

# VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

January 2010

## LEGAL AND PRACTICAL EMPLOYER RESPONSES TO A FLU PANDEMIC

Under Vermont law, employers have a general duty to provide a place of employment, “free from recognized hazards that are causing or likely to cause death or significant physical harm to . . . employees.” 21 V.S.A. § 223(a). A flu pandemic could significantly affect your town’s ability to provide important services. The following suggestions may help to mitigate the effects of a pandemic on your municipal operations.

- **Prevention is still the best approach.** According to the Center for Infectious Disease Research and Policy, employers should take steps to promote reg-

ular hand-washing and good hygiene practices. Many employers provide alcohol-based hand sanitizers and tissues and take extra measures to ensure frequently touched surfaces are cleaned and disinfected. Employers should encourage, but not require, employees to be vaccinated against the seasonal flu and H1N1 viruses, especially those employees who may have regular contact with the public or who may be providing health care or emergency response services. The Vermont Department of Health posts vaccination clinic

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## UNBRIDLED DISCRETION RIDES AGAIN

A recent decision by the Environmental Court highlights the need for conscientious evaluation of municipal bylaws to correct ambiguous language. The case, *In re Irish Construction Application*, 44-3-08 Vtec (November 2, 2009), concerns the invalidation of a section of the Town of Bristol’s municipal zoning bylaw for failure to “articulate [setback] standards that sufficiently guide municipal decisions and give notice to those seeking an understanding of what is regulated.”

The appeal came to the Environmental Court after the zoning board of adjustment (ZBA) upheld the zoning administrator’s decision to deny a zoning permit to construct

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## HEALTH TRUST ANNUAL MEETING



2009 Leader Award Winners. Back Row: Governor Jim Douglas, Jeanne Kunderell-Wilson of Hinesburg, Jennifer Getty of Chittenden Solid Waste Management District, Sara Tully and Nancy Gondella of Mendon, Wendy Somers of Danville, and Frank Heald of Ludlow. Front row: Joe Damiata and Heidi Joyce of VLCT. Absent: Kerry Bennett of Rockingham/Bellows Falls. All members of the VLCT Health Trust were invited to attend the Trust’s annual meeting at the Capitol Plaza Hotel in Montpelier on Friday November 13, 2009. Despite the inauspicious date, the meeting was upbeat and energizing. Turn to page 11 for some of the highlights.

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## FLU PANDEMIC

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information at [http://healthvermont.gov/prevent/flu/flu\\_clinics\\_h1n1.aspx#finder](http://healthvermont.gov/prevent/flu/flu_clinics_h1n1.aspx#finder).

- **Educate employees about the risks.** Employers should consider developing written policies and guidelines with information about the H1N1 and seasonal flu viruses. Encourage employees to visit the websites of the Department of Health and Human Services pandemic flu ([www.PandemicFlu.gov](http://www.PandemicFlu.gov)), the Centers for Disease Control and Prevention ([www.cdc.gov](http://www.cdc.gov)) and the Vermont Department of Health (<http://healthvermont.gov>) for information on the flu virus.
- **Set the expectation that sick employees stay home.** While consistent work attendance is a regular expectation for employers, encouraging sick employees, as well as employees with sick members of their households, to stay home may be the most important step to prevent spread of the virus in the workplace. The CDC recommends that employees with flu-like illness stay home until at least 24 hours after they no longer have a fever (100 degrees Fahrenheit or 38 degrees Celsius) or signs of a fever (have chills, feel very warm, have a flushed appearance, or are sweating). This should be determined without the use of fever-reducing medications (i.e., any medicine that contains ibuprofen or acetaminophen).

If an employer believes that an employee is ill with flu-like symptoms, the employer can send the employee home. Likewise, employers generally have the right to discipline employees who come to work when directed not to do so. Stay-home directives may be appropriate when the employee has flu-like symptoms or there is a reasonable expectation that he or she may have been exposed to the H1N1 or seasonal viruses, the workplace is unsafe, or that there is insufficient work because of a pandemic.

- **Consider temporary modifications to leave policies.** Most employee leave

policies encourage consistent work attendance, but the unusual risks of a flu pandemic may warrant a temporary modification of these policies. If absenteeism reaches a high level, employers might consider advancing paid time off to those employees who have exhausted paid sick leave. As doctors may be discouraging sick individuals from visiting their offices unless they have severe complications or are in a high-risk group, employers might temporarily suspend physician certification requirements (i.e., doctors' notes) for absent employees. To avoid potential discrimination claims, the suspension of physician certification requirements should be uniformly applied to all absent employees, and not just those claiming flu-like illnesses.

Along these lines, employers should develop or evaluate existing telecommuting policies. Telecommuting reduces the potential for spreading the flu virus among employees and preserves some level of productivity for employees who may otherwise be ordered to stay home and may not be able to perform any work. Also remember, if your municipality is subject to a collective bargaining agreement, that agreement may limit your ability to unilaterally modify existing personnel policies or adopt new ones. Be sure to review any relevant collective bargaining agreement before implementing new leave policies or modifying your present policies.

- **Evaluate your sources of news and information.** While national and state news reports may be helpful in your planning efforts, the most useful and relevant information is likely to be local. Consider networking with area school officials and local employers to share current information about absenteeism. For example, a spike in local school absenteeism may indicate an area-wide outbreak of the flu virus in your area, triggering modification of your employee leave policies.

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



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# LEGAL AND REGULATORY NOTES



## HOST SITE AGREEMENT FOR LANDFILL; PROPERTY TAX ASSESSMENT APPEAL

### HOST SITE AGREEMENT FOR LANDFILL NOT UNLAWFUL DELEGATION OF MUNICIPAL AUTHORITY

Twenty-five Williston homeowners filed a complaint in Chittenden Superior Court alleging that Williston's 1992 agreement with the Chittenden Solid Waste District (CSWD) for siting, construction, and operation of a solid waste disposal facility in the Town was an unlawful delegation of municipal authority. The homeowners contended that by promising to support CSWD in its permit applications and warranting that CSWD's plans conform with the town plan, Williston illegally delegated its statutory authority regarding construction, permitting, and operation of solid waste disposal facilities. The Chittenden Superior Court found for the Town and the homeowners appealed the decision to the Vermont Supreme Court.

In rejecting the homeowners' arguments, the Supreme Court held that a municipality's agreement not to oppose the other party to the contract in its permit applications was entirely permissible, especially given the specific statutory authorization for municipalities to enter into contracts with a waste disposal district for the siting and management of landfills under 24 V.S.A. § 2202a(b). Williston's ability to pledge its cooperation to further the goals of the agreement was implicit in its authority to contract for the siting, construction, and operation of a waste disposal facility. By pledging its cooperation in siting the landfill, the Town did not abrogate its statutory right to exercise its party status in various local and state permitting proceedings or cede any legislatively derived power. With respect to the town plan warranty, the agreement did not "displace existing state permitting, licensing, and public hearing requirements," nor did it promise the

success of these permitting processes. *Gade v. Chittenden Solid Waste District and Town of Williston*, 2009 VT 107.

The *Gade* case represents an important recognition of municipal authority to contract with other parties to accomplish common goals. A pledge of mutual cooperation between the municipality and another party will not amount to an unlawful delegation of municipal authority if the subject of the contract is within the power of the municipality to enter in the first instance. With respect to local and state permitting, so long as the independence of the process is maintained, a town's pledge to cooperate with an outside party in the permitting processes will not be considered illegal.

A copy of the decision is at <http://info.libraries.vermont.gov/supct/current/op2008-462.html>.

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

### INSPECTION NECESSARY TO PROPERTY TAX ASSESSMENT APPEAL

In June 2007, the Town of Brookfield completed a town-wide appraisal of properties. One property owner, Michael Garbitelli, refused to allow the Brookfield listers to inspect two of his properties. The listers initially appraised the properties at \$248,900 and \$1,921,900. After Mr. Garbitelli filed grievances, the listers reduced the appraised values to \$236,800 and \$1,691,800. He appealed both appraisals to the board of civil authority (BCA).

