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The Players

A review of the roles and responsibilities of local officials with respect to land use regulation in our municipalities.

A. Overview

A number of individuals and boards (municipal panels) play important roles in the creation, implementation and enforcement of local land use planning and regulation. The roles and responsibilities of each of these players can vary from town to town according to local custom within the limits expressed in statutes and case law. Act 115 of 2003 gives towns new flexibility in deciding the roles of some of the players by allowing towns to draft bylaws that designate which “appropriate municipal panel” will review particular permit applications. Now, for the most part, it's up to the municipality to determine which panel is most appropriate to conduct a particular type of review. If it wishes a municipality can consolidate and local permit proceedings under one board to help streamline the permit process. The only mandate that remains is that the Board of Adjustment or Development Review Board must hear appeals.

The short descriptions below include the usual roles of the various players including the “appropriate municipal panels.”

Appropriate Municipal Panel refers to any municipal body or "panel" designated in the bylaw to review development applications or to hear appeals. An appropriate municipal panel may include a planning commission, board of adjustment, development review board, or in some cases the legislative body.

- **The Zoning Administrator.** The zoning administrator provides assistance to individuals who wish to develop their property by providing the necessary forms to obtain required municipal permits and by referring them to the state authorities that must be contacted to obtain necessary state permits. The zoning administrator is required to literally administer the bylaws, and may not permit any development that does not conform to the bylaws. The administrator provides the clerk with notices of permits, violations and denials of permits for recording. 24 V.S.A. § 4449. The administrator enforces violations of the bylaws and in many communities provides administrative support services to the zoning and planning boards. See 24 V.S.A. § 4448.
- **The Planning Commission.** The planning commission is a municipal panel that is principally responsible for drafting the town plan and the town's land use bylaws. In towns that do not have a

development review board the planning commission generally perform site plan reviews, subdivision reviews, and becomes involved with PRD and PUD review. The planning commission generally participates in the regional planning program. The planning commission may also prepare and present to the selectboard building, housing and other safety codes, undertake capacity studies, and prepare and present a capital budget. See 24 V.S.A. § 4325.

- **The Zoning Board of Adjustment.** The zoning board is a municipal panel that performs a quasi-judicial permitting function (acts like a court) and hears appeals from actions or decisions of the administrator. It may also consider conditional use applications, decides requests for waivers, and rules on variance requests. 24 V.S.A. §§ 4460.
- **The Development Review Board.** If a town chooses to have a development review board, this board replaces the Zoning Board of Adjustment and takes on all development review functions that had previously been undertaken by the planning commission. See 24 V.S.A. § 4460(a). In municipalities that have created development review boards, the planning commission continues to exercise its planning and bylaw development functions and other duties established by law.
- **Alternates.** The municipal legislative body may appoint alternates to a board of adjustment or a development review board for a term to be determined by the legislative body. Alternates may be assigned by the legislative body to serve on the board of adjustment or the development review board in situations when one or more members of the board are disqualified or are otherwise unable to serve. 24 V.S.A. § 4460(c).
- **The Selectboard.** All selectboards review and hold hearings on the proposed bylaws, amendments and repeals. In some municipalities the selectboard votes to adopt, amend or repeal the bylaws. In other municipalities, the board puts this question before the voters at an annual or special town meeting. The selectboard appoints members of the boards (except elected planning commissioners) and may approve or disapprove the appointment of the zoning administrator. The board may remove appointed planning commissioners by unanimous vote, and other appointed officials, for cause, upon written charges and after a public hearing. In addition, the zoning administrator may only be removed for cause after consultation with the planning commission. The selectboard enables the zoning administrator to enforce the bylaws by providing legal assistance in court actions, and may settle cases once they are in litigation. The selectboard sets the fees to be charged for permits, appeals and other costs paid by applicants. The selectboard may participate in an appeal from a development review board or zoning board decision when the town is an interested party. The selectboard may adopt interim regulations and hold hearings and decide whether a permit should be granted under interim zoning. The board decides whether to accept private streets or highways. 24 V.S.A. §§ 4415, 4440, 4460(b), (c), 4461, 4463(c).
- **The Planning Director.** The legislative body of a municipality may create a planning department, headed by a planning director, as a substitute for the planning commission. The planning director may be assisted by an advisory planning council who advise the planning director and perform other duties as assigned by the legislative body. 24 V.S.A. § 4321

