in the Energy Independence and Security Act of 2007. Approximately \$9.5 million will come through the state; the rest will go directly to Vermont cities and towns. The Department of Energy (DOE) is allocating 40% of that amount (\$3.8 million) to the State Energy Program and 60% (\$5.7 million) to cities and towns not receiving a direct DOE allocation. Those communities will need to apply to the state for Energy Efficiency and Conservation Block Grants (EECBG). The Department of Public Service (DPS) is applying to the DOE for these dollars by June 25. It will then conduct a competitive grant application process.

DPS also applied to the DOE for \$21,999,000, with a goal of obligating half of those federal funds by June 17. The application indicates the following allocations:

- \$14.4 million to the Clean Energy Development Fund;
- \$2 million to the Public Service Institutions Efficiency and Renewable En-

ergy Program (including government buildings);

- \$2 million to the Vermont Telecom Authority for small scale wind towers;
- \$2 million to the Vermont Housing and Conservation Board for weatherization and renewable energy assistance.

RENOVATIONS TO MUNICIPAL BUILDINGS

Despite the demonstrated need and readiness of projects, ARRA money is *not* available to undertake municipal building renovations or reconstruction, except in some limited circumstances. For example, the U.S. Department of Agriculture (USDA) Housing and Communities Facilities Programs

has funding available through three programs: the Community Facilities Guaranteed Loan Program, the Community Facilities Direct Loan Program, and the Community Facilities Grant Program. Community Programs administers programs that develop essential community facilities for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, medical clinics, assisted living facilities, fire and rescue stations, police stations, community centers, public buildings, and transportation.

Local officials need to continue to check the web for information about ARRA funding. The websites listed in the sidebar are especially helpful. And we will work hard to keep the VLCT website up to date as well.

*Karen Horn, Director
Public Policy and Advocacy*

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Coleen Krauss	community programs, economic development, education, housing, labor	828-2546	coleen.krauss@state.vt.us
Joan Stewart	justice programs, planning	828-1354	joan.stewart@state.vt.us
Jan Westervelt	transparency and accountability, Agency of Human Services	828-2137	jan.westervelt@state.vt.us



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VLCT's NRRA DRAWING WINNERS

Two names were drawn recently for one-day passes to the Northeast Resource Recovery Association (NRRA)'s 28th Annual Recycling Conference & Expo in Manchester, New Hampshire. The event takes place on Monday and Tuesday, June 8 and 9, at the Radisson Hotel Manchester, and the winners will choose which day of the expo they want to attend. For more information on the conference and expo, go to nrna.net and click in the conference box.

Hmm? Oh, the winners, right! They are Suzanne Rude (Village of Enosburg Falls) and Catrina Lawley (Brattleboro). Congrats, ladies!

CONE DAYS AT STOWE??

STEVENS ADVANCED DRIVER TRAINING IN MAY AND JUNE 2009

The first week of May, flocks of traffic cones descended on the Stowe Mountain Resort parking lot in preparation for the PACIF-sponsored Stevens Advanced Driver Training Course. Each day, the cones – joined by a mobile classroom, four sedans, and five instructors – proceeded to enlighten and enliven up to 16 students.

This is not your teenage kid's driving school! Experienced municipal drivers studied advanced principles and practiced a variety of drills to learn professional strategies for avoiding or diminishing possible accidents.



The full-day training started with a classroom session explaining various topics such as ABS braking theory, road rage awareness, and assertive driving attitude. Later, everyone went out to the parking lot for the in-car drills. After two or three observation runs with the instructor driving and explaining

the drill to three student passengers, each student drove with only the instructor until the driver accomplished each exercise to the instructor's satisfaction. This practice with one-on-one evaluation and response made the course truly effective.

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DRIVING COURSES AVAILABLE THROUGH VLCT

These courses are described in the VLCT Loss Control Services booklet. If you need a copy, contact Joe Damiata or your Member Relations representative at 800-649-7915.

