

VLCT NEWS

A PUBLICATION OF THE VERMONT LEAGUE OF CITIES & TOWNS

SERVING AND STRENGTHENING VERMONT LOCAL GOVERNMENTS

March 2015

NUMERO UNO

The website “Best Choice Reviews” (<http://www.bestchoicereviews.org/>) does what its name implies: it ranks lots of stuff that you might not have previously been interested in. Current reviews include the Top Ten Remote Control Cars, the 50 Greatest Card Games and Board Games of All Time, the Top Five Espresso Makers, and, more importantly, the 50 Best Small Towns in America. Why are we telling you this? Because, while scenic Red Lodge, Montana, placed 31st and Heber City, Utah, home of the Wasatch County Fair, placed fifth, *the* best American small downtown belongs to Montpelier, Vermont, home of, among other things, the **Vermont League of Cities and Towns**. The article points out that Montpelier “is full of both small town charm as well as big city amenities,” and that “long time residents own many of the shops in the downtown area and the locals are proud of their small town fellowship.” Of course, if you lived here, you’d already know that!

BEST CHOICE REVIEWS

50 Best Small Town Downtowns in America

#1 - Montpelier, Vermont

BEST CHOICE REVIEWS
BEST TOWNS IN AMERICA



A UNIQUE OPPORTUNITY

Later this year there will be a vacancy at the top of the Vermont League of Cities and Towns’ food chain: **Steve Jeffery**, VLCT’s executive director for 33 years, announced that he will retire in July. And he’ll be leaving Sasquatch-sized shoes to fill – that is, his work here has been exemplary bordering on the otherworldly, not that he wears size 14½-EEE brogans to the office. While co-workers speculate wildly about what he’ll do next, the VLCT Board of Directors does, after all, have to get on with the business of finding a suitable replacement. And you can help! VLCT’s mighty Communications Department has published a fabulous brochure, www.vlct.org/assets/General/Executive-Director.pdf, which we encourage you to show to anyone you know who you think has the chops for the job. But don’t tarry. The deadline to apply for this unique opportunity is **Thursday, March 12, 2015**. Details on page 2.



The VLCT staff in the Very Old Days (i.e., before Mr. Jeffrey discovered the bow tie), clockwise from top left: Dave Sichel, Karen Horn, Steve Jeffrey, Chip Epperson, Janet Foster, Linda Schlott, Aggie Elwell, Tom LoPizzo.

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The *VLCT News* is published eleven times per year (the August and September issues are combined) by the Vermont League of Cities and Towns, a non-profit, nonpartisan organization founded in 1967 to serve the needs and interests of Vermont municipalities. The *VLCT News* is distributed to all VLCT member towns. Additional subscriptions are available for \$25 to VLCT members (\$60, non-members), plus sales tax if applicable. Please contact VLCT for subscription and advertising information.

EXECUTIVE DIRECTOR VERMONT LEAGUE OF CITIES AND TOWNS

This is a unique opportunity to direct a highly respected municipal association located in the Green Mountains of Vermont. The VLCT Board of Directors seeks a dynamic leader to help it develop and achieve its vision for the future of Vermont local government and the role VLCT will play in achieving that vision.

Founded in 1967, the Vermont League of Cities and Towns (VLCT) is a non-profit, nonpartisan organization that serves Vermont's municipal officials. VLCT employs a staff of 50 and has an annual operating budget of \$5.5 million. The League provides:

- educational workshops and consulting advice for municipal officials so that they can deliver excellent service to their citizens;
- information for the public so that it can better understand local government;
- support for legislation that strengthens local government; and
- comprehensive insurance coverage for municipalities.

The anticipated start date is July 6, 2015. Complete details and a link to the informational brochure are posted at www.vlct.org/marketplace/classifiedads/.

VLCT offers a quality workplace in convenient, downtown Montpelier and an excellent total compensation package. Confidential cover letters and resumes must be received **via email** at applications@vlctdirector.org by **Thursday, March 12, 2015**. EOE.



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THE FLOODWATERS OF REFORM: NATIONAL FLOOD INSURANCE PROGRAM CHANGES TO BEGIN APRIL 1

On April 1, 2015, Congress will begin implementing changes to the National Flood Insurance Program (NFIP) as called for by the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014. These reforms slow some flood insurance rate increases and offer relief to policyholders who experienced steep flood insurance premium increases in 2013 and early 2014. (For background information, see “Change is coming to the National Flood Insurance Program” and “The National Flood Insurance Program Homeowners Flood Insurance Affordability Act” in the July 2013 and June 2014 *VLCT News*, respectively.)



Flood insurance rates and other changes will be revised for new and existing policies beginning on April 1, 2015.

Quick History. In 1968, Congress created the NFIP to allow property owners to insure against flood loss since most homeowners’ insurance policies do not cover flood damage. Owners of buildings located in high risk areas called Special Flood Hazard Areas (SFHAs) built *before* a community received its first Flood Insurance Rate Map (so-called pre-FIRM structures) could obtain flood insurance at a subsidized rate that did not reflect the property’s true risk of flooding. The NFIP was set up to be self-sustaining; but during episodes of higher than normal flood insurance claims, the program borrows money from the U.S. Treasury, which it theoretically pays back with interest. NFIP reform is driven mainly by the fact that by 2012, the NFIP was billions of dollars in debt.

The first move toward NFIP reform was the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), which resolved to limit or eliminate subsidies for pre-FIRM structures so that premiums were at full risk rates. A full risk rating means that the premium is based on how high or low the lowest floor elevation is compared to the Base Flood Elevation.

When some homeowners saw flood insurance premiums increase by staggering amounts and the implications for such an impact became obvious, the outcry nationwide was enormous, especially in coastal areas and areas with older, subsidized housing stock. Nationwide, approximately 20 percent of NFIP policies are subsidized for pre-FIRM structures. Vermont communities enrolled in the NFIP received their first Flood Insurance Rate Maps in the 1970s. Notably, Vermont is one of the top five states with the highest percentage of currently subsidized pre-FIRM policies at over 50 percent. New requirements under BW-12 activated the full actuarial premium rate upon the sale of these pre-existing subsidized properties. Likewise, any new policy for a subsidized property or a lapsed policy would be reinstated at the full-risk rate. As expected, the significant rate

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ASK THE LEAGUE

WHEN A BOARD OF ABATEMENT MAY GRANT ABATEMENTS; SELECTBOARDS BORROWING FUNDS WITHOUT VOTER APPROVAL

Must a board of abatement grant abatement if a taxpayer falls within one of the statutory categories allowing for abatement?