A hearing was held before the BCA and Mr. Garbitelli again refused to allow the BCA to inspect the properties. Because it could not conduct inspections, the BCA kept the assessments at \$236,800 and \$1,691,800. Mr. Garbitelli appealed both as-

*(continued on next page)*

### It's Not Too Soon to Plan for 2010 Projects. . . Let us Help

- Water Supply Treatment and Distribution Design
- Wastewater Collection and Treatment System Design
- Stormwater Management · Site Plans · Environmental Engineering
- Mechanical Engineering and Energy Conservation
- Road Improvements · Public Swimming Pools
- State Funding and Permitting Assistance



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## SELECTIVE APPRAISAL

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assessments to the director of Property Valuation and Review. For one property, Mr. Garbitelli allowed the state appraiser access only to a building attached to the main dwelling. For the second property, he allowed the state appraiser access to only the foyer and the basement.

At the conclusion of the hearings, the state appraiser found that because 32 V.S.A. § 4467, which governs appeals from BCA decisions, requires the state appraiser to inspect the property prior to making a determination, and because the owner refused to allow a full interior inspection of either property, "it is not possible for the State Appraiser to make a determination as required by statute" and he dismissed both appeals. Mr. Garbitelli requested the state appraiser to reconsider the dismissal of his appeal, and that request was denied. Mr. Garbitelli then appealed to the Vermont Supreme Court, arguing that the state appraiser abused his discretion by dismissing the appeal for refusal to allow a full interior inspection of the two properties.

The Supreme Court noted that under 32 V.S.A. § 4404(c), the BCA was required to inspect the interior and exterior of any structure on the property: "If an adequate inspection is necessary for the BCA to make its decision, then the state appraiser, to make a 'de novo' determination, must also be able to conduct an adequate inspection. The importance of the inspection to the valuation of the property is evidenced by the fact that it is a mandatory part of the state appraiser's determination. [32 V.S.A. § 4467] ... In the absence of an adequate inspection, there is simply no way that the taxpayer can present the evidence needed to extinguish this presumption." The limited inspections that the taxpayer finally allowed the state appraiser were not enough to provide him with evidence sufficient to overcome the presumption in favor of the BCA's determination. In the absence of an adequate inspection, neither the BCA nor the state appraiser had enough information upon which to change the listers' appraisals.

This case underscores the importance of site inspections for properties subject to an appeal before the BCA. According to 32 V.S.A. § 4404(c), "Each property, the appraisal of which is being appealed, shall be inspected by a committee of not less than

three members of the board who shall report to the board within 30 days from the hearing on the appeal and before the final decision pertaining to the property is given. If, after notice, the appellant refuses to allow an inspection of the property as required under this subsection, including the interior and exterior of any structure on the property, the appeal shall be deemed withdrawn." Taxpayers cannot reasonably expect to appeal their appraisals to the board of civil authority

(and beyond) and not allow a full inspection of their property. Not only do owners risk a "deemed withdrawal" of the appeal, but they also cannot overcome the presumption that the lister's appraisal is valid.

A copy of the decision, *Garbitelli v. Town of Brookfield*, 2009 VT 109, is at <http://info.libraries.vermont.gov/supct/current/eo2008-412.html>.

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

## 2010 MUNICIPAL EDUCATION GRANTS AVAILABLE APPLY TODAY!

The Department of Economic, Housing and Community Development (DEHCD) 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 until May 15, 2010 to bring MAC staff to their offices for a free on-site training. Links to descriptions of VLCT's Land use Workshops and the MEG application are available on VLCT's website at [www.vlct.org/municipalassistancecenter/customworkshops/](http://www.vlct.org/municipalassistancecenter/customworkshops/).

To schedule a land use training, please contact Abby Friedman, MAC Director, at 800-649-7915 or [Afriedman@vlct.org](mailto:Afriedman@vlct.org). For more information about the MEG program, visit the DEHCD website ([www.dhca.state.vt.us/Planning/MEG.htm](http://www.dhca.state.vt.us/Planning/MEG.htm)), or contact Brenda Greika at the DEHCD, 802-828-3243 or [Brenda.greika@state.vt.us](mailto:Brenda.greika@state.vt.us).

**There are 15 VLCT Land Use Training Workshops to choose from, including two new topics noted below:**

### CORE TOPICS

- Capital Planning and Budgeting
- Conducting Effective Meetings and Hearings
- The Effective Land Use Board (new)
- 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
- Managing Conflicts of Interest in Local Land Use Decisions (new)
- Major Types of Development Review

### SPECIFIC TOPICS

- Adopting Local Act 250 Review
- Is a Development Review Board Right for Our Town?
- Planning for Ancient Roads – What Every Municipality Should Know
- Should Our Town Adopt On the Record Review?
- Should Our Town Adopt Zoning?
- Understanding Homeowners' Associations

**Remember to apply early as funding may run out before the May 15, 2009 deadline.**



# ASK THE LEAGUE

## CAN TOWNS REGULATE DOMESTIC ANIMALS?

Yes, but not through zoning. "A bylaw under this chapter shall not regulate accepted agricultural ... practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets ..." 24 V.S.A. § 4413(d). But agricultural practices are not only a land use issue. They're becoming more and more a quality of life issue as well.

Whether it is due to a rise in sprawl, the demand for local products, or simply aspirations for a healthier and more sustainable lifestyle accomplished by growing and raising the foods we eat ourselves, the spatial separation between where we live and where we grow our food is diminishing. As people get closer to their produce and the domestic animals used to support them, so, too – by obvious association – do their neighbors. This trend can be particularly fractious and intrusive when it comes to the raising and management of domestic animals. Domestic animals are defined under Vermont law as "cattle, sheep, goats, equines, deer, American bison, swine, poultry, pheasant, Chukar par-

tridge, Coturnix quail, psittacine birds, ferrets, camelids, ratites (ostriches, rheas, and emus), and water buffalo. The term shall include cultured trout propagated by commercial trout farms." 6 V.S.A. § 1151(2).

Zoning, however, isn't the only regulatory tool municipalities have at their disposal to address the interactions between man and beast. Other possible mechanisms include regulating the noise and odor generated by these animals via enactment of a noise or animal control ordinance pursuant to a town's nuisance authority [24 V.S.A. § 2291(14)], and regulating the potential detrimental public health affects of these practices by enacting a public health ordinance pursuant to

a town's authority to "compel the cleaning or repair of any premises which in the judgment of the legislative body is dangerous to the health or safety of the public." 24 V.S.A. § 2291(13).

Of course, occasionally the best response to a problem is to do nothing at all. Government can't be all things to all people and sometimes a dispute between neighbors is simply that. Regardless of the presence of an ordinance, these individuals could always opt to assert their own rights by filing a private nuisance suit in superior court.

*Garrett Baxter, Staff Attorney  
VLCT Municipal Assistance Center*

### NEW IRS MILEAGE RATE

The Internal Revenue Service announced that its optional standard mileage rate for 2010 will be \$0.50 per mile. This rate applies to the use of a personal car, van, pickup, or panel truck for business purposes. The rate is down \$0.05 from 2009. For more information about the reimbursement rate, visit [www.irs.gov/newsroom/article/0,,id=216048,00.html](http://www.irs.gov/newsroom/article/0,,id=216048,00.html).

**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



# NEW MODEL POLICIES FROM THE MUNICIPAL ASSISTANCE CENTER

VLCT's Municipal Assistance Center is pleased to announce two new model policies for municipal officials: a **Model Public Records Inspection, Copying, and Transmission Policy** and a **Model Social Service Agency Appropriation Policy**. Both may be accessed via the online Resource Library <http://resources.vlct.org>. Please feel free to contact us with any questions at 1-800-649-7915 or [info@vlct.org](mailto:info@vlct.org).