Courses marked with an I are led by an instructor; those marked with an O are available online.

- Stevens Advanced Driver Training (I)
- Winter Driving Safety (O)
- CDL Training (I)
- Coaching the Emergency Vehicle Operator (CEVO) – Straight Truck (I)
- Coaching the Emergency Vehicle Operator (CEVO) – Ambulance (I)
- Coaching the Emergency Vehicle Operator (CEVO) – Fire (I)
- Coaching the Emergency Vehicle Operator (CEVO) – Police (I)
- Defensive Driving (I, O)
- Snowplow Safety (I)

WINOOSKI FILLS CLASSROOM FOR SAFETY TRAINING

This past April, VLCT's Manager of Safety and Health Promotion, Joe Damiata, got a call from Erik Bailey, Winooski's Superintendent of Water Pollution Control. Erik wanted to set up a day of safety training specifically designed for Winooski's Public Works employees, and he expected that Joe would be a good partner for it. He was right. Together, they quickly agreed on what to include and how to proceed. The customized training took place on May 7, after seasonal employees had been hired and just as the summer work season was getting into full swing.

This training provided three core requirements of safety education and was mandatory for all of Winooski's public works employees. First off, Erik taught a Flagger Certification course. Flagger skills are crucial for the safety of road crews as well as passing traffic, and having the entire crew certified assures versatility for all projects. As an experienced trainer, Erik arrived with donuts and stainless steel water bottles to give away, so the lesson went down quite well.



Next was Joe's turn, and he spent the rest of the morning on Confined Space Awareness. What is a confined

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LIFE AND DISABILITY RATES STABLE THROUGH JUNE 2012

Good news! We have just completed the 7/1/09 renewal with Unum for our group life as well as short-term and long-term disability insurances, and the results are a pleasant surprise. Not only are the rates for all products not increasing, but they will remain steady for three years, guaranteed until the renewal date of July 1, 2012.

Now is a great time for employers who currently don't offer our life or disability products to consider adding or switching to them. The three-year price guarantee helps keep your budget stable, and we will be happy to provide an in-depth comparison of the costs and benefits of your current products with the VLCT options. Call your Member Relations representative today to look into this.

SAY "AAHHHHHHHH" NOW TO ADD OR CHANGE DENTAL COVERAGE

Health Trust contacts (Benefits Coordinators) who need to add or change coverage with Northeast Delta Dental can still do it, but not for long! The open enrollment period is about to end, so whether you have new enrollees or are changing coverage (e.g., adding an orthodontic rider if your group has ten or more Delta enrollees), don't delay. Contact your Member Relations representative *immediately* so we can complete all the paperwork in time for the July 1 effective date.

UPCOMING EVENTS

Stevens Advanced Driver Training. Monday through Friday, June 1-5. Stowe Mountain Resort. Five one-day sessions of high-speed skills instruction. *FULL. Check this calendar for future classes.*

Northeast Delta Dental Open Enrollment. Closes in June; please submit changes and additions in advance of Wednesday, July 1 effective date.

Combustible Dust Safety Workshop and Plant Tour. Thursday, June 25, noon to 4pm (includes lunch). Burlington McNeil Wood Generating Plant. Presented by Vermont Safety & Health Council. Speakers: David Berard, former OSHA Compliance Assistance Specialist for New Hampshire, and Harlo Wells of Project Worksafe. Free for VSHC members, \$25 for others. Register by June 22 with Peter Crawford at petercrawford@vtsbdc.org or 802-728-1423. For more information, contact Pauline Singley at paulinesingley@myfairpoint.net or 802-352-4427.

2nd Quarter Rutland Area Safety & Health Roundtable. Friday, June 26, 9am to noon. Rutland Regional Medical Center. Presented by Vermont Safety & Health Council and VOSHA. Speakers: Dan Whipple, OSHA Compliance Assistance Specialist for Vermont, and Mike Cromis. Free to all. To register, contact Pauline Singley at paulinesingley@myfairpoint.net or 802-352-4427.