No. The abatement process allows a board of abatement to abate taxes, but does not require it to do so even if a taxpayer falls within one of the categories allowing for abatement in 24 V.S.A. § 1535.

Abatement is a statutory process for relieving taxpayers from the burden of paying property taxes, interest, and/or collection fees when the law authorizes abatement and when the board, in its discretion, agrees that the request is reasonable and proper. Abatement may be granted for:

- taxes of persons who have died insolvent, have moved out of state, or who are unable to pay their taxes, interest, and collection fees;

- taxes where there is a manifest error or a mistake of the listers;
- taxes upon real or personal property lost or destroyed during the tax year;
- taxes of a veteran or his or her family members who file late for an exemption claim under 32 V.S.A. § 3802 (11) due to sickness, disability or other good cause; and
- taxes upon mobile homes moved from town due to a change in use of mobile home park land or a mobile home park closure. 24 V.S.A. § 1535.

Boards of abatement are given wide latitude in determining whether abatement should be granted under these circumstances. There is no standardized approach to weighing the justifications for either granting or denying abatement. Additionally, a

superior court hearing an appeal only reviews the decision for abuse of discretion by the board, which is a very limited and narrow scope of review. Essentially, a decision will be deemed an abuse of discretion only if a board failed to exercise sound, reasonable, and legal reasoning in making its decision.

Some boards may be more apt to grant abatement when, for example, a house is destroyed by fire or when a clear error is found in the property valuation set by the listers. In these situations, the board is dealing with basic fairness with the constitutional principle of proportional contribution as applied to the tax system. These same boards may be reluctant to grant abatement if a poor taxpayer is unable to pay his or her taxes and the circumstances surrounding the inability to pay are not temporary. However, if that same

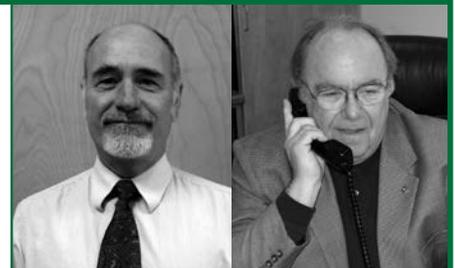
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MAC MUNICIPAL CONSULTANTS

MAC is pleased offer the services of our expert municipal consultants. To learn more or discuss a possible project, contact Abby Friedman at 800-649-7915, extension 1926, or afriedman@vlct.org.

MAC's consulting team:

- Bill Hall, Senior Financial Consultant
- Doug Hoyt, Municipal Law Enforcement Consultant



BILL HALL

DOUG HOYT



ASK THE LEAGUE

(continued from previous page)

taxpayer was only temporarily unable to pay because of a costly illness in the family or even a temporary job loss, a board may be more willing to grant at least some portion of abatement.

Abatements should be cautiously granted insofar as they reduce the income to the town, requiring it to either spend less or increase the taxes on the rest of the taxpayers

to make up the difference. A board of abatement needs to remember that granting abatement is wholly discretionary and is available to taxpayers to prevent an injustice or to help a taxpayer who faces extraordinary circumstances that make it difficult for the taxpayer to meet his or her tax obligations. Though a board of abatement may exercise this discretion and does not have to make formal findings of fact to support its decision, it still must “state in detail the reasons for its decision.” 24 V.S.A. § 1535(c). This means that although a board does not have to explain precisely how it reached its

decision, it does need to “provide sufficient explanation to indicate to the parties, and to an appellate court, what was decided and upon what considerations.” *Guntlow v. Bd. of Abatement*, 2014 VT 118.

*Gwynn Zakov, Staff Attorney I
VLCT Municipal Assistance Center*

Can the selectboard borrow money without voter approval?

There are six situations in which a selectboard may borrow funds without voter approval:

1. *Borrowing to paying current expenses so long as the term is one year or less.* 24 V.S.A. § 1786. There is no statutory definition or explanation of a “current expense.” Our rule of thumb is that a current expense is one that will be paid for in a year or less. A current expense could arise from provision of a service or from the acquisition of a public improvement or asset. In our opinion, simply because something is an asset or a public improvement does not mean that it cannot be considered

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ON-SITE WORKSHOPS

LET THE VLCT MAC STAFF TRAVEL TO YOU!

Since 2005, VLCT Municipal Assistance Center staff have been conducting customized on-site workshops in municipal offices across the state.

Each workshop costs \$825, though VLCT PACIF members are eligible for a reduced rate of \$415 for many of the topics listed below (except for land use). PACIF members may also be eligible for a PACIF scholarship, which can cover the cost of the training. Please call PACIF Loss Control at 800-649-7915, or visit www.vlct.org/rms/pacif/pacif-scholarships/ for more information on the program. In addition, MAC can develop custom workshops upon request. To discuss or schedule a workshop, please contact Abigail Friedman or call 800-649-7915.

ON-SITE WORKSHOP PROGRAM OFFERINGS:

- Improving the Relationship Between Independent Officers and the Selectboard
- Roles and Responsibilities of Town Officers
- Conducting Effective Selectboard Meetings
- Conducting Effective Tax Appeal Grievances and Hearings
- A Field Guide to the Open Meeting Law and Executive Session
- How to Write a Good Hearing Decision
- The Role of the Manager and the Role of the Selectboard
- An Orientation to Local Government for New Selectboard Members
- How to Respond to a Public Records Request
- Developing and Managing the Town Budget
- Financial Management, Internal Controls, Fraud Risk Assessment
- Inter-local Agreements
- Municipal Charter Adoption and Amendment
- Many specific topics for local land use boards

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Brief updates on Vermont's changing legal and regulatory environments

LEGAL AND REGULATORY NOTES



VERMONT SUPREME COURT DETERMINES EMPLOYMENT STATUS OF TOWN MANAGERS

Given the importance of this case and the number of issues it addresses, as well as those it has left to be resolved on remand, and another related case before the Vermont Supreme Court currently awaiting a decision, this is the first of several VLCT News articles on the topic of the employment status of town managers.