- **Advisory Planning Council.** In a municipality that has a planning department, the selectboard may appoint a planning council that provides advice to the planning director. The council may have other duties assigned to it by resolution of the selectboard. 24 V.S.A. § 4321
- **Advisory Commissions and Committees.** Municipalities may at any time create one or more advisory commissions, whose members are appointed by the legislative body. Advisory committees may include committees, or a combination of advisory commissions to assist the legislative body or the planning commission in preparing, adopting, and implementing the municipal plan. Advisory commissions authorized under this section and under chapter 118 of this title may advise appropriate municipal panels, applicants, and interested parties in accordance with the procedures established under section 4464 of this title. 24 V.S.A. § 4433.
- **Design Review Board.** If a town has a design review district the selectboard may appoint a design review board to advise the appropriate municipal panel on development requests in this district. 24 V.S.A. § 4414(1)(E).
- **The Town Clerk.** The town clerk records notices of municipal land use permits, notices of violations and notices of denial of permit, as well as subdivision plats. 24 V.S.A. §§ 1154, 4463(2). If a subdivision plat shows a new street or highway, the clerk may only record it if it has been endorsed by the appropriate municipal panel or if the clerk certifies that the board failed to take action within the required forty-five day period. If the adoption of a plan, bylaw capital budget or amendment is challenged, a certificate from the clerk regarding its publication, posting, consideration and adoption will be presumptive proof that it was so done. 24 V.S.A. § 4447.
- **The Regional Planning Commission.** Regional planning commissions are created by vote of the legislative body or voters of each of a number of contiguous municipalities, upon the written approval of the Agency of Commerce and Community Development. 24 V.S.A. § 4341, *et seq.* There are twelve regional planning commissions in Vermont and each commission is made of up at least one representative appointed from each member municipality. The regional planning commission assists and advises municipalities in all aspects of planning for future growth. It conducts capacity studies, and prepares a regional plan, considers regional land use issues, local growth center identification and evaluation, economic development, natural resource issues, public/private sector cooperation, and reviews Act 250 projects. The regional commission also serves as a GIS Service Center and a U.S. Census Data Center and provides professional assistance and opinions on local ordinances and bylaw administration. Finally, the regional commission assists towns in obtaining and administering grant funds for community development, housing, economic development, capital improvements, recreation, etc.
- **Council of Regional Commissions.** The Council of Regional Commissions is made up of a representative from each regional commission and three members appointed by the Governor who are state agency or department heads and two members representing the public. The council mediates disputes between municipalities, state agencies and regional commissions, and reviews proposed state agency and regional plans or amendments
- **The Environmental Court.** The Environmental Court is a trial level court that was created in 1989 to review environmental appeals and enforcement actions including local zoning and land use

matters. 4 V.S.A. § 1001 and 10 V.S.A. § 8001 *et seq.* All appeals from decisions of local boards are appealed to the Environmental Court.

B. Zoning Administrator

1. **Appointment / Removal.** The zoning administrator is nominated by the planning commission and appointed by the legislative body for a term of three years promptly after the adoption of the first bylaws or when a vacancy exists. 24 V.S.A. § 4448. Subsequent administrators are appointed when the three-year term expires or when there is a vacancy.

According to law, the zoning administrator “may hold any other office in the municipality other than membership in the board of adjustment or development review board.” 24 V.S.A. § 4448. This means he or she may also be the health officer or a member of the selectboard. Note that although legally he or she may be a member of the planning commission, complications could arise from this dual role since the planning commission plays a key role in the appointment and removal of the zoning administrator.