**Model Public Records Inspection, Copying, and Transmission Policy.** The Vermont Public Records Act (1 V.S.A. §§

315-320) requires municipalities to provide access to public records for inspection and copying unless a record is exempt under one of the 39 general exemptions found at 1 V.S.A. § 317(c). A municipality is authorized under 1 V.S.A. 316(j) of the Public Records Act to adopt and enforce reasonable rules to prevent disruption of operations in responding to records requests, to preserve the security of public records, and to protect public records from damage. This model policy has been developed for adoption by municipal clerks but can be modified for

adoption for other officials who may be custodians of municipal records.

**Model Social Service Agency Appropriation Policy.** Under Vermont law, voters of a city or town may appropriate money for the support of social service programs and agencies that provide services to town residents. 24 V.S.A. § 2691. Due to the proliferation of social service agency requests, legislative bodies may find it helpful to adopt a policy for managing these requests. This model policy provides an example of a petitioned article and language to encourage or require social service agencies to describe their programs for inclusion in the annual report. Some municipalities require social service agencies to provide some form of financial disclosure as a condition for receiving an appropriation.

## UPCOMING TRAINING OPPORTUNITIES

PRESENTED BY  
VLCT'S MUNICIPAL ASSISTANCE CENTER

**Rescheduled! Thursday, February 4, Vermont Interactive Television**  
**Variations on a Theme: Guiding Development**  
**Through Planned Unit Development Bylaws**

Planned unit development (PUD) language can supplement an existing bylaw or bind future development to an approved stand-alone master plan. As a planning tool, PUD has many applications beyond open space preservation and clustered development. This workshop will explore the broad, enabling legislation and how towns are using the PUD process to achieve various development goals. It is delivered in the evening via interactive television and is co-sponsored by Vermont's Regional Planning Commissions and the Vermont Association of Planning and Development Agencies.

**Wednesday, February 17, Capitol Plaza, Montpelier**  
**Town Meeting Tune-Up**

A parliamentarian's paradise, this annual workshop is designed for moderators and selectboard members, both seasoned and new. It will focus on the statutory requirements for town meeting, Robert's Rules of Order, and best practices for making it through Town Meeting unscathed.

### SAVE THE DATE

Wednesday, March 10, Vermont Interactive Television  
**Making the Most of Municipal Planning Data Resources**

Tuesday, March 23, Hartford Town Offices  
Thursday, March 25, Milton Town Offices  
**Treasurers' Workshop**

Saturday, March 27, Lake Morey Inn, Fairlee  
**Selectboard Institute**

For registration and other information, please visit [www.vlct.org/eventscalendar/upcomingevents/](http://www.vlct.org/eventscalendar/upcomingevents/) or call 1-800-649-7915 or email [info@vlct.org](mailto:info@vlct.org).

## FCC SETS NEW TELECOM DEADLINES

Municipal zoning officials should be aware that the Federal Communications Commission (FCC) has passed a new rule imposing deadlines for review of telecommunication zoning applications. Pursuant to 47 U.S.C.A. § 332(c)(7), municipalities must "act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request." Under the new FCC rule, a municipality must act within 90 days on a collocation application and within 150 days on any other zoning request for a communication tower. If a municipality fails to act on an application within these time periods, an applicant may file a claim for relief in court within 30 days. A copy of the FCC press release on the new rule is at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-294711A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294711A1.pdf).

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



## WHEN VOSHA KNOCKS, BENNINGTON DELIVERS

ONE TOWN'S EXPERIENCE WITH A POTENTIALLY GRUELING AND COSTLY PROCESS

One morning last July, two compliance officers from the Vermont Occupational Safety & Hazard Administration (VOSHA) showed up at the Bennington Town Offices for a surprise safety inspection – a *complete* surprise and a *full* (“general schedule”) inspection for compliance with federal

and state workplace safety laws. Politely, they gave Town Manager Stuart Hurd a choice: agree to let the inspection begin immediately, or refuse and know that the inspectors would obtain a warrant from a judge to compel the inspection. Stu chose to welcome the inspectors, not because he knew that putting them off would prejudice the town's evaluation, but because it is in his nature to run a safe and open-minded organization. This was the first step in the right direction.

This wall-to-wall inspection required two employee guides: one manager and one union member. The town was able to designate one of its two full-time building inspectors for the entire six days of the inspection, and two union members took turns working on the team. The team of four got right to work.

From 9 a.m. to 1 p.m. each day (except Fridays), the inspection team toured one department thoroughly. Every location where three or more municipal employees work was checked (the exempted sites being the Senior Center, with only two employees, and the Fire Department, which is entirely volunteer). One VOSHA officer reviewed relevant paperwork: policies, posters, signs, purchase and repair records, operating procedures, and more. The other looked for physical hazards and violations, such as exposure to noxious chemicals, daisy-chaining of power strips, overloading of shelves, use of ungrounded outlets where grounding is required, ad-hoc repairs to machinery, and unsanitary kitchens and bathrooms. As he saw problems and photographed finable violations, he identified them out loud so the Bennington building inspector could take notes. Every afternoon, the Bennington inspector emailed his

“ This was certainly a wakeup call for us, because we thought we were pretty good. ”

— Stuart Hurd, Manager,  
Town of Bennington

notes to the other departments, giving them the opportunity to correct similar situations before the team arrived at their buildings. This was another step in the right direction, because, as Stu put it, “VOSHA's not trying to trick you or catch every issue. They want you to learn as you go and start clearing up issues before they find them.” Each day's list noted 20 to 50 recommendations and four or fewer true violations (those with potential to receive VOSHA fines).

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### VFDs IN WC AUDITS

For workers' comp audits of PACIF members that have a volunteer fire department (VFD), the following documentation is due **by Friday January 8, 2010** via email (to [pvandeursen@vlct.org](mailto:pvandeursen@vlct.org)), fax, or mail:

- Roster of all volunteer fire fighters who served in 2009.
- 2009 Payroll report for VFD only, by employee (please include stipends for officers, training wages, and all paid fire fighters).
- Copies of all four quarterly 941s for 2009. (These will be for the entire municipality and not specific to the VFD.)

Please note:

- If your VFD is **paid, but not through payroll**, please provide documentation and an explanation.
- If your VFD is **not paid at all**, please provide the roster with a note to that effect.

If you have any questions, please email Pam VanDeursen at [pvandeursen@vlct.org](mailto:pvandeursen@vlct.org), or call her at 1-800-649-7915, ext. 171.



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## VOSHA

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“We treated this as a learning experience,” said Stu, explaining the willingness with which the town worked with the VOSHA officers. According to Larry McLeod, Bennington’s Facilities Manager, “Having VOSHA here made us all start noticing potential threats and realizing that we should have done something about them before. We’d been seeing many of these problems, just not really noticing them and taking time to correct them.”

When an inspection is complete, the VOSHA compliance officers hold a closing conference to explain their findings to managers, department heads, and union representatives. In Bennington’s case, the closing conference took place about two weeks after the inspection period, giving the VOSHA officers time to evaluate the violations, prepare their talking points, and assemble handouts for all the attendees. Meanwhile, Michele Johnson, Bennington’s Human Resources and Contract Manager, scheduled a day when all of the town’s supervisors from departments whose buildings had been inspected could attend. In the closing conference, everyone had a list of the finable violations and a copy of the *VOSHA Closing Conference Guide*. The VOSHA officers carefully explained each violation, stating the relevant regulation and discussing the degree of seriousness and appropriate corrections. The Bennington attendees asked questions to help them understand what it takes to comply and maintain a safe workplace.