In a highly anticipated and long-awaited decision, the Vermont Supreme Court ruled in the case of *Nelson v. Town of St. Johnsbury, LaMotte, Oddy, Ruggles, Rust, Timson*, 2015 VT 5, that town managers may be terminated from employment only for cause.

What will surely be considered a seminal case in Vermont municipal law concerns the employment of Ralph Nelson (plaintiff) and the Town of St. Johnsbury (defendant), which hired him as its town manager in September 2010. The parties did not enter into a contract or otherwise discuss, negotiate, or agree to any terms of employment, though Nelson testified later that the town's attorney assured him that he could only be removed for serious misconduct.

During the course of his employment, the selectboard had several concerns about Nelson's performance, including his handling of the renovation and leasing of a town building, communications with the selectboard, treatment of employees, and an attempt to influence a school board member. On March 16, 2012, the selectboard gave Nelson a letter stating that it had concerns about his performance and that it was looking into those concerns. On April 2, 2012, selectboard member James Rust informed Nelson that the selectboard's inquiry had

turned up "something," and that the board would be meeting to discuss Nelson's job. In the meantime, Nelson was to turn in his keys and laptop computer and go home. The next day, Rust informed Nelson that the selectboard was meeting that night to discuss his performance, though he was not required to attend. Nelson did attend and, while there,

he discussed with the selectboard the issues it had with his performance. At the conclusion of the meeting, Nelson was asked to resign; he refused. The selectboard then passed a vote of "no confidence" in him.

The next day, the selectboard issued a press release publicly announcing Nelson's
(continued on next page)

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LEGAL AND REG.

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termination. In it, the selectboard explained that the town manager “holds office at the will of the Board” and his discharge was a result of actions taken “directly against the will of the Board...” The phrase “hold(s) of- fice at the will of the Board” comes from 24 V.S.A. § 1233, which states in relevant part, “In all matters he (town manager) shall be subject to the direction and supervision and shall hold office *at the will* of such se- lectmen, who, by majority vote, may re- move him at any time *for cause*.” (Empha- sis added.) Though this case dealt with other claims on appeal (wrongful termination; vi- olation of due process under the Civil Rights Act and Chapter 1, Article 4, of the Ver- mont Constitution; and promissory estop- pel – next month’s *VLCT News* will address these claims), it was the two phrases “at the will” and “for cause” which were at heart of this case.

For context, an at-will employee can be terminated under Vermont law for any rea- son, or none at all, so long as the reason is not illegal, (e.g. discrimination), whereas ter- mination “for cause” requires “some sub- stantial shortcoming detrimental to the em- ployer’s interests, which the law and a sound public opinion recognize as a good cause for his dismissal.” *In re Brooks*, 135 Vt. 563, 568 (1977). The characterization of the employ- ment relationship is a crucial one for Ver- mont’s municipalities because public em- ployees who can only be terminated for cause have a constitutionally-protected prop- erty interest in their continued employment and cannot be fired without due process – a degree of procedural protection not afforded to at-will employees. *Gilbert v. Homar*, 520 U.S. 924 (1997).

Nelson’s suit against the town alleged in part that the selectboard did not have the right to terminate his employment with- out cause. The trial court disagreed, ruling that a town manager is an at-will employ- ee and as such can be terminated for any rea- son. In reaching its decision, the trial court attempted to harmonize phrases used in the governing law that appeared to be in con- flict. The trial court reasoned that the leg- islature used the words “hold office at the will of the selectmen” to reflect the default rule in Vermont, which is that any employ- ee is presumed to be “at-will.” It also opined

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UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

SPRING SELECTBOARD INSTITUTE

Saturday, March 21, Capitol Plaza Hotel and Conference Center, Montpelier

Focused on the unique and varied roles and responsibilities of Vermont selectboards, the *Spring Selectboard Institute* provides indispensable training for newly elected mem- bers. More seasoned selectboard members and staff members who report to a select- board will benefit from attending as well. The program is highly interactive and de- signed to encourage learning from one another’s experiences.

SPRING AUDITORS WORKSHOP

Tuesday, March 24, Capitol Plaza Hotel and Conference Center, Montpelier

This workshop is designed for locally elected auditors, as well as treasurers, select- board members, municipal managers and administrators, and finance directors who want to improve internal controls and the quality of financial reporting.

MUNICIPAL CONSTRUCTION CONTRACTS: DON’T GIVE AWAY YOUR PROTECTION

Thursday, April 9, Capitol Plaza Hotel and Conference Center, Montpelier

(Co-sponsored by VLCT PACIF) Construction contracts are crucial to successful project completion, yet those presented by contractors typically shift the burden of risk from the contractor to the client. Attendees will learn how to negotiate with contractors to arrive at contracts that are not one-sided against your municipality. Strongly recom- mended for all who review, negotiate, or sign construction contracts on behalf of a mu- nicipality, including municipal attorneys, governing board members, managers/admin- istrators, public works directors, highway foremen, municipal engineers, and others.

MUNICIPAL CONSTRUCTION CONTRACTS: DON’T GIVE AWAY YOUR PROTECTION

Tuesday, May 5, Lake Morey Resort, Fairlee

Tuesday, May 12, Capitol Plaza Hotel and Conference Center, Montpelier

With the property tax under increasing pressure and the subject of more and more scrutiny, it is essential that the appeals process be properly administered. Come learn what your town can do to conduct effective property tax assessment grievances and appeals.

For registration, agendas, and other information, please visit www.vlct.org/eventscalendar, all 800-649-7915, or email info@vlct.org.



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“BEST DOCTORS” JOINS THE PACIF WORKERS’ COMP CLAIMS TEAM

In January, PACIF launched a new partnership with Best Doctors Occupational Health Institute (BDOHI, or Best Doctors) to help control workers’ compensation (WC) claims costs by enhancing the ability of PACIF’s WC Claims team to provide our members’ injured employees with the most appropriate medical care in their treatment and recovery plans, with an emphasis on returning the injured employee to productivity as soon as appropriately possible. BDOHI has selected an exclusive group of the “best doctors” in Vermont to join its network. These doctors have been recommended by their peers as best in class, and have been further vetted by BDOHI. We believe their involvement will result in better claim experiences for injured workers and improved performance of the fund, yielding lower rates for our member municipalities.