Local Officials Golf Outing (LOGO). Wednesday, September 30. Barre Country Club. The ever popular golf tournament is back, in conjunction with Town Fair. Please contact Ken Canning at VLCT (kcanning@vlct.org) for more information or to sponsor this event.

Vermont Safety & Health Council Fall Expo. Thursday October 8. Lake Morey Inn and Resort, Fairlee, Vt. Watch for more info at vshc.org.



NEWS TO USE

PARADE SAFETY

The parade season is upon us! When preparing and planning holiday or festival parades, please consider implementing the following safety tips to protect spectators and participants.

- Obtain necessary permits from the Agency of Transportation when using state roads in the parade route by contacting your local Maintenance District.
- Before the parade, inspect sidewalks for cracks and holes which could cause people to trip and fall. Fill these or mark the areas with brightly colored paint.
- Place law enforcement personnel at intersections and along the parade route for safety and traffic control. Verify that every driver has a valid operator's license.
- Prohibit anyone from riding on municipal vehicles such as fire trucks or dump trucks. People may ride inside the passenger compartment instead.
- For vehicles and floats that are carrying children, make sure that:
 - there is at least one adult other than the driver to monitor up to four children, and
 - the adults have a reasonable means of immediate communication with the driver.
- Be aware that allowing parade entrants to throw candy creates the risk of children running into harm's way to pick up candy. Some parade organizers have banned the throwing of candy or toys to help keep children safe.
- Check that parade participants are not under the influence of alcohol.



FLOOD

(continued from page 1)

But what happens when a property owner wants to make an improvement, such as an addition, to a building built in a flood prone area before the community's floodplain regulations and FIRMs were established? What if a so-called "pre-FIRM" building is damaged by a fire, flood, or other cause? The basic rule is this: If the cost of improvements or damage repair exceeds 50 percent of the market value of the building, it must be brought up to current floodplain management standards. In other words, a structure that is substantially damaged or otherwise substantially improved must be elevated (or flood-proofed if it is a non-residential structure) to or above the base flood

elevation (BFE) and meet other requirements for new construction in the local zoning bylaw or stand-alone flood hazard ordinance. In lieu of elevating the structure, it can be physically moved out of the flood-prone area identified on the FIRM.

PRE-FIRM AND POST-FIRM BUILDINGS

Buildings that were already present at the time a community adopted a flood hazard ordinance and a FIRM are referred to as "pre-FIRM." The flood insurance premiums for pre-FIRM buildings are subsidized by the NFIP. Owners of these policies do not pay "actuarial" rates, i.e., rates based on the true risk the building is exposed to.

Substantial improvement and substantial damage usually only apply to pre-FIRM buildings because in most cases post-FIRM

buildings will be properly elevated or otherwise compliant with the regulations for new construction. However, if a FIRM map change results in a higher BFE or change in FIRM flood zone, substantial improvements or substantial damage will require that affected buildings be elevated (or flood-proofed for non-residential structures) to protect them from the new, higher regulatory BFE.

Additions to a post-FIRM building must be elevated at least as high as the BFE in effect when the building was built. If a new, higher BFE has been adopted since the building was built, additions that are substantial improvements must be elevated to the new BFE.

COST OF THE PROJECT

The formula for determining substantial improvement and substantial damage is based on the cost of the project and the value of the building. These two numbers must be reviewed in detail.

The cost of a project includes all structural costs including material, labor, built-in appliances, overhead and profit. The formulas apply to the cost *to* repair or improve, not the cost *of* repairs or improvements. For ex-

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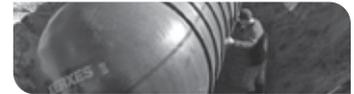


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FLOOD

(continued from previous page)

ample, the owner may not opt to pay for all the items needed by doing some of the work, obtaining materials and/or labor for free, or deciding not to do some of the repairs. Substantial damage and substantial improvement are determined regardless of the actual cost to the owner. It is figured based on the true cost of bringing the building back to its pre-damage condition or the new improved value using qualified labor and materials obtained at market prices.