After the closing conference, the VOSHA officers discussed Bennington’s situation with their supervisor to establish the fines that would be assessed. The town was fined for ten violations: some types of violation had many instances, such as the use of two or more power strips in a row, but the town had already started correcting these, so only one fine was assigned for all such instances. (The town had also acted on about half of the additional recommendations during the inspection period.) The VOSHA officers established the basic fines according to the seriousness of each violation and the probability that an employee could be injured by it. Then they adjusted the fines according to factors such as the total number of employ-

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## BENNINGTON’S RECOMMENDATIONS TO OTHER TOWNS FOR VOSHA PREPAREDNESS

- Bring Project Worksafe [a proactive arm of VOSHA] into your workplace to inspect existing facilities and equipment and identify finable offenses. If they find something, you must fix it, but they won’t fine you. *Bennington did this after upgrading its water filtration plant less than two years ago, and it helped them start to see things the way VOSHA does.*
- Use PACIF’s WC Rewards program. It is valuable both for providing ideas on how to implement new safety initiatives and as a format and checklist for collecting and organizing complete safety-related information. *Much of the documentation that VOSHA required was easy for Bennington to hand over because it was already together in the WC Rewards binder.*
- Keep receipts and photographs (from before and after) of all repairs to facilities and equipment, even if these are not prompted by a VOSHA inspection.
- To every Public Works department:
  1. When you buy parts for your machinery and equipment (especially universally adapted parts), make sure they are certified or certifiable by the manufacturer. Check this detail specifically with the supplier, get the answer in writing, and file that record. *Years ago, Bennington bought forks to use on a Bobcat, and the supplier said they were perfect for the Bobcat, but they were not manufacturer approved, and VOSHA noticed that.*
  2. Keep in mind that ad hoc and field modifications always pose the risk of a VOSHA fine because they are seldom made with the manufacturer’s approval.
- When your VLCT loss control consultant wants to inspect your building, take advantage of it. *Larry gave Wade Masure, the consultant for southern Vermont, copies of all of Bennington’s lists of VOSHA recommendations and violations so that all PACIF members can learn from them.*
- If you have sufficient staff, set up a schedule for cross-departmental in-house inspection teams, and have them look for problems like the ones on the lists that Bennington gave to VLCT. *Small towns could work with neighboring towns to inspect each other’s facilities.*
- It is not enough for employees to report safety violations to their supervisors. They should keep an eye on whether the violations are corrected and remind the supervisor if necessary.
- If VOSHA officers come to inspect your facility, provide them with a guide who is familiar with facilities inspection. Try to have a qualified individual available at a moment’s notice, because you can lose a lot in translation from building to building unless your person knows what to look for. It is even a good idea for your guide to have a camera and take photographs of whatever the VOSHA inspector photographs.
- If you are inspected and you don’t choose to contest the violations that are found, document all of your corrections thoroughly. Record what you did, when you did it, and who did it, and include an “after” photograph for every place where the VOSHA officer took a “before” photograph. *The book of correction records that Larry McLeod compiled for Van-George Belanger helped put Bennington in a proactive rather than a defensive light.*
- If you are inspected, do request an informal conference during the 20-day response period. Whether it takes place in person or by phone, this is a great opportunity to present evidence that might help reduce your fines and to discuss acceptable corrective actions after complex violations have been found.

## FIRST PACIF SERIOUS HAZARD ALERT PROMPTS PISTON REPAIRS

When he heard that a third PACIF member in eleven weeks had filed a claim involving the sudden failure of the multi-stage piston in a tandem dump truck, Joe Damiata, VLCT's Manager of Safety and Health Promotion, saw a disturbing trend in the making. The pistons had all failed while the truck beds were raised, with two main effects: the loaded beds slammed down hard, tipping two trucks onto their sides, and, more alarmingly, one piston broke into the cab forcefully enough to have seriously injured anyone sitting in the middle. The danger loomed too large not to do something about it. Immediately.

Joe wanted to get word out quickly, urging PACIF members to protect their road crews against this threat. He decided that an email marked Alert would get people's attention. With swift consent from senior managers, he wrote a simple but clear message with the heading Serious Hazard Alert. He stated the facts and outlined the three recent incidents. He sent it to every PACIF member municipality with Internet access, and also to the Vermont Local Roads Listserve in hopes it would reach more eyes that way. Then, because he hadn't heard of any similar events in other states, he sent it to the National League of Cities (NLC) in case it could help municipalities elsewhere in the country. The alert included several safety precautions, including "Visually inspect the dump piston before each use. If the piston is leaking, scored or cracked, take the truck out of service until it can be inspected by a qualified mechanic and repaired if needed."

That was in late September. Recently, one of Joe's Loss Control team members, Fred Satink, was in Corinth and mentioned the alert to the Road Foreman, Joe Blodgett. Blodgett said that the piston on the town's tandem dump truck had been leaking a bit, and when he read the League's email warn-

*(continued on page 14)*

## REMINDER: WELLNESS PROGRAM PAYMENTS

This is a reminder to Health Trust members that all payments for VLCT-sponsored wellness programs – flu shots, workshops, challenges, etc. – must be made separately from your health insurance premiums. Please take care not only to cut separate checks, but also to send them to different addresses. Please continue to send health insurance premium payments to VLCT Health Trust, PO Box 39, Montpelier, VT 05601-0039 (which ensures that the premiums will arrive at our billing and eligibility processing center). Please direct all wellness program payments to the VLCT Health Trust, c/o VLCT Wellness Programs, VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602. If you have any questions regarding what constitutes a wellness program, please call Kelley Avery at 800-649-7915.

## NEW ENROLLMENT CHANGE FORM FOR HEALTH INSURANCE

The Health Trust's new CIGNA Enrollment Change Form is now available to members to use for 2010. This form has been updated to include the newest HDHP Value Plan options, which are available for members and subscribers effective January 1, 2010. The updated enrollment form was emailed to each member's Health Trust contact in late November and can always be found at [www.vlct.org](http://www.vlct.org) on the Health page (Insurance & Risk Services—Programs – Health) and the Customer Service Forms page (Insurance & Risk Services – Customer Service Forms).

Feel free to contact your Member Relations representative or Kelley Avery at 800-649-7915 if you have any questions regarding group or individual subscriber eligibility changes.

### JANUARY 2010 RMS CALENDAR

**Deadline for PACIF members with volunteer fire departments to submit documentation required for WC audits.** January 8, 2010. See full description on page 8. Call Pam VanDeursen at 802-229-9111, ext. 171 with questions.

**VLCT Health Trust Wellness Coordinator Workshops.** Five mornings and one afternoon, January 21 to February 4, at the locations listed below. Health Trust contacts, municipal managers, and wellness coordinators are invited to learn about VLCT's 2010 health promotion activities and receive materials for the Leader Program and the Vancouver Olympics Pedometer Adventure. Free to all VLCT Health Trust members. Contact Shawna O'Neill at [soneill@vlct.org](mailto:soneill@vlct.org) or 802-229-9111 to inquire about late registration.

**Thursday, January 21**  
9:00 a.m. to noon  
VLCT Office, Montpelier

**Wednesday, January 27**  
9:00 a.m. to noon  
Brattleboro Holiday Inn

**Wednesday, February 3**  
9:00 a.m. to noon  
Lyndon Industrial Park

**Thursday, January 21**  
noon to 3:00 p.m.  
VLCT Office, Montpelier

**Thursday, January 28**  
9:00 a.m. to noon  
Rutland Holiday Inn

**Thursday, February 4**  
9:00 a.m. to noon  
Hampton Inn, Colchester

# MENT SERVICES

## HT ANNUAL MEETING

(continued from page 1)

Two items were brought up for attending members to vote on:

- Joel Cope and Sandra Gallup, the two board members whose terms expired this year, were nominated and re-elected unanimously for an additional three-year term each.
- A proposed bylaw revision concerning members leaving the trust at times other than during the renewal period was explained by the Board Vice President and President and was accepted unanimously. The policy that members may only leave the trust during renewal season and with 30 days' notice is a longstanding one. The revision addresses the fact that the calculations for each year's operating costs are based on having the enrolled number of members participate in the pool for the entire fund year. If a member leaves the trust either with fewer than 30 days remaining in the annual renewal period or after the renewal period ends, the rest of the members must cover the operating costs of that member's part of the pool. The revision specifies that the leaving member must pay an exit fee equal to a one-month premium payment—to cover administrative costs, rather than to be punitive in any way. The revision includes an appeal process to allow for a "good cause" waiver in cases involving circumstances absolutely beyond the member's control.