Among many other benefits, this Best Doctors partnership brings to PACIF two people with considerable medical experience. Darlene Breton, RN, who has been a registered nurse since 1991, is working with us three days a week as a Patient Advocate. Darlene will help ensure that our injured employees receive the best possible care and are staying up on their treatment plans and appointments. An extremely effective communicator, Darlene is adept at interacting with all types of people. John Macy, MD, has been named as BDOHI’s Vermont Medical Director. Dr. Macy is a practicing orthopedic surgeon who will review complex workers’ compensation cases twice a month in a round-table meeting with the PACIF WC Claims team, advise treatment strategies, and communicate with treating physicians as necessary. Dr. Macy, who specializes in treating disorders and injuries of the shoulder, is on staff at Mansfield Orthopedics in Morrisville (a practice of Copley Hospital) and has been a member of the medical staff at The University of Vermont Medical Center.



Left to right: Ken Canning, Peggy Tucker, Peggy Gates, Kathi Chaloux, Dr. John Macy, Tania Chambers, Susan Ward, Darlene Breton, and BDOHI’s Managing Director Michael Shor.

NEW WORKSHOP: CONSTRUCTION CONTRACTS

Every municipality should have contracts that define its arrangements with private contractors, and these contracts should be negotiated conscientiously to make sure they do not expose the municipality to unnecessary risk. Yet the documents that contractors present to their clients tend to be skewed in the contractor’s interest. On Thursday, April 9, in Montpelier, two attorneys will cite actual cases, explain hypothetical situations, and provide practical guidelines for mitigating risk in contracts before they are signed. This new VLCT workshop, **Construction Contracts: Don’t Give Away Your Protection**, is strongly recommended for municipal attorneys, governing board members, municipal managers or administrators, public works directors, highway foremen, municipal engineers – anyone who reviews, negotiates, or signs construction contracts on behalf of a municipality. Register before April 2 at www.vlct.org/events-news-blogs/event-calendar/.

UI 2014 WAGE REPORTS: ON YOUR MARK, GET SET, GO!

Members of the Unemployment Insurance (UI) Program (now part of the VERB Trust) received an email from Kelley Avery in February with instructions for reporting their 2014 wages by the end of April. All UI program participants need to file their reports electronically this year – using the Excel spreadsheet that’s posted on our website – so that the latest complete year’s information can be used in determining the UI Program’s 2016 rates.

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2015 RMS CALENDAR

Spring Selectboards Institute. 8:30 a.m. to 3:45 p.m. Saturday, March 21, Capitol Plaza Hotel, Montpelier. As part of this annual VLCT event, Ken Canning will discuss some highlights of the products and services that come with membership in PACIF and VERB, and David Sichel will update attendees on health care reform and the federal “Cadillac Tax.” For more information and to register, visit www.vlct.org/events-news-blogs/event-calendar/.

Construction Contracts: Don't Give Away Your Protection. 8:30 a.m. to 3:30 p.m. Thursday, April 9, Capitol Plaza Hotel, Montpelier. Strongly recommended for anyone who reviews, negotiates, or signs construction contracts on behalf of a municipality. Two lawyers who specialize in municipal contracts will reveal potential pitfalls and give attendees practical advice for negotiating contracts that are not one-sided against your municipality. Sponsored by VLCT PACIF and the VLCT Municipal Assistance Center. Prices until April 2: \$60 for PACIF members, \$90 for VLCT members, \$160 for others. Register before April 2 at www.vlct.org/events-news-blogs/event-calendar/.

M.U.S.T. Excavation Safety Breakfast Seminars. 7:00 a.m. to 11:00 a.m. on dates and at locations listed below. Free three-hour safety seminar to prepare road, utility, and construction crews for a safe excavation season. Learn about the potential safety hazards of utility damage, the “Dig Safe” laws and rules, new methods of call center notification, best practices, utility marking standards, what to do if a line is damaged, and the enforcement process. Includes a short Project WorkSAFE presentation on the VOSHA excavation standard. Presented by Managing Underground Safety Training (MUST) in cooperation with DigSafe™. To register, visit www.must-ne.com/safety_training.php#trainedvtt or call 802-951-0370.

Tuesday, April 7 Hilton Doubletree Hotel, 1117 Williston Road, South Burlington

Wednesday, April 8 Franklin Conference Center, 1 Scale Avenue, Rutland

Thursday, April 9 Lake Morey Resort, 1 Clubhouse Road, Fairlee

Application Deadline for Round 1 of 2015 PACIF Equipment Grants. Thursday, April 30. PACIF Equipment Grants help members purchase equipment that is likely to significantly reduce their risk of workers' compensation, property/casualty, or liability insurance claims. Most of the allotted \$200,000 for 2015 is expected to be awarded during Round 1, so we encourage PACIF members to read the latest guidelines, consider their group's needs, and compile their application materials sooner rather than later. Materials are posted at www.vlct.org/rms/pacif/pacif-equipment-grants/.



**Tailgates Can
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Avoid All Pinch Points!



Town of Dummerston employees Leslie Houghton (left) and Joe Mariano (right) point out the danger stickers that had just been applied to the tailgate of one of the town dump trucks. These stickers were specially made to try to decrease the number of hand injuries that road crew members receive while working with plow truck tailgates every winter.

VERB

Unemployment Insurance Administration, Claims Management, Advocacy
Dental, Vision, Health Insurance Consultation, Large Group Health Insurance
Group Life, Accidental Death, Disability, Optional Life, Accident, Critical Illness



UI 2014 WAGE REPORTS

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Please use that file – which has 2014 in the filename – *now*. It has been simplified to automatically calculate the 2014 maximum taxable wage amount for each employee. If you are the UI Program contact for your municipality, the file to download and complete is at www.vlct.org/rms/unemployment-insurance-trust/, and the deadline for returning your completed file is May 1, 2015. But don't wait to start! If you have any questions, please contact Kelley at kavery@vlct.org or 800-649-7915.

ACADIA/BERKLEY NOW HANDLES ALL WORKERS' COMP FOR PACIF FIREFIGHTERS

Volunteer fire departments that get their workers' compensation coverage through PACIF may have received claim-related paperwork in the past from one of five different "assigned risk" insurance carriers: Acadia, Travelers, Liberty Mutual, The Hartford, and CNA. As of 2015, PACIF has consolidated these services in just one carrier, Acadia Insurance, which administers our firefighters' injury claims through Berkley Assigned Risk. Working with one assigned risk carrier instead of five significantly simplifies and streamlines PACIF's billing and auditing processes.