Costs related to plans and specifications, surveying, permit fees, emergency repairs for health and safety reasons and repairs outside the building – such as driveways, fencing, and landscaping – are not counted toward the cost of improvement or repairs. FEMA has several resources to help local officials determine substantial damage. They can be found in the FEMA library online at www.fema.gov/library.

MARKET VALUE

We usually count on market value to be the price a willing buyer and seller agree upon. However, when determining substantial improvement and substantial damage, market value pertains only to the structure in question; the value of the land on which the structure lies is not considered. Any value resulting from the location of the property is attributed to the value of the land, not the building. The adage that the three fundamentals of real estate are location, location, location does not apply here.

Acceptable estimates of market value can be obtained from various sources, such as an independent, professional appraisal; replacement cost minus depreciation; adjusted tax assessments; and local building department staff. More than one source should be used, and they should be compared for accuracy.

EXCEPTIONS

There are two possible exemptions to the substantial improvement and substantial damage requirements. Under specific circumstances, improvements to correct code violations do not have to be included in the cost of an improvement or repair project. Additionally, historic structures may be exempted from NFIP elevation or flood-proofing requirements as long as the exemption is included in the community's definition of substantial improvement. The community can also opt to grant the exemption through a variance procedure. Communities should still encourage protection measures

to reduce the flood damage potential to historic buildings, such as locating the mechanical and electrical equipment above the BFE and elevating the lowest floor of an addition with the change in floor elevation disguised externally.

FLOOD INSURANCE RATES

As noted above, the flood insurance premiums for buildings that were already present at the time a community adopted a flood hazard ordinance and a FIRM do not reflect the actual risk the buildings are exposed to. However, whether a building is pre-FIRM or post-FIRM, with flood insurance, owners of flood-prone properties pay more of their share toward flood relief. If a structure is substantially damaged or otherwise substantially improved, it becomes a post-FIRM building and is actuarially rated based on its risk of flooding. The rate is established based on the elevation of the building's lowest floor in relation to the BFE. Post-FIRM rates and premiums are significantly higher than pre-FIRM rates and premiums. In situations where substantially damaged or substantially improved buildings have their lowest floor below the base flood elevation, the annual premium could increase to thousands of dollars – up to amounts as high as \$25 for \$100 of insurance coverage!

INCREASED COST OF COMPLIANCE

In 1997, the NFIP began offering additional coverage to all holders of structural flood insurance. This coverage is called Increased Cost of Compliance, or ICC. In addition to covering the repairs to the flooded building, ICC will pay up to \$30,000 to help cover the cost of meeting the ordinance's requirement to elevate. Claims must

“ A common problem when determining substantial improvement occurs when a builder trying to avoid the requirement applies for a permit for only part of the job, and then later applies for another permit to finish the work.”

be accompanied by a substantial damage determination by the floodplain ordinance administrator. An ICC claim can be paid on a building that has been flooded repetitively as long as there have been two or more claims averaging 25 percent or more of the building's value within a ten-year period. In order to trigger ICC for repetitively damaged buildings, the community must include in its ordinance a definition of repetitive loss and incorporate the term in its definition of substantial damage.

CUMULATIVE IMPROVEMENT

A common problem when determining substantial improvement occurs when a builder trying to avoid the requirement applies for a permit for only part of the job, and then later applies for another permit to finish the work. If both applications are together worth more than 50 percent of the building, FEMA requires that the entire improvement be counted as one, and the combined project should be considered a substantial improvement subject to the rules. Some communities require that improvements be calculated cumulatively over several years – for example, over a period of five years, ten years, or the life of the structure.

(continued on next page)

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FLOOD

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When the cost of the improvements totals 50 percent of the market value, the building must be brought into compliance as if it were new construction.