The annual update on the Trust featured a presentation by David Sichel, Deputy Director, Risk Management Services, and Tanya Chambers, Senior Member Relations Representative, called "Balancing Healthcare Costs." Dave and Tanya charted a helpful route through the shifting plans and various options available to Health Trust members, noting the long- and short-term impli-

(continued on next page)

## PACIF TO HELP PAY FOR LOSS PREVENTION EQUIPMENT

2010 will bring a new loss control program to PACIF members. This is not just another program – it has been designed to address members' specific needs for risk prevention. The PACIF Grant Program will help members purchase high-cost equipment that can help prevent claims. PACIF grants will be awarded for a 50/50 match of other funds, up to \$5000 per grant, for the purchase of certain types of equipment.

Here's how it works. A PACIF member will first need to identify a qualifying piece of equipment that his or her municipality needs. He or she will then gather quotes and pick the specific model and company he or she would like to purchase the equipment from. Next, the application must be filled out completely. Because these grants will be issued based on need, he or she must explain in detail why the municipality needs the equipment. We encourage smaller communities to pool funds and share equipment with each other. Lastly, the member will send the completed application and product quote to the Vermont League of Cities and Towns for consideration. Applications received by March 31, 2010 will be eligible for

(continued on next page)

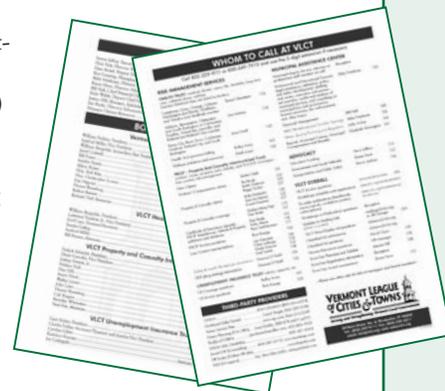
## FOR BULLETIN BOARDS OR PAYROLL ENCLOSURES

If you came to the recent Health Trust Annual Meeting you received a folder with not only meeting-related handouts but also materials describing various Health Trust services. Did you know that many of the latter are available in quantities for members to distribute to their covered employees? Whenever possible, Member Relations representatives email PDFs of useful documents to Health Trust contacts who can then print as many as they require. But beyond that, we can provide you with quantities of several full-color brochures published by our third-party vendors.

Perhaps you would like to share with your employees printed materials that you received in the annual meeting folder or saw at our trade show display. Maybe you frequently answer the same questions from your employees and you'd like a handout that does the answering for you. Either way, let us know! We want to help you get the word out about everything we offer. Please contact your Member Relations representative or Suzie Benoit at [sbenoit@vlct.org](mailto:sbenoit@vlct.org) (or 802-229-9111 ext. 157).

Larry Smith, Manager, Member Relations, Risk Management Services

Another handout at the Health Trust annual meeting was VLCT's Whom To Call sheet. This is a convenient resource for town officials (and support staff) who have a question but don't know which person at VLCT to call for the answer. One side gives names and phone extensions of VLCT employees according to job function; the other lists VLCT managers and current board members. This reference sheet will be updated frequently and distributed as a PDF by MR reps. If you would ever like a copy of the latest version, just ask Suzie or your MR rep for one, specifying whether you'd like the PDF or a print copy.





## HT ANNUAL MEETING

*(continued from previous page)*

cations of different payment strategies. In short, the best approach is for employers to share health insurance costs with employees so that, as Dave put it, “they have some skin in the game.” This will encourage everyone to be smart healthcare consumers.

The meeting’s keynote speech, “Rubik the Magic Cube: Solving the Health Care Puzzle,” was delivered by Gary Earl, whose background is in health insurance (he is currently a vice president at CIGNA), but whose approach to health goes far beyond premiums and covered services. Gary explained that healthcare, like a Rubik cube, has dozens of variables and millions of possible arrangements, but “it is a solvable problem.” Solving both of these puzzles involves taking a broad view and aligning variables effectively.

In the course of this fast-paced presentation, Gary pointed out that many factors affect individuals’ health – emotional, economic, social, environmental, and others. Improving it requires getting to each person’s root issues, the fundamental factors of his or her unhealth [his word]. He has found that helping people identify their barriers to making healthy lifestyle choices is a necessary start, and addressing community-level circumstances can be very effective at removing those barriers. Gary outlined six major steps toward solving our country’s huge healthcare problems: admitting there is a problem, expanding our vision, learning (through listening and research), empowering our teams, engaging all partners (such as vendors, local businesses, government agencies, community groups, and neighbors), and taking the first step.

Later in the meeting, Heidi Joyce, VLCT’s Senior Health Promotion Consultant, acknowledged members that fostered wellness activities at their workplaces. Gary Earl was a tough act to follow, but Heidi had brought in a big gun: Governor Jim Douglas. With Joe Damiata, VLCT’s Manager of Safety and Health Promotion, Heidi and Governor Douglas presented award certificates to six Health Trust members for high or significantly improved scores in the 2009 Leader Program.

*Ken Canning, Managing Deputy Director,  
Risk Management Services*

## PACIF GRANT

*(continued from previous page)*

grants to be awarded in May, and applications received by August 30, 2010 will be eligible for grants awarded in October. VLCT Risk Management Services staff will select all grant recipients and notify them of the amount they were awarded. The grant is good for one year from the date on the award letter. The member has one year to purchase the equipment and send in documentation that he or she purchased the equipment requested in the application. When all the information has been confirmed, VLCT PACIF will send the member a check for the award amount.

We got the idea during a recent third-party audit of our Loss Control program. We learned that other pools have similar programs, but they focus mostly on workers’ safety. Our Grant Program is different because it is guided by claims history. We reviewed the losses our members were having, examined the most frequent and severe losses, and identified equipment that can help prevent them. The equipment available

for purchase in this program is more expensive than what most of our members can afford on their own but it is designed to prevent either a catastrophic loss or our most common severe losses. The products eligible for a 2010 PACIF grant (and the area each is meant to protect) are powered ambulance cots (back), stair chairs (back and shoulder), hydraulic tailgate lifts (back and shoulder), truck cranes (back and shoulder), manhole “buddies” (back and shoulder), headsets for emergency responders (attention to driving), ballistic vests (life), trench protection systems (against cave-ins), and security systems (against thefts and break-ins).

We will send a packet to each PACIF member with information on how to participate in this program. There will be a cap on how many grants we can issue, so interested members should act quickly. If you do not receive a packet and would like to participate in this program, you can either visit our website ([www.vlct.org/insuranceriskservices/programs/](http://www.vlct.org/insuranceriskservices/programs/)) or contact your Loss Control or Member Relations representative.

*Joe Damiata, Manager, Safety and Health  
Promotion, Risk Management Services*



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# HISTORIC REDEVELOPMENT AND TAX CREDITS

With the increasing popularity of “green building” and a growing focus on new technologies, materials, and building techniques, the redevelopment and reuse of existing historic buildings may seem counter-intuitive. However, Vermont’s historic downtowns, combined with generous tax credits, make urban redevelopment an attractive opportunity in Vermont. Vermont’s development community has become a national leader in rehabilitating traditional historic centers by redeveloping buildings that are newly environmentally efficient, while still ensuring preservation of their historic and cultural values.

Statewide redevelopment projects and opportunities were showcased last November at the annual Vermont Downtown Conference. This conference was hosted in the newly restored Town Hall Theater which won recognition as the Best Downtown Renovation Project of 2009. This article offers a summary of the historic tax credit programs that are available to help fund these renovations and revitalize our commercial centers.

**Stability and Orientation.** The attributes of historic preservation have been long recognized. Congress identified that “the preservation of historic properties is in the public interest” when it passed the National Historic Preservation Act of 1966. Congress expressly recognized that historic buildings offered “cultural, educational, aesthetic, inspirational, economic, and energy benefits.”

Vermont is home to many buildings that are not utilized to their fullest potential de-

spite their historic character. The rehabilitation of historic and older buildings is encouraged to give communities a sense of stability and orientation. Buildings that are strong candidates for successful rehabilitation include those built for an outdated purpose or that lag behind more contemporary building performance standards.