Rest assured that this change does not affect coverage at all and should be seamless to PACIF members. Even so, several alert members that used to be placed with one of the other four carriers have noticed that they are now receiving paperwork from Acadia and/or Berkley. **Fire departments must continue to file their "First Report of Injury" forms with PACIF within 72 hours of any injury.** The form is two clicks from VLCT's homepage: on the right side of www.vlct.org, click on the File a Claim graphic, then click on the orange Workers' Compensation box. Our Claims staff will forward firefighters' claims to Acadia (Berkley), which will handle everything else about the claim process. Our PACIF Claim staff is available at 800-649-7915 to help you with any questions or concerns you may have throughout the claim process. If you have any questions about your fire department's assigned risk coverage, please contact Suzie Benoit at 1-800-649-7915.

FLOOD INSURANCE REFORM

(continued from page 3)

increases resulted in a flood of opposition from many venues including unprepared property owners, realtors, and politicians.

Fast forward to the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which was passed by Congress to address the outcry, at least temporarily, by implementing the rate changes more gradually and avoiding major adjustments in insurance costs at the time of sale. The HFIAA amends some of the changes made under the BW-12, but is in no way a wholesale repeal of the legislation. Under HFIAA, the goal of limiting subsidies is still very much present but the transition will be less dramatic overall. HFIAA also makes additional program changes for new and current flood insurance policy holders.

Highlights of the Federal Law Changes Annual insurance rate change increases. For buildings in the flood hazard area, insurance rates will continue to rise, but the rate increases will be tempered. Flood insurance annual rate increases for primary, owner-occupied residences built before 1978 (i.e., pre-FIRM structures) will increase by not more than 18 percent, plus fees. Pre-FIRM vacation, rental, and business properties will continue to go up by 25 percent per year until they reach the full-risk rate,

the same increase mandated under BW-12. Pre-FIRM structures that have been substantially damaged or improved – that is, reconstructed at a cost that equals or exceeds 50 percent of the structure's market value before the improvement – will have an annual rate increase of 25 percent. (This represents a change from BW-12 that reclassified all substantially damaged buildings as post-FIRM and immediately required full-risk rates.) However, since repairs made to substantially damaged/improved structures should have met current flood hazard regulatory standards that enhance protection from future flood damage, sometimes the full-risk premium is lower than the subsidized premium and will be applied.

Reserve Fund Assessment Increasing. In 2013, as a requirement of BW-12, the Federal Emergency Management Agency (FEMA) began collecting a five percent assessment on all policies except for Preferred Risk Policies (PRPs), which are low cost flood insurance policies for residential structures located in areas of low to moderate flood risk. The Reserve Fund was established to help fund costs when insurance claims exceed the annual premium. In 2015, this fund will increase to 15 percent for all policies except PRPs, which will be assessed at 10 percent.

Surcharges of \$25 or \$250. Starting April 1, an annual surcharge will be added to

(continued on next page)

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- Water & Sewer Ordinances
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FLOOD INSURANCE REFORM

(continued from previous page)

all flood insurance policies: \$25 to primary residential structures and \$250 to non-primary residential and non-residential structures. The surcharge also applies to a renter's contents-only policy. These surcharges will be collected until all subsidies are eliminated. According to the Strategic Alliance for Risk Reduction (STARR, a FEMA technical service contractor), FEMA does not have reliable documentation of whether residential structures are primary or non-primary. All residential structures are being treated as non-primary, until the structure is determined to be a primary residence. Insurance companies should have sent letters to their policy holders over the last few months informing them of the surcharge and the documentation required, although it is unknown how many of those letters were overlooked or ignored. How many primary residential policy owners will be surprised with a \$250 surcharge because they didn't provide documentation is yet to be seen.

Maximum Deductible. Another notable change in the NFIP is a newly created maximum deductible up to \$10,000 for single family and two-to-four family dwellings to help make some policies more affordable. If

this higher deductible is used, it must apply to both the building and the building contents. According to an October 2014 FEMA fact sheet, choosing the maximum deductible will result in up to a 40 percent discount from the base premium, but there is no guarantee that mortgage companies and other lenders will accept this higher deductible.

Map Change Occurs. The NFIP allows "grandfathered rates" for eligible property owners of structures built in compliance with a prior flood rate map after a new one has been released. These grandfathered rates, which were to be phased out under BW-12, were restored in part by HFIAA. Under the grandfathering provision in the HFIAA, the *first year premium* for properties newly identified in the flood hazard area would be charged a very favorable flood insurance premium rate equivalent to a property not located in the regulated floodplain (a PRP). From this baseline, flood insurance premiums are phased into full-risk rates through premium increases not to exceed the maximum cap of 18 percent per year.

FEMA is scheduled to release a map change for Bennington County later this year. According to Ned Swanberg, Flood Hazard Mapping Coordinator of the

Vermont Department of Environmental Conservation, when that map change happens, 458 structures will be identified as being in the high risk Special Flood Hazard Area for the first time. "The new act (HFIAA) allows people in Bennington County to benefit by getting flood insurance before the upcoming map change," says Swanberg. "If a building will be officially recognized to be in a higher flood risk zone, it is possible to get flood insurance before the change for the old and lower cost zone and to 'grandfather' that zone at the lower cost." The preliminary Digital Flood Insurance Rate Map for Bennington County can be viewed on the Flood Ready Atlas at tinyurl.com/floodreadyatlas. There will be community meetings in Bennington County to discuss flood insurance opportunities later this year.

For more information, FEMA summarizes the changes in its October 2014 Fact Sheet, [How April 2015 Program Changes Will Affect Flood Insurance Premiums](http://www.fema.gov), which is posted on its website, <http://www.fema.gov>. An explanatory video is at www.fema.gov/media-library/assets/videos/84716.

Milly Archer, CFM
Water Resources Coordinator
VLCT Municipal Assistance Center

VLCT News Online

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ASK THE LEAGUE

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a current expense under 24 V.S.A. § 1786. We view the term of the note (one year or less/more than one year) as the defining characteristic.