The zoning administrator may be removed from office for cause by the selectboard after consulting with the planning commission. 24 V.S.A. § 4448. The selectboard must give the zoning administrator notice of the pending dismissal and the facts that form the basis of the decision to dismiss. The selectboard must also provide the zoning administrator with a hearing if he or she requests, at which the zoning administrator must be given an opportunity to bring witnesses and provide other evidence to show that there is no good cause for dismissal.

Note that the zoning administrator is subject to all personnel policies of the town, unless the selectboard specifically exempts the office. This means that the board must follow all required procedures before it may dismiss the zoning administrator for “cause.” However, even if no procedures are required by the policy, or if the town has no policy, the zoning administrator has a right to remain employed for the three year term, which cannot be altered without the town first providing due process (notice and an opportunity to be heard) as described above. Once the three year term expires, however, the planning commission can nominate, and the selectboard can appoint, someone new to serve.

2. **Salary.** The zoning administrator’s pay is determined either by vote of the town at town meeting or by the selectboard. 24 V.S.A. § 932. If the salary is set by the selectboard, the board may alter the administrator’s salary and benefits so long as it is permitted by the town’s personnel policy or collective bargaining agreement.

A few of the smaller towns choose to pay their zoning administrator by allowing him or her to retain permit fees (or some percentage of the fee). This is acceptable so long as the town withholds federal income tax and social security from this “pay”. This means that all fees must be paid to the treasurer who will then issue a check to the zoning administrator.

3. **Duties of the Zoning Administrator.**

- a. Issuing permits.** The administrative officer issues zoning permits and occupancy permits. He or she must administer the bylaws literally, and only has authority to permit land development that strictly conforms to the town's bylaws. 24 V.S.A. § 4448.
- b. Assistance to applicants.** The administrative officer provides landowners and other members of the public with the necessary forms to obtain municipal permits and other municipal authorizations required under local zoning or subdivision bylaws or under other laws or ordinances that relate to the regulation by municipalities of land development. 24 V.S.A. § 4448(c).
- c. Provides information about land development regulations.** If other municipal permits or authorizations are required, the administrative officer helps to coordinate a unified effort on the behalf of the municipality in administering its development review programs. 24 V.S.A. § 4448(c). The administrative officer also informs any person applying for municipal permit or authorization that the person should contact the regional permit specialist employed by the agency of natural resources, in order to assure timely action on any related state permits. 24 V.S.A. § 4448(c). Note that this will not change the applicant's obligation to identify, apply for, and obtain relevant state permits.
- d. Administrative functions.** The zoning administrator performs many administrative functions for the town. These functions may vary depending upon whether there are other paid staff working with the zoning and planning boards. Many zoning administrators act as the clerks of the zoning, planning or development review board and are charged with ensuring that those boards have the assistance and information that they require to perform their duties. These functions, however, are not required by statute. Certain administrative functions are required by law to be performed by the administrator. They are:
- Assisting landowners and interested parties with required forms and providing information about permit requirements. 24 V.S.A. §§ 4448.
 - Refer matters for review by the appropriate municipal panel. 24 V.S.A. § 4460
 - Issuing permits and certificates of occupancy and, when permitted by the bylaws, may review and approve new development and amendments to previously approved development that would otherwise require review by an appropriate municipal panel. 24 V.S.A. §§ 4449, 4464.
 - Within three days following the issuance of a zoning permit, the administrative officer must deliver a copy of the permit to the listers of the municipality. 24 V.S.A. §§ 4449.
 - Within three days following the issuance of a zoning permit, the administrative officer must post a copy of the permit in at least one public place in the municipality, until the expiration of fifteen days from the date of issuance of the permit. 24 V.S.A. §§ 4449.
 - Within thirty days after a land use permit has been issued or within thirty days of the issuance of a notice of violation, the original or a copy of the permit or notice

of permit, violation or denial must be provided to the town clerk for recording. 24 V.S.A. §§ 4449.