Efforts by the Department of Economic, Housing and Community Development (formerly the Department of Housing and Community Affairs) and the Division for Historic Preservation’s Downtown Program to promote public-private partnerships and the implementation of tax credits have played a critical and still growing role in Vermont’s downtown rehabilitation. This redevelopment offers significant public benefits as well as benefiting the opportunistic developer. Governor Douglas has said, “Rehabilitation through public-private partnerships has proven effective at returning abandoned and underused properties to the tax rolls, generating employment and much needed office space and housing in downtowns and villages.”

**What is a Tax Credit?** A tax credit, whether pursuant to a federal or state program, is an earned amount that lowers the amount of tax owed. Tax credits differ from grants in that no funds are conveyed directly. They also differ from income tax deductions, which lower the amount of income subject to taxation. Simply, one dollar of tax credit lowers the income tax owed by one dollar, regardless of the income level of the recipi-

ent. This tax credit incentive is taken in the year in which the renovated building is put into service and is useful to reducing project costs.

**Federal Historic Preservation Tax Incentive Credits.** The use of tax credits through the Federal Historic Preservation Tax Incentives promotes responsible rehabilitation and cost-effective community revitalization. Under the Federal Historic Preservation Tax Incentive Program, a 20 percent tax credit is available for the rehabilitation of certified historic structures. This credit is not capped and extends to labor and material costs as well as soft costs such as architectural and consulting fees. Nationally, approximately 1,200 tax credit rehabilitation projects are proposed and a similar number completed each year. According to the National Park Service, “The capital investment in the completed projects is around \$2.8 billion of private sector investment every year.”

A 10 percent federal tax credit is also available for the rehabilitation of non-historic buildings built before 1936, but this program has been less widely used. Pending legislative changes, discussed below, may expand the application of this program.

**Historic Tax Credit Program Qualifications.** To qualify for the 20 percent historic renovation tax credit, a building must first be recognized as an historic structure. This requires that the building either be listed in

*(continued on page 18)*



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## PISTON REPAIR

(continued from page 10)

ing he had the piston disassembled for a thorough inspection. The mechanic found a serious leak and deep corrosion at the base of the piston. Blodgett replaced the piston at a cost of \$1800 – far less than the hundreds of thousands of dollars that a broken piston might have cost in a combination of damaged property, workers' compensation, and lost time. As Fred said, "We don't often identify 'avoided' claims when we practice prevention with our members, yet the dump piston alert clearly made a difference here."

There's more. Joe Blodgett passed the warning to a couple of neighboring towns that do not have Internet access. That's why Topsham employees examined their dump truck (even though it has a single, not double, rear axle), and they found that their dual stage piston had significant corrosion around the base. They were able to replace that piston in plenty of time for the winter plowing season.

We are gratified to know that PACIF's first Serious Hazard Alert has helped at least two towns remove a preventable risk from their workplace. We will continue to look for patterns in the claims that are filed with us, and we will send appropriate alerts to our members in the future. Preventing accidents saves time, money, and, very possibly, lives.

*Ione Minot, Contributing Writer*

The experiences of Corinth and Topsham shed light on two more aspects of dump piston safety.

1. This problem, initially noted in tandem dump trucks, can also occur in single rear axle trucks. The core issue is the structural integrity of the piston and where it is welded to the truck.
2. Towns that have a lot of dirt roads might be more prone to damaged pistons than those with mostly paved roads. Joe Blodgett points out that laying down gravel or stone over a muddy road requires that the truck travel with the dump body in the raised position. The strain on the piston and on the points where it is attached to the truck chassis is greater when the piston is under load and fully extended.

Many Vermont towns rely on their dump trucks to perform a variety of functions in all seasons, so it is no surprise that these trucks take a beating. Inspecting them habitually for signs that they aren't bearing up under the strain – and taking corrective action – is the sensible thing to do.

## VOSHA

(continued from page 9)

ees, the town's record of good faith effort (e.g. correcting identified hazards and cooperating with inspectors), and the presence of a formal safety program. In general, Bennington had a good record of safety awareness and implementation, and whereas a serious violation with aggravating factors can make a first offense fine as high as \$7,000, Bennington's single highest fine was only \$1,400. The total of the ten fines – as initially set – came to \$5,875.

VOSHA presented its official findings in the form of a Citation and Notification of Penalty. This document lists all of the violations explained in the closing conference, with a fine assigned to each, and a lot of extra paperwork (required by federal and state protocol). From the day it received the notification, Bennington had 20 calendar days to provide a complete response: the town could contest the findings and request a meeting with the VOSHA Review Board, it could agree that the violations were valid and pay the fines, or it could request an informal conference with VOSHA's chief compliance officer before taking one of the first two actions. Stu requested an informal conference with Van-George Belanger to discuss the violations (which Stu admitted were valid) and consider the levels of the fines (which

*(continued on next page)*

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## VOSHA

(continued from previous page)

he hoped could be reduced). In preparation for this meeting, Larry McLeod assembled a report containing records of the corrections made to each finable violation, complete with invoices for parts required and photographs of the finished work. Stu mailed this with his request for an informal conference, so Van-George had it in hand when he considered and granted the request.

The informal conference took place on day 14 of the 20-day response period. Stu, Larry, and Michele drove to Montpelier to meet with Van-George, and the meeting “was very comfortable – not adversarial at all,” says Michele. Van-George was familiar with the case, so he was not surprised when Stu, Larry, and Michele explained and pre-

sented evidence for how they were actively working to mitigate the violations and prevent future ones. Clearly, he believed that they were taking VOSHA’s regulations and recommendations to heart. Said Stu, “Because of our response and our reaction – especially the efforts that all of our staff put in and Larry’s documentation – when we sat down for the informal conference with the chief compliance officer, I think he already had in mind to mitigate the fines.”

A few days later, Stu received VOSHA’s Final Order showing the fines totaling only \$2,950. If he had disagreed with the charges, he could still have contested them before the VOSHA Review Board, but he didn’t want to. “I would have liked the total to have been a little less, but considering how high it could have been, I think the final amount was very fair to the community,” Stu said. He was glad that Bennington’s cooperative

attitude and good faith behavior had been recognized.

Now the town is taking new steps to avoid backsliding. At VOSHA’s recommendation, it has established a schedule for teams of people on the existing Safety Committee to inspect each other’s departments on a rotating basis – a different team tours a different building every month. Bennington had such a team long ago which had fallen by the wayside, but the new one is invigorated with the memory of the VOSHA inspection. “A new set of eyes – people who aren’t used to seeing that particular space -- will be really helpful,” said Stu.

VLCT loss control consultants are available to assist PACIF members with safety questions and concerns at any time – especially if a municipality becomes the subject of any kind of VOSHA inspection.

*Ione L. Minot, Contributing Writer*

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# STAFF NEWS AND NOTES

As predicted last time, we do now have a new Receptionist/Administrative Assistant, who you can talk to if you call VLCT on Mondays, Wednesdays, or Fridays. However, we're a tad leery to introduce her to you at this time because of the VLCT Jinx. See, in the past when we've written up a new employee before she or he has spent a couple of weeks here, that person has for some reason abruptly given notice. Flown the coop. Permanently left the building. So we want to ease her into her new position, let her acclimate to VLCTdom before we spring any announcement on you. So check back here next month for her official employment launch.

Meanwhile, it's official. Ione Minot (never to be confused with North Dakota's fourth largest city) has been turned into a

permanent Marketing Specialist in the Risk Management Services Department, known in VLCT's French quarter as *Service après vente de gestion des risques*. Ione was contrac-



Ione Minot

tually engaged for seven months, then employed on a temporary basis for six months more. Her permanent status entitles her to an Official VLCT Town Fair travel mug, which is nothing to sneeze at (unless you do so properly into your arm or elbow).

This just in: VLCT has two more almost-employees to almost introduce! By this time next month, we'll have on board a new legislative associate and a new underwriting manager. Why, it boggles the mind (almost)! But due to the aforementioned jinx, we won't be presenting them to you till each has had a chance to settle in to his or her ergonomic office chair. Ergo, next month – introductions galore!