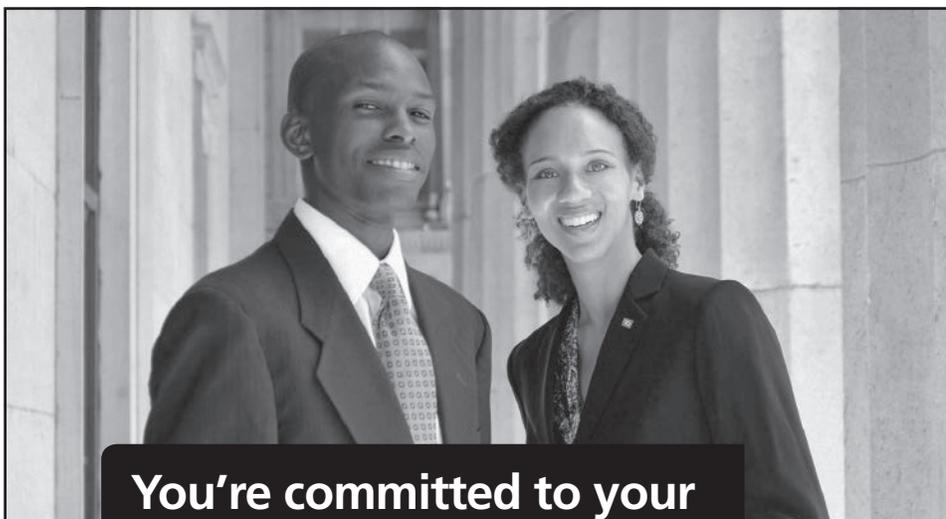
2. *Borrowing in anticipation of taxes so long as the term is one year or less and the amount borrowed does not exceed 90% of the municipal taxes assessed for that year.* 24 V.S.A. § 1786.
3. *Borrowing in anticipation of the sale of bonds so long as the term is one year or less.* 24 V.S.A. § 1773(a).
4. *Borrowing in anticipation of grants so long as the term is one year or less.* 24 V.S.A. § 1773(c).
5. *Borrowing from the State Municipal Equipment Loan Fund for the purchase of tools, equipment and materials necessary for the construction, maintenance, or repair of highways and bridges for a term of five years or less.* 19 V.S.A. § 304(a)(3), 24 V.S.A. § 1786a(b).
6. *Alternative financing of personal property, fixtures, technology and intellectual property.* 24 V.S.A. § 1789. The selectboard may enter into leases, lease-purchase agreements, installment sales

agreements, and similar agreements to acquire assets for the municipality either singly or as a participant in an interlocal contract. Such agreements, however, must contain a “non-appropriation clause” that states that the annual payments by the municipality must be approved by the voters.

If the municipal borrowing does not fit into any of these situations, there must be specific voter approval at a regular or special town meeting. 24 V.S.A. § 1786a(b) “The voters of a municipality may authorize specific public improvements and the acquisition of capital assets and finance the same, temporarily or permanently, through debt instruments other than bonds for a term not to exceed the reasonably anticipated useful life of the improvements or assets as provided in this section.” 24 V.S.A. § 1786a. If the improvements or assets are to be financed for a term of five years or less, the borrowing is approved at a regular or special town meeting. If the financing is for a term of more than five years, the municipality must go through the traditional bond authorization process, even if the final form of the borrowing is not a bond. 24 V.S.A. §§ 1755, 1756, and 1786a(c).

For more information about the bonding process, see Chapter 17 of the VLCT Selectboard Handbook, which is archived at www.vlct.org/assets/Resource/Handbooks/VLCT_Selectboard_Handbook.pdf.

*Sarah Jarvis, Staff Attorney II
VLCT Municipal Assistance Center*



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The *VLCT News* is published eleven times per year – the August and September issues are combined – and reaches readers no later than the first week of the month.

Two kinds of advertising are available in the *VLCT News*:

CLASSIFIEDS

(Posted online and also placed in the printed VLCT News)

The *VLCT News* publishes classifieds 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.

While there is no deadline for posting classifieds online, the print advertisement deadline (below) applies to classifieds that run in the printed VLCT News.

Classifieds are generally limited to 200 words due to limited space in the newsletter, but they may be longer when posted online. The online version can also include hyperlinks to images or other websites.

For more information on placing classifieds, contact classifieds@vlct.org.

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The deadline for submitting display advertisements is the first Friday of the month prior to the issue date.

Download a calendar of print deadlines and find information on print ad requirements, sizes, and prices at www.vlct.org/advertising-information.

For answers to specific questions about print advertising, email vlctnews@vlct.org.

Visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads. You may also submit your ad via an email link on this page of the site.

HELP WANTED

Wastewater Operator. The North Branch Fire District #1, a wastewater treatment facility in West Dover, Vermont, is seeking a person to perform skilled and semi-skilled work in the operation of the district's wastewater facility. Work includes laboratory analysis, collection system maintenance and repairs, equipment maintenance, grounds care, performing daily pump runs, and the daily monitoring of influent and effluent conditions; collecting water quality samples as applicable; operating and maintaining plant equipment including pump control systems, alarm signals, chemical feed systems, and belt filter press; making adjustments in plant operations as needed due to seasonal changes, quality changes, maintenance schedules, or special programs or circumstances; and other duties as assigned. The Wastewater Operator works under the Chief Operator's supervision. Grade II Wastewater certification a must; weekend work is necessary. Benefits include health insurance, life insurance, short- and long-term disability insurance, vacation days, personnel days, holidays, and participation in the Vermont Municipal Employee Retirement System. The position may be either full-time or part-time. Pay compensatory with work

experience. For an employment application and more information, contact Linda Holland, Administrative Manager, North Branch Fire District #1, 78 Dorr Fitch Road, West Dover, VT 05356, 802-464-7560 x 110 and nbfd1@myfairpoint.net. (01-13)

Town Manager. Milton (pop. 10,700), located in northwest Vermont on the shores of Lake Champlain, seeks an engaging and collaborative Town Manager. The Manager reports to a five-member selectboard and is responsible for the daily operations of the town. The Manager develops and administers a \$10 million budget that includes water and sewer utilities. He or she also oversees all personnel, financial, public works, public safety, and community relations matters. The Town of Milton employs approximately 70 employees and depends upon many volunteers. A detailed job description and the town's governance charter are on the town's website, <http://miltonvt.org/>. Hiring range is \$85,000 to \$100,000, based on qualifications, with an excellent benefits package. Bachelor's degree is required; master's degree in public administration, business administration, or related field is preferred. Experience with tax increment financing

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- Make operational improvements such as traffic control and signal systems; and
- Construct rail freight and intermodal facilities.