According to Paul Belaski, Windsor's Zoning Administrator, enforcing cumulative improvement calculated over several years can be especially difficult for towns that do not require permits for interior renovations. Most often, the local zoning administrator has no reason to know about a kitchen or bathroom renovation, or a downstairs den conversion into a multimedia family room with a bar. Drawing the line between improvements and maintenance can be a difficult task, to say the least. For exam-

ple, would new paint or wallpaper, replacing a linoleum floor with slate tile, window and door replacements (the list goes on) be considered cumulative improvements or regular maintenance? Belaski says that making these decisions requires a balance between personal privacy and enforcement, with education as the nexus.

Administration/Local Government's Role

It is easy to see why the substantial improvement and substantial damage requirements can be difficult to administer and pose an ongoing challenge to town floodplain ordinance administrators. People who own existing buildings that are being substantially improved or repaired will be required to make a major investment in order to bring them into compliance with the law. ICC availability and the threat of increased flood insurance premiums can help convince reluctant property owners to elevate above the BFE.

FEMA monitors communities enrolled in the NFIP to ensure that they have adopted an ordinance that meets or exceeds the minimum NFIP floodplain management criteria and verifies that they are effectively enforcing their ordinance. Ultimately, however, it is the responsibility of the town's floodplain ordinance administrator to enforce the local flood hazard regulations. Included in this responsibly is the duty of making substantial improvement and substantial damage determinations and assuring that the market value estimates are reasonably accurate and cost estimates reasonably reflect the actual costs of improvement or fully repairing the

damage. This can be made simpler by stipulating that permit applicants supply the information necessary to make those decisions, such as appraisals and construction cost estimates, and by developing an appeals process for disagreements.

If communities do not adequately enforce their floodplain management regulations by allowing improper improvements within the flood-prone areas identified on their FIRMs, they can be placed on probation and potentially suspended from the flood insurance program. All policyholders in a sanctioned community pay a surcharge fee in addition to their regular annual premiums until the town acts to correct the deficiencies and returns to good standing with the NFIP. Should the town fail to be reinstated, policies are cancelled, leaving at-risk floodplain residents and businesses without flood insurance. Substantial improvement and substantial damage requirements, however difficult they may seem, offer a one-time opportunity for the local regulatory program to reduce future damage to buildings that existed in flood-prone areas before the community's flood hazard regulations and FIRMs were established.

If you have any questions, please contact Milly Archer, CFM, Water Quality Coordinator, VLCT Municipal Assistance Center at marcher@vlct.org or 800-649-3759 or the Vermont Agency of Natural Resources at ANR.Floodplains@state.vt.us or 802-241-3759.

*Milly Archer
VLCT Water Quality Coordinator*

CONGRATULATIONS, MILLY!

Milly Archer was recently awarded a Certified Floodplain Manager (CFM) designation by the Association of State Floodplain Managers (ASFPM).

The primary goal of the ASFPM Certified Floodplain Manager Program is to help reduce the nation's flood losses and protect and enhance the natural resources and functions of its floodplains by improving the knowledge and abilities of floodplain managers in the United States.

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VLCT STAFF NEWS AND NOTES

WELCOME

Peggy Tucker is our new Senior Claims Representative in the Workers' Compensation Section, where she handles PACIF workers' compensation claims. She came to us in April from CCMMSI, a third-party administrator for workers' compensation and property/casualty self-insurance programs in South Burlington. She spent the past nine



Peggy Tucker

years there as a senior claims consultant. Her professional designations include an Associate In Claims (AIC), conferred by the Insurance Institute of America, Certified Professional Insurance Woman (CPIW), conferred by the National Association of Insurance Women, and a WC and Property License.

Peggy has lived in South Burlington for the last 25 years. Her outside activities include cake decorating, renovations, catering small functions, and canning. She is also an advocate of giving blood, and so far has donated over 14 gallons.

Welcome, Peggy!