## TRIVIA

I typically spend hours – nay, *days!* – coming up with a trivia question that will be, like the middle of the three beds that Goldilocks once commandeered for her own selfish use, not too hard and not too soft but just right. I thought I had it last month. However, Vermont lister Carol Hammond proved me wrong by answering it correctly a mere ninety-nine minutes after I'd emailed the *VLCT News* to its legions of faithful readers. (Or *one* legion, really.) She knew that Vermont towns that had undergone name changes included Caldersburgh to Morgan, Duncansborough to Newport, Kellyvale to Lowell, Lutterlock to Albany, Missiskouie to Troy, Mooretown to Bradford, New Flamstead to Chester, and Turnersburgh to Chelsea. Well done!

This month's query is for any rodentologist out there: **What Vermont town was named (all right, probably named) for a Wampanoag Indian word meaning "beaver"?**

Email your answers to [dgunn@vlct.org](mailto:dgunn@vlct.org). Then watch this space in February's reasonably engrossing issue for the answer.

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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](mailto:classifieds@vlct.org). For details on display or municipal marketplace advertising, email [vlctnews@vlct.org](mailto:vlctnews@vlct.org). Instructions for ad requirements may also be downloaded at [www.vlct.org/aboutvlct/vlctnewsletter/advertisinginformation/](http://www.vlct.org/aboutvlct/vlctnewsletter/advertisinginformation/).

## HELP WANTED

**City Manager.** The City of South Burlington, Vt. seeks a collaborative, energetic, and professional City Manager. South Burlington (pop. 17,500) is a growing, dynamic community with a strong tradition of civic engagement. Located adjacent to Lake Champlain and the University of Vermont, the city includes a na-

tionally recognized school system, thriving retail and hospitality sectors, hospital and world class recreational opportunities. In 2008, *Family Circle* magazine recognized South Burlington as one of the "Ten Best Towns for Families." The manager reports to a five-member City Council in a traditional council-manager form of government. The manager supervises 117 full-time employees and 50 part-time and seasonal employees, develops and administers a \$13.3 million operating budget, and oversees all personnel, financial, departmental, and labor-relations matters. A detailed job description is available at [www.sburl.com](http://www.sburl.com) under "Employment Opportunities." The current city manager is retiring after 21 years of service. South Burlington has had two city managers in its 37 years as a city. The Council will select a manager to be an active partner in community and governing discussions and to provide leadership in policy formulation and implementation. South Burlington's next manager will face the challenge of assisting the Council in balancing the growth that comes from being a desirable community with the community's wish to preserve open space. The salary is \$100,000 with an excellent benefits package. A Bachelor's degree is required; a Master's in public administration, business administration or other relevant field is desirable. Five years previous experience in municipal government is preferred. To apply, please send a confidential cover letter, resume, and three references to: South Burlington City Manager Search, c/o VLCT, 89 Main Street, Montpelier, VT 05602. You may also email to [eharrington@vlct.org](mailto:eharrington@vlct.org) with South Burlington in the subject line. Resume review begins January 11, 2010. E.O.E. (12-7)

### Large Vehicle Mechanic/Fleet Manager.

Town of Hartford. Requirements: high school diploma or equivalent; prior experience with large vehicle maintenance; knowledge of fleet management software; commercial driver's license; must pass background check and physical exam. ASE Master Certification preferred.

Starting salary range is \$41,323 to \$51,000, plus a generous benefit package including retirement, health insurance, and vacation time. For a complete job description, call Administrative Assistant Michelle Wheatley at 802-295-3232 or email her at [mwheatley@hartford-vt.org](mailto:mwheatley@hartford-vt.org). To apply, send letter of interest and resume to Steven A. Locke, Fire Chief, 812 VA Cutoff, White River Junction, VT 05001. Position open until filled. Equal Opportunity Employer. (12-4)

**Assistant Planner.** The Windham Regional Commission seeks an assistant planner to provide technical planning support to towns. Qualifications include a Bachelor's degree in planning or a related field, 1 to 3 years of professional planning experience, and significant knowledge regarding municipal land use regulation. She or he will be self-motivated and able to work independently and manage multiple assignments with an active and forward-looking team. Primary assignments will include land use planning and regulation and municipal grant programs. Under supervision of senior staff, the assistant planner will conduct technical analyses, draft reports, make presentations to local boards and commissions, work with town officials and the general public on local and regional planning matters, represent the WRC at the state and federal level, and provide technical assistance to member towns on a wide range of issues. The WRC serves a 27-town region with a considerable tourism base, historic downtowns and villages, and outstanding natural and cultural environments. Starting salary \$29,000-\$32,000, DOE. WRC offers excellent benefits including health, life and disability insurance, retirement plans, paid vacation and holidays. Email resume and supporting information to [jmatteau@sover.net](mailto:jmatteau@sover.net), or send via surface mail to Executive Director, Windham Regional Commission, 139 Main Street, Suite 505, Brattleboro, VT 05301. View our website at [www.rpc.windham.vt.us](http://www.rpc.windham.vt.us). Position open until filled. (12-3)



## UNBRIDLED DISCRETION

(continued from page 1)

a cantilevered porch on the easterly side of a residence adjacent to a stream. The appeal was brought on several questions, but ultimately turned on the zoning administrator's application of a fifty-foot setback requirement from "significant public waters." The appellant argued that the undefined term "significant public waters" bestowed unbridled discretion on the decision-making authority. The town argued that although "significant public waters" is not defined in the bylaws, the applicable section of the bylaw was not vague because the term is "universally understood" and therefore could be applied equally to all.

While the court agreed with the ZBA that there is an "established legal meaning" and "historical usage" of the term *public waters*, the term "significant" was meant to further distinguish certain waterways, and the town failed to identify which ones were important enough to qualify for this classification. The court's decision to grant the appellant's motion for Summary Judgment and approve his request to construct the easterly portion of his porch suggests that a definition or a map showing the location of "significant public waters," combined with the setback requirement, would be a reasonable standard that both an applicant could understand and an appropriate municipal panel (AMP) could apply. Without that additional direction in the bylaw, the court said "decision-makers and landowners are left without notice or guidance as to what waterways

are or are not to be protected" by the setback requirement.

This decision accentuates the need for consummate review of municipal bylaws and stresses how simply defining terms or mapping important features worthy of protection may clarify a standard necessary to withstand constitutional challenge.

The Municipal Assistance Center's advice to AMPs does not change in light of this decision. We continue to encourage AMPs to apply zoning and subdivision ordinances as written to the best of their ability. An AMP should not of its own volition invalidate a bylaw when it believes it is ambiguous or standardless. However, if the AMP or a zoning administrator believes some of the bylaws are vague, be sure to alert the planning commission and ask for clarification. This dialogue with the legislative body is important especially in towns where the quasi-judicial and legislative responsibilities are separate.

Please join us for a Vermont Interactive Television Workshop at 7:30 on February 4, 2010. We will discuss the importance of clear, unambiguous language as it pertains to planned unit development bylaws specifically.

To review this decision, go to [www.vermontjudiciary.org/GTC/Environmental/ENVCRT%20Opinions/Irish%20Construction%20Application%20%20Docket%2044-3-08%20Vtec.pdf](http://www.vermontjudiciary.org/GTC/Environmental/ENVCRT%20Opinions/Irish%20Construction%20Application%20%20Docket%2044-3-08%20Vtec.pdf).

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

## DOWNTOWN TAX CREDIT

(continued from page 13)

the National Register of Historic Places or be located in a registered historic district and be certified as being of historic significance to the district.

The rehabilitation work to be performed must also be consistent with the historic character of the property and, where applicable, to the district in which it is located. Qualifying property owners agree to rehabilitate their historic buildings consistent with Standards promulgated by the secretary of the U.S. Department of the Interior through the National Park Service. These Standards define rehabilitation as "the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural and cultural values." The Standards are not rigid absolutes but are to be flexibly applied in a reasonable manner, taking into consideration economic and technical feasibility. The Secretary's Standards expressly include regard for promoting energy efficiency, which is further discussed below.