Also, in certain cases, electric vehicle charging stations and natural gas refueling stations for trucks and other vehicles available for public use are eligible for SIB financing.

FOR MORE INFORMATION: [WWW.VEDA.ORG](http://www.veda.org) ♦ 802-828-5627



CLASSIFIEDS

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(TIF) is a plus. Ten years of progressively responsible experience in municipal government and public finance or equivalent is required; experience as a town manager is a plus. The selectboard expects the Town Manager to take up residence in the town within one year of beginning employment. To apply, please email a confidential cover letter, resume, and contact information for three professional references **by Tuesday, March 3**, to municipal.recruitment@vlct.org with Milton in the subject line. You also may mail your documents to Milton Town Manager Search, c/o VLCT, 89 Main Street, Suite 4, Montpelier, VT 05602. Equal opportunity employer. (01-14)

Town Manager. Berwick, Maine (pop. 7,600), seeks an experienced, professional community leader to serve as its next Town Manager. Berwick has a Town Meeting form of government, an annual

town budget of \$5.1 million, excluding schools, and employs 30 full-time and 35-40 part-time and seasonal staff. The Town Manager is the CAO/CEO and reports to a five-member Board of Selectmen. Requirements: BA/BS (Master's preferred); strong experience in local government operations, labor relations, and community-based problem solving; strong interpersonal, listening, written, and verbal skills; experience in managing large scale, downtown redevelopment projects desired; minimum seven years of progressive municipal management and leadership experience desired; residency preferred but not required. Salary to \$100K, DOQ. Additional information is at www.mrigov.com/career.html. Submit resume in confidence by Tuesday, March 3, 2015, to recruitment@mrigov.com (electronic submission preferred) or Berwick, ME – Town Manager Search, Attn: Gail Schillinger, Municipal Resources, Inc., 120 Daniel Webster Highway, Meredith, NH 03253. (02-04)

Auditing Services. The Town of Castleton is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2015, with the option of auditing its financial statements for each of the two subsequent fiscal years. The complete RFP is posted at www.vlct.org/assets/Marketplace/RFP-for-auditing-services-castleton.pdf. Please direct all questions to Mark Shea, Town Manager, at 802-468-5319 x 201 or manager@castletonvt.org. The town's audit reports for prior years are archived at <http://castletonvermont.org/town-departments/finance-budget/>. Submit proposal in an envelope clearly labeled "Request For Proposals Audit Services Town of Castleton, Vermont" **by Monday, March 2, 2015**, to Mark S. Shea, Town Manager, Town of Castleton, PO Box 727, Castleton, VT 05735. (02-05)

Auditor. The Town of Morristown is accepting proposals for an audit of its financial statements for the fiscal year periods ending June 30, 2015, 2016, and 2017. The deadline to submit a proposal is **Monday, March 23, 2015**. The complete RFP is posted at www.vlct.org/assets/Marketplace/morristown-audit-RFP.pdf. Please direct any questions to Carol Bradley, Finance Director, or Tina Sweet, Assistant Finance Director, at 802-888-5374. (02-06)

City Manager. Portland, Maine (pop. 66,500), is seeking an innovative, creative, and proactive community leader who is committed to excellence to serve as its next City Manager. This ethnically diverse coastal community (over 50 different languages spoken in the school system) serves as the metropolitan hub of the region and enjoys a rich history and neighborhood feel. Portland is the largest city in Maine and is home to world-class medical, educational, and cultural assets. Recognized for providing exemplary services to its residents and its thriving business community, Portland provides the perfect blend of urban sophistication, coastal Maine character, and unsurpassed quality of life. Led by the Mayor and an eight-member City Council, the City Manager oversees an operating budget of approximately \$220 million and more than 1,300 FTEs. The successful candidate must have a Bachelor's degree in a related field (Master's preferred) and should have a minimum of ten years of experience in public administration, with at least seven years in a senior management capacity, or an equivalent combination of education and proven management experience. Salary commensurate with experience with the expectation of continued excellence in management. Additional information is available at www.mrigov.com/career.html. To apply, submit resume, in confidence, **by Friday, March 6, 2015**, to recruitment@mrigov.com (electronic submission preferred), or send via U.S. mail to Portland ME City Administrator Search, Municipal Resources, Inc., Attn: Gail Schillinger, 120 Daniel Webster Highway, Meredith, NH 03253. Equal opportunity employer. (02-09)

Audit of Financial Statements. The Central Vermont Solid Waste Management District is accepting proposals for an audit of its financial statements for the fiscal year periods ending June 30, 2015, June 30, 2016, and June 30, 2017. The deadline to submit a proposal is Friday, March 13, 2015. The complete RFP is posted at www.cvsmd.org/uploads/6/1/2/6/6126179/rfp_auditor_services_fy2015-2017_3.pdf. Please direct any questions to Leesa Stewart, CVSWMD General Manager, at generalmanager@cvsmd.org. (02-10)

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TRIVIA

Herb Durfee, Ann Myers, Louise Luring, Bob Kelley, Jenny Bertrum, plus one other person – whose name regrettably fell into the word processor where it was turned into unidentifiable cursive lines before I could read it – of Fair Haven, Essex, Saxtons River, Derby, Fair Haven again, and the Unknown Municipality, respectively, knew that the first radio broadcast from a Vermont location originated at the University of Vermont's station WCAX on October 10, 1924. What remarkably fine deductive reasoning!

Meanwhile, back at ye olde Gazetteer: **Name the Vermont body of water that shares its name with another, bigger one five thousand five hundred and fifty-five miles away.**

Here's a hint: one is 80 feet below sea level while the other is 1,800 feet *above* sea level. Once you figure out which is which, the rest will be easy! Then email your answer to dgunn@vlct.org. The aptly apropos April issue will reveal the truth. Or *a* truth, anyway.