GOOD-BYE

One comes, one goes. Grace Person, MAC's Research and Information Specialist for the past two years, one day and seventeen minutes, is leaving to resume her quest for a Master's in Environmental Law and Policy (that's MELP to the legal cognoscenti) at Vermont Law School. Readers may primarily know Grace as the "survey girl who keeps harassing them to return that survey which somehow ended up on the bottom of the pile over other unimportant things to accomplish before the next budget cycle" (her words). Sure, the position will be filled by another

qualified candidate, but we will definitely miss Grace's quotidian quirkiness.

Good luck, Grace!

CONGRATS

In April, Governor James Douglas appointed Joe Damiata, VLCT's Manager of Safety and Health Promotion, to the Vermont Criminal Justice Training Council (VCJTC). Joe is one of two civilians on the council; the other members are five state officials and three members of the law enforcement community.

In layman's terms, the VCJTC is the board of directors for the Vermont Police Academy. How did Joe get involved? First, he realized that the VCJTC and VLCT have some overlap in their missions in the area of serving municipal governments. In October 2007, he approached the Police Academy looking for ways to integrate VLCT's goal of promoting safety among municipal employees with the Academy's strengths in program development and training. Joe met and began working closely with John Gonyea,

VCJTC's Senior Training and Curriculum Development Coordinator. Over time, they came up with courses specifically for municipal police. Joe also worked with R.J. Elrick, VCJTC's Executive Director, on various projects, including obtaining a driving simulator for the Academy and VLCT to share (more about that in the next issue of the *VLCT News*). Gonyea has been impressed with the quality of Joe's ideas, and when a civilian seat on the council opened, he nominated Joe for it.

The council meets in person every quarter and has conference calls as needed. No meetings have taken place since he was appointed, and although Joe sat in on a few phone meetings, he is taking a back seat while he learns more about council business. He will abstain from discussions that might involve conflicts of interest with municipalities. But when the discussion involves best practices for risk management, safety, or fitness, he will certainly share his experience and bright ideas.

Congratulations, Joe!



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STEVENS DRIVER

(continued from page 10)

The driving exercises included seven-cone slalom, emergency lane changes, tailgating awareness, reversing/parking procedures, and ABS braking practice. That sounds pretty tame, but at 50 miles an hour (not much for Mario Andretti, but it is the default limit on secondary roads), the exercises get exciting. Take the slalom for example. You're thinking: *How hard can it be? I've seen it on all those new car ads on TV.* But when you're driving faster than you're comfortable with, the increased speed affects both the car's handling and your timing for steering and braking. It's scary and exhilarating to push the car to its limit – to avoiding skidding and get the feel of controlling the car through the turns. De-

tails of hand and body position become very important, and the instructor is right there to coach you in all of it. Even the drill for driving in reverse, which takes place at low speeds, is enlightening because it addresses the cause of almost half of all auto repair costs – the driver not looking in the right place when backing up.

Fast or slow, in forward or reverse, this advanced driver training has a lot to offer even seasoned drivers and is consistently popular with participants. VLCT is running another five classes in the first week of June, and – no surprise – all of the classes are already full! But if interest remains high, we will consider scheduling more training days.

Ione Minot
Contributing Writer, VLCT News



Bud Stanley (standing) explains principles such as ABS theory in the mobile classroom before the driving begins.

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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

Human Resources Director. The City of Burlington seeks an HR Director to be responsible for City-wide personnel administration, including compensation, recruitment, policy development, benefit administration, insurance administration, labor relations, training and development, and risk management in accordance with applicable policies, contracts, local, state and federal requirements. The ideal candidate will possess a Bachelor's degree in Human Resources or related field and 7-10 of progressively responsible HR management experience. For a complete job description and application, visit our website at www.vlct.org.

hrjobs.ci.burlington.vt.us, or call Human Resources at 802-865-7145. To apply, please send resume, cover letter, and City of Burlington application to Human Resources Department, 131 Church Street, Burlington, VT 05401. E.O.E. Women, minorities and persons with disabilities are encouraged to apply. (5-7)