The Internal Revenue Service also regulates the use of historic renovation tax credits. The IRS requires that buildings be income-producing, whether used for rental housing, retail or other commercial use. Owner-occupied residences will not qualify. The IRS also requires that the construction renovation cost exceed the adjusted cost basis of the building (exclusive of land costs) or \$5,000, whichever is greater. Despite this modest threshold, the costs associated with applying for tax credits are seen to preclude the program's appeal for less expensive renovations. However, recent legislative changes, further discussed below, propose to encourage tax credit advantages for smaller and less expensive rehabilitation projects.

**Vermont Historic Tax Credits.** In addition to the federal program, Vermont offers a 10 percent tax credit for owners or long-term lessees who qualify for the 20 percent federal reinvestment tax credit. This program piggybacks on federally qualified projects so that owners may receive a cumulative 30 percent tax credit. Unlike the fed-

(continued on next page)



Brian P. Monaghan, Esq.

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## DOWNTOWN TAX CREDIT

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eral program, tax credit funding under Vermont's program is competitive. Applications are submitted annually and tax credits are awarded in July. Not every qualified application for state tax credits is funded. Nevertheless, the use of tax credits has resulted in historic investment exceeding \$100 million in Vermont in over the past 10 years, and the use of tax credit rehabilitation in Vermont is increasing.

The use of rehabilitation tax credits has enabled the completion of successful projects that might otherwise have suffered from inadequate funding, especially during the present slowdown. Recent projects in Vermont that exemplify not only the success of these rehabilitation tax credits but the diversity of the qualifying projects include the Fellows Gear Shaper Plant project in Springfield which is again a manufacturing facility, the Shelburne Inn in Shelburne which offers commercial and restaurant space, and the Seymour Block mixed residential and commercial renovation in St. Albans.

### **Energy Efficiency: Green Building and Historic Preservation.**

Concerns about the energy efficiencies of older buildings are common. Architects, builders, developers, and preservationists have discovered that green building initiatives can be usefully applied to historic preservation and redevelopment. Consequently, historic building standards are being challenged with new and novel approaches to building reuse and restoration. Carefully applied and thoughtfully designed, historic rehabilitation can satisfy the Secretary's Standards and promote energy efficiency.

Energy efficiency is an important aspect of almost every rehabilitation project. The Secretary's Standards and related guidelines published by the National Park Service direct that "particular care must be taken not to obscure, radically change, damage or destroy character defining features in the process of rehabilitation work to make the building more energy efficient." The Energy Efficiency Standard specifies that the first step to making any building more energy efficient "should always be to identify and evaluate existing historic features to assess their inherent energy-conserving potential."

Debevoise Hall at the Vermont Law School exemplifies how historic structures

may be made energy efficient in adhering with the Secretary's Standards. Originally built in 1893 as the Town of South Royalton's first central "graded school," Debevoise Hall is part of a registered historic district.

Recently, Vermont Law School completed a \$6.5million rehabilitation of the town landmark. By restoring the original double hung wooden windows and newly installing interior glazed fiberglass storm windows and new insulation, air leakage from the building was reduced by four-fifths. Despite a significant expansion to the area of the building, the school's energy use for heating Debevoise Hall after the renovation dropped by two-thirds. As this project demonstrates, character defining historic features may be preserved while producing operating energy efficiencies that are the equivalent of contemporary new construction.

“ Vermont is home to many buildings that are not utilized to their fullest potential despite their historic character. ”

### **Pending Legislative Program Changes.**

Pending federal legislation may make historic tax credit projects in Vermont an even greater opportunity. Legislative changes introduced last October expand the federal rehabilitation tax credit and provide greater incentive for the reuse of historic and older buildings. This newly introduced bill not only encourages building owners to achieve substantial energy savings by boosting the received credit through the use of energy efficient materials, systems and appliances, but it expands to 30 percent the federal tax credit for "small" historic rehabilitation projects costing \$7.5 million or less. This increase will help offset the application costs that presently frustrate the use of tax credits on smaller projects.

The proposal will also reduce the qualifying cost for historic rehabilitation tax credits to only 50 percent of the adjusted basis, increasing the eligible pool of buildings in need of rehabilitation that may qualify for tax credit participation. Finally, the proposal will ensure that piggybacked state credits are not federally taxed or considered federal income unless so reported by the taxpayer. Each of these changes is intended to further promote smaller rehabilitation projects

in rural downtowns, such as are predominant in Vermont.

The pending legislative changes also propose to amend the non-historic tax credit program for older buildings. Two proposed changes are especially notable. First, while the 20 percent tax credit for historic renovation is allowed for income producing property including residential rental property, housing is not presently allowed under the 10 percent program for older, non-historic buildings. It is newly proposed that housing be included. The second change will bring forward the date of eligibility for older but non-historic buildings. Preservation policy has long relied upon 50 years or older as the age of "older" structures. In 1986, when Congress last amended the applicable Section 47 of the Tax Code, it implemented this 50 year or older threshold by requiring qualified structures to have been placed in service prior to 1936. It has not been changed since, preventing noteworthy "older" buildings from participating. The new proposal suggests that public policy is better served by declaring any qualified building to be "fifty-years old or older" rather than by the set year of 1936.

Each of these changes would make the downtown rehabilitation program in Vermont even stronger by further promoting smart growth, good-paying jobs, housing and office space, and sustainable development as an economic stimulus statewide. As the governor has recognized, "These projects leverage significant private investment, and rehabilitation of historic buildings in downtown areas results in increased economic activity. And of course it preserves a key part of what makes Vermont special: Our iconic downtowns and village centers."

*Scott Jaunich, Esq.*

*Scott Jaunich co-chairs the Real Estate Practice Group at Downs Rachlin Martin, PLLC.*

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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; email [jhill@vlct.org](mailto:jhill@vlct.org). Or visit [www.vlct.org](http://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.)*

**Wellness Coordinator Workshops.** Thursday, January 21, VLCT Offices; Wednesday, January 27, Holiday Inn Express, Brattleboro; Thursday, January 28, Holiday Inn, Rutland; Wednesday, February 3, NVDA Offices, Lyndonville; or Thursday, February 4, Hampton Inn, Colchester. Sponsored by VLCT Risk Management Services. This regional workshop kicks off VLCT's 2010 health promotion programs. Included is a briefing on the wellness incentive programs. We'll also introduce two new pedometer programs. This

half-day workshop is free to wellness coordinators and includes lunch. Existing and new coordinators are welcome!

### **Rescheduled! Variations on a Theme:**

#### **Guiding Development Through Planned Unit Development Bylaws.**

Originally scheduled for Thursday, December 10, this event has been postponed until **Thursday, February 4, 2010**. Vermont Interactive Television (VIT). Sponsored by the VLCT Municipal Assistance Center and Vermont's Regional Planning Commissions. 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, planners, zoning administrators, development review board members, selectboard members, town managers and administrators, conservation commissioners, and other interested parties.

**Town Meeting Tune-Up.** Wednesday, February 17, 2010, Capitol Plaza, Montpelier.

Sponsored by the VLCT Municipal Assistance Center. A parliamentarian's paradise, this annual workshop is designed for moderators and selectboard members, both seasoned and new. It will focus on the statutory requirements for town meeting, Robert's Rules of Order, and best practices for making it through Town Meeting unscathed.

### **Local Government Day in the Legislature.**

Wednesday, February 24, 2010, Capitol Plaza, Montpelier. Sponsored by VLCT and the Vermont Municipal Clerks' and Treasurers' Association. A special day at the Vermont State House for local officials to hear about the status of pending legislation from VLCT and VMCTA representatives, attend legislative hearings, and speak with their representatives and senators at the Vermont Legislature.

Visit our website [www.vlct.org/eventscalendar/upcomingevents/](http://www.vlct.org/eventscalendar/upcomingevents/) for the most up to date list of events.