- Answer public information requests. The zoning administrator as the custodian of permit records must assist individuals who are researching the permit history of a property.
- Enforcing all violations of the ordinance. 24 V.S.A. § 4451.

e. **Enforcement.** The zoning administrator must act to stop or prevent violations of the land use bylaws. To do this, the administrative officer must institute in the name of the municipality an action, injunction or other proceeding to prevent or abate violations. 24 V.S.A. §§ 4451; 4452. The zoning administrator has no discretion, and must enforce all violations in the municipality. See *In re Fairchild*, 159 Vt. 125, 130 (1992).

f. **Appeals.** Actions of the zoning administrator may be appealed by an “interested party” (defined in section 4465(b) to the zoning board of adjustment or the development review board. The zoning administrator participates in the appeal by explaining his or her action (or failure to act – as in deciding not to enforce in a particular matter) that is under appeal. In addition, the administrator may present evidence to support his or her decision and may question any witness or evidence presented during the hearing by the person bringing the appeal. 24 V.S.A. § § 4449, 4465.

4. **Acting administrator.** The planning commission may nominate and the legislative body may appoint an acting administrative officer who has the same duties and responsibilities as the administrative officer in the administrative officer's absence. If an acting administrative officer position is established, or, for municipalities that establish the position of assistant administrative officer, there shall be clear policies regarding the authority of the administrative officer in relation to the acting or assistant officer. 24 V.S.A. § 4448.

5. **Deemed Approval.** If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, a permit shall be deemed issued on the 31st day. 24 V.S.A. § 4448 (d).

* For more detailed information on the roles and responsibilities of the Zoning Administrator see the Zoning Administrator's Handbook, published by the Land Use and Education Collaborative.

C. Planning Commission.

1. **Creation of Planning Commission.** A planning commission may be created at any time by a motion and vote of the legislative body of a municipality. 24 V.S.A. § 4321. (Note that if a provision of the municipal charter differs from state law, the charter provision will apply. 24 V.S.A. § 4328)

a. **Board make up.** A planning commission is made up of three to nine voting members, plus the selectboard of a rural town, or not more than two elected or appointed officials of

an urban municipality who are chosen by the legislative body, who shall be nonvoting ex officio members. Note that a selectboard member may be appointed a voting member of the board and may serve in that capacity. If a municipality has an energy coordinator under subchapter 12 of chapter 33 of this title, the energy coordinator may be a nonvoting ex officio member of the planning commission as well. 24 V.S.A. § 4322. At least a majority of the members of a planning commission must be residents of the municipality. This rule lets the municipality appoint non-residents who may have particular expertise in planning to sit on the board.

- b. Appointment/election.** Members of a planning commission may be either appointed by the selectboard or elected by the voters. When planning commissioners are appointed, the length of the term of planning commission members shall be determined by the legislative body of a municipality. 24 V.S.A. § 4323.

As an alternative to appointment, municipalities may choose to elect planning commissioners for terms of one to four years. The proposal to elect the planning commission must be decided by vote at an annual or special meeting of the municipality. 24 V.S.A. § 4323. If a municipality chooses to elect planning commissioners:

- The length and spacing of terms is decided by vote of the municipality.
- Elections shall occur only as terms are completed, or as vacancies occur, or as new planning commissions are created.
- Vacancies may be filled by appointment of the legislative body only until the next meeting of the municipality, at which time the voters shall elect a commissioner to fill the un-expired term.

- c. Removal of planning commissioners.** A planning commissioner that has been appointed may be removed at any time by unanimous vote of the legislative body. 24 V.S.A. § 4322. The appointed planning commission serves at the will of the selectboard, so that removal can occur for any or no reason. *Brennan v. Town of Colchester*, 169 Vt. 175, 176 (1999). Elected commissioners may not be removed by action of the legislative body. 24 V.S.A. § 4323. An appointment to fill a vacancy is for the un-expired term.