District Manager. The Lamoille Regional Solid Waste Management District is seeking a Manager for its 12-town municipal corporation. Experience should include supervision of staff, oversight of permitting process and the law as it relates to solid waste management, and government financial management, including budgets and municipal fund accounting. Requirements: Master's degree in a relevant field, with a minimum of 5 years progressive experience in solid waste management; or an equivalent combination of education and experience that provides the required knowledge, skills, and abilities. Salary commensurate with experience. To apply, send resume and letters of reference to Victor Ehly, Chair, LRSWMD Board of Supervisors, 29 Sunset Drive, Morrisville, VT, 05661-8331. You may also apply via email to info@lrswmd.org. Position open until filled. (5-1)

Planning Director. The Town of Hillsborough, a rural, growing community (pop. 6,500) located in northern Hillsbor-

ough County, New Hampshire, is seeking an experienced land use planner for a full-time position. The current Director is leaving after nine and a half years. The Director reports to the Town Administrator and Board of Selectmen. Duties include: direct professional support to several land-use boards; review and comment on various development proposals; participation in special planning projects; grant writing; and interaction and coordination with all town departments, federal, state, and regional agencies, the general public, and community groups. Requirements: Bachelor's degree in planning, civil engineering, or related field; three years of related experience; excellent oral and written communications skills and organizational abilities. Hillsborough is 30 minutes to Concord and slightly farther to Manchester. Competitive salary and benefits package. To apply, send cover letter and resume to Town Administrator, PO Box 7, Hillsborough, NH 03244. Position open until filled. EOE. (4-17)

Town Manager. The Town of Coventry, R.I. (pop. 33,668) seeks a progressive, innovative, professional Town Manager to lead its organization of 176 full-time and 148 part-time employees. Two Town Managers and two interims since 1986. \$22 million town operating budget plus \$62.8

(continued on next page)

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TRIVIA

Clancy DeSmet, Montpelier's Planning and Zoning Administrator, was the first to correctly identify Woodford as the highest village in the state (2,215 feet). And **Jackie LeBlanc** and **Cynthia Gibbs** from Grafton were the first to report that Runaway Pond is in Glover but "ran away" to flood Barton. Well done!

This month's trivia moves from the geographical to the geopolitical:

Who was the only incumbent Republican governor in Vermont to lose a primary for reelection to the governorship?

In what year did this occur?

Email your answers to dgunn@vlct.org. Then watch this space in the edifying July issue for the answers.

CLASSIFIEDS

(continued from previous page)

million school budget. Requirements: Bachelor's degree (Master's degree in public or business administration preferred); 5+ years of significant and progressively responsible experience as a manager or assistant in community of comparable size and complexity; excellent communication/interpersonal skills; ability to initiate efficient operations; budget/fiscal management, economic development, team building, and labor relations experience; residency strongly preferred within agreed upon time of appointment. Starting salary \$115,000 +/- DOQE. To apply, **respond by June 1, 2009** to Carl F. Luft, Vice President, The PAR Group, 100 N. Waukegan Road, Suite 211, Lake Bluff, IL 60044, or by email to resume@pargroup-

pltd.com or fax to 847-234-8309. For more information, telephone 847-234-0005. The Town of Coventry is an Equal Opportunity Employer. (4-16)

FOR SALE

Dump Truck. The Shelburne Highway Department is accepting bids for a 2001 International 4700 dump truck with snow plow, wing and sander, 9' dump body, Everest poly all-angle plow, Swanson 9" auger tailgate sander; 34,000 miles. Minimum bid, \$11,000. For further information, call the Shelburne Highway Dept. at 802-985-5123. **Bids are due by June 15, 2009** to Shelburne Town Office, Attn: HW Truck bid, 5420 Shelburne Road, PO Box 88, Shelburne, VT 05482. The Town of Shelburne reserves the right to reject any and/or all bids. (4-28)

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SAFETY TRAINING

(continued from page 10)

space? When do you need a permit to work in one? What equipment is required? Even though some attendees were quick with the answers, the information is always worth re-viewing, because entering confined spaces is a leading cause of occupational deaths in the



Adam Wahl, City Parking Garage Attendant (L), and Rick Gaulin, Parking Garage Superintendent, attended the May 7 training.