CLASSIFIEDS

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For Sale or Donation. 747 Pine Street in Burlington has an 85'x85' clear span pre-engineering steel building on it that is slated for demolition to make way for a parking lot. The building is 24' tall, has a single sloped roof, and was the former Burlington Food Service freezer. This building is ideal for a small town garage. In Vermont, we "Reduce, Reuse and Recycle," and this 1985 building is nearly brand new! The owner can say nothing specific about the price (possible donation), but he can certainly invite a dialogue and is working with appropriate contractors to determine the cost of dismantling versus demolishing it. The building must be taken down and removed from the site within two months. Contact Nick Hurt at 802-316-6934 (or 55 Fairfield Road, Cambridge, VT 05444).

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LEGAL AND REG.

(continued from page 7)

that the legislature used the phrase "remove him at any time for cause" to reflect a selectboard's authority to negotiate specific terms of a contract with a town manager which alter that employment relationship such that it becomes terminable only for cause. The decision stated:

The two parts of the provision may be reconciled without difficulty in that they enable a selectboard to hire a person as town manager on either an at-will basis or on modified terms that provide for a specific duration of employment, but if the latter option is chosen, any contract must, by statute, provide for termination for just cause.

Nelson v. Town of St. Johnsbury Selectboard, et al., Docket No. 93-4-12 Cacv.

The Vermont Supreme Court disagreed with the trial court's approach and consequently its holding. Rejecting both parties' contention and the lower court's premise that a law with seemingly contradictory language is clear on its face, the Court treated it as ambiguous and looked to the legislative history to discern its meaning. The law at issue, 24 V.S.A. § 1233, was enacted in 1917 and left untouched to this day. Lacking any direct evidence of legislative intent behind the law, the Court looked at the context in which it was written. Specifically, this meant comparing the historical meaning of the phrases at issue – "at the will of/at will" and "for cause" – to their modern meaning. This approach proved instructive as it revealed

that the words "at will" had a very different meaning in 1917 than they do today. In fact, as the Court notes, it was not until the late 1940s that the phrase "at will" referred to an employment relationship terminable for any reason. Up until that time, what we today recognize as at-will employment was signified by using the terms "at the pleasure of" or "during the pleasure of." The Court therefore read "*at the will of such selectmen*" as meaning that only the selectboard, and no other authority, may terminate the manager's employment. The phrase "for cause" on the other hand meant the same then as it does now: a limitation on the exercise of an employer's discretionary authority to terminate an employee.

With these interpretations in mind, the Court read the town manager statute as follows: "In all matters he shall be subject to the direction and supervision and shall hold office at the will of such selectmen [i.e., only the selectboard can terminate the town manager], who, by majority vote, may remove him at any time for cause" [a limitation on the selectboard's removal authority]. 24 V.S.A. § 1233. Almost one hundred years after the law was first enacted, the question is finally settled – a town manager is a public employee whose employment can only be terminated for cause.

What exactly does that mean? In past cases, the Court has declared that termination of public employees requires "some substantial shortcoming detrimental to the employer's interests, which the law and a sound public opinion recognizes as a good cause for his dismissal." *In re Brooks*, 135 Vt. 563 at 568 (1997). In this matter, however, because the Court had not had previous occasion to define what constitutes sufficient cause under this law, and because there were disputes of material fact between the parties concerning the grounds for Nelson's termination, the Court remanded to the trial court the question of whether Nelson was wrongfully terminated. For that and several other important questions, we will just have to wait for the case to be resolved.

In the meantime, if you have any employment status questions, please contact the Municipal Assistance Center at 1-800-649-7915 for assistance and potential referral to VLCT's Employment Practices Liability program if your municipality is a PACIF member.

The decision is archived at <http://info.libraries.vermont.gov/supct/current/op2013-386.html>.

*Garrett Baxter, Senior Staff Attorney
VLCT Municipal Assistance Center*



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March 21, Capitol Plaza Hotel and Conference Center, Montpelier

SPRING AUDITORS WORKSHOP

March 24, Capitol Plaza Hotel and Conference Center, Montpelier

MUNICIPAL CONSTRUCTION CONTRACTS

April 9, Capitol Plaza Hotel and Conference Center, Montpelier

EFFECTIVE PROPERTY TAX APPEALS WORKSHOP

May 5, Lake Morey Resort, Fairlee

May 12, Capitol Plaza Hotel and Conference Center, Montpelier

HUMAN RESOURCES/EMPLOYMENT LAW WORKSHOP

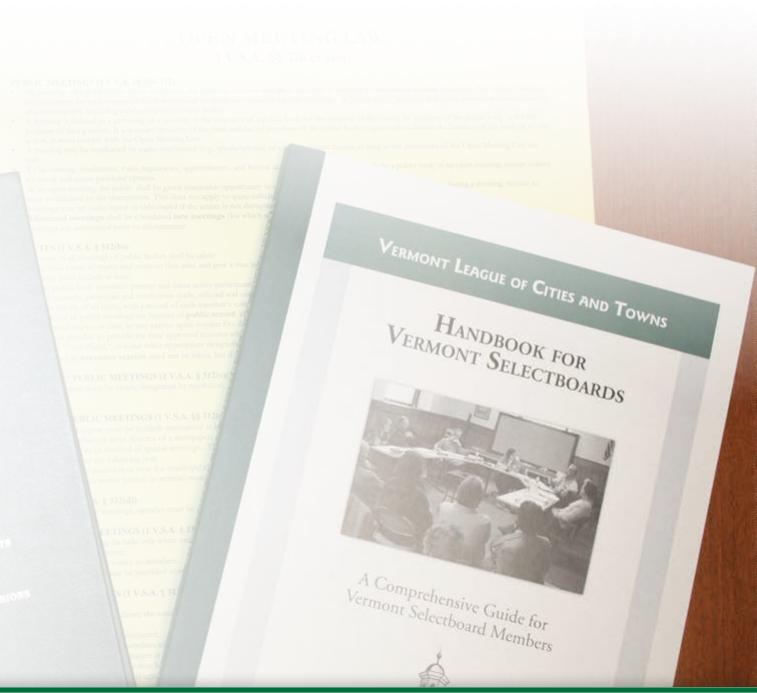
June 3, Capitol Plaza Hotel and Conference Center, Montpelier

SPRING PLANNING AND ZONING FORUM

June 10, Capitol Plaza Hotel and Conference Center, Montpelier

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June 16, Capitol Plaza Hotel and Conference Center, Montpelier



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