- 2. Compensation.** All planning commission members may be compensated and reimbursed by the municipality for necessary and reasonable expenses. As a practical matter, most planning commissioners volunteer their time and are paid a stipend to cover expenses such as phone calls and travel. 24 V.S.A. § 4322.

- 3. Organization.** A planning commission elects a chair and a clerk. (The clerk must be a member of the body – although the board may pay someone to act as its secretary.) At its organizational meeting the commission must adopt, by majority vote of those members present and voting, such other rules as it deems necessary and appropriate for the performance of its functions. Generally boards adopt some rules of procedure such as Roberts' Rules for Small Boards, or the board establishes its own rules. Note that the board's rules may not contradict provisions of state law. *In re Lionni*, 160 Vt. 625, 626 (1993) (the planning commission may not adopt a rule that allows the board to act with less than the

concurrence of a majority of the board.) The board also sets its regularly scheduled meetings. A planning commission must keep a record of its resolutions and transactions, which must be maintained as a public record of the municipality. 24 V.S.A. § 4323.

4. Powers and Duties of Planning Commission.

- a. Town plan.** Prepare a town plan and amendments to the town plan for consideration by the legislative body, and review any amendments initiated by others; 24 V.S.A. § 4325(1).
- b. Land use regulations.** Prepare and present to the legislative body proposed by-laws and amendments and make recommendations about adoption of citizen-initiated amendments. 24 V.S.A. § 4325(2).
- c. Bylaw administration.** Administer by-laws, except to the extent that a development review board performs those functions. This may include any development review functions authorize by the municipal bylaws. 24 V.S.A. § 4460.
- d. Studies.** Undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources and wetland protection. All data gathered by the planning commission that is relevant to the geographic information system established under 3 V.S.A. § 20 and operated by the regional planning commission (RPC) must be shared with the RPC. 24 V.S.A. § 4325.
- e. Housing and safety codes.** Prepare, present and recommend to the legislative body building, plumbing, fire, electrical, housing, and related codes and enforcement procedures, and construction specifications for streets and public improvements. 24 V.S.A. § 4325.
- f. Capital budget.** Prepare and present a recommended capital budget and program for a period of five years for action by the legislative body. See 24 V.S.A. § 4443. Note that in order to assess impact fees the town must have adopted a capital budget. 24 V.S.A. § 4430.
- g. General Authority.** The planning commission has general authority in statute to hold public meetings; require the production of information from other municipal departments that relates to the work of the planning commission; to enter upon land to make examinations and surveys; retain staff and consultant assistance in carrying out its duties and powers; to perform such other acts or functions as it may deem necessary or appropriate to fulfill the duties and obligations imposed by, and the intent and purposes of the law. 24 V.S.A. § 4325.
- h. Regional Planning.** Participate in a regional planning program. 24 V.S.A. § 4325.

i. **Studies.** Undertake comprehensive planning, including related preliminary planning and engineering studies. 24 V.S.A. § 4325.

5. **Appropriation, Reports and Records.** Every municipality may appropriate and expend funds for its planning commission. The planning commission must keep a record of its business and make an annual report to the municipality. A planning commission may accept and utilize any funds, personal or other assistance made available by this state or federal government or any of their agencies or from private sources. 24 V.S.A. § 4326.

6. **Joint Planning Commissions.** A planning commission of a town having one or more municipalities contained within it may, upon the act of the legislative body of each municipality, be the planning commission for the town and all the contained municipalities (i.e. villages). The planning commission will continue to represent all of the municipalities until such joint arrangement is terminated by the act of the legislative body of any participating municipality.

Note that if a town contains one or more villages, any act required to be taken by a legislative body or by the vote of a municipality shall be taken by the legislative body of the town or as the case may be the voters of the town including the voters of any contained village. If, however, a contained village adopts its own plan, capital budget or program or one or more bylaws, then any act required by law for the adoption shall be taken by the legislative body or voters of the village. Nevertheless, the voters of the village will remain as voters in the town for the adoption of town bylaws and capital budget and program.

Finally, a single planning commission, appointed by the supervisor of the unorganized