U.S. Technology has come a long way since the canary in the coal mine days, but the same principles apply: confined areas such as manholes and pits are particularly dangerous, posing threats of physical entrapment and exposure to noxious fumes or a build-up of water. Joe went into detail on poisonous vapors and the equipment available for sensing them before summarizing his main points. As a final example he used a case study which, while realistic, definitely incorporated some humor. After a quick written quiz helped attendees recall key information, Joe pointed out that this lesson was only an introduction: further training is required before workers may enter the kind of confined space that requires a permit.

After a break for lunch, the topic shifted to Trenching and Excavation as taught by Dan Whipple, the Compliance Assistance Specialist for VOSHA. Like Erik and Joe, Dan kept the attendees involved, getting them to discuss hypothetical and real-life examples. He pointed out best – and worst – practices for creating and working in trenches. He cited the legal requirements, and he even pointed out where he thinks the laws aren't strict enough. Then, using photographs taken by OSHA inspectors of actual noncompliant worksites, Dan provided

“Educating employees is the key to success in both safety and operational efficiency.”

— Erik Bailey, Superintendent, Water Pollution Control, City of Winooski

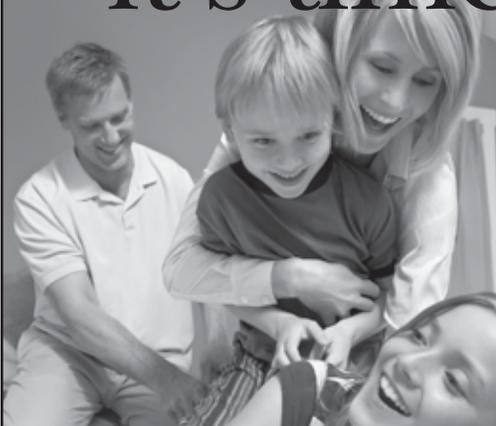
graphic examples of situations where disasters were waiting to happen, and a couple where they already had. He made it clear that, aside from avoiding fines for violating VOSHA and OSHA regulations, it is in the interest of everyone – workers, supervisors, and bypassers – for every job site to be set up with the intention of preventing incidents. If we all get in the habit of looking out for potentially dangerous situations, problems can be corrected and work can proceed safely.

VLCT was pleased to be asked to coordinate this training day for the Winooski Public Works Department. Taking an entire department offline for a full day of structured safety training shows that the city is serious about making safety a priority in its day-to-day operations. We look forward to working with Winooski on an ongoing basis.

Ione Minot
Contributing Writer, VLCT News

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to make it better for them.



Serving our communities is a privilege and a responsibility.

We know that. That's why we believe it's time to simplify. To clarify. To speak plainly. It's time to make the process less painful, and more healthy.

As a premier health care provider, CIGNA offers health benefits designed to help members of the Vermont League of Cities and Towns Health Trust lead better, more fulfilling lives. To learn more about us, visit www.cigna.com.



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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.)

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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.

Town Fair Local Officials Golf Outing (LOGO). Wednesday, September 30. Barre Country Club. The ever popular golf tournament is back in conjunction with Town Fair. Registration materials will be included in your Town Fair packet. Please contact Ken Canning at VLCT for more information or to sponsor this event.

Town Fair 2009. Mark your calendar for Thursday, October 1! This year's Town Fair returns to the Barre Municipal Civic Center. Registration materials will be sent out in late July.

VLCT NEWS ONLINE

We still encourage all subscribers, especially single-use readers, to seriously consider switching from paper prints to online viewing of the *VLCT News*. The benefits are many: a smaller carbon footprint, lower printing and postage costs, less paper used, full-color rendering of color photographs, and immediate access to web links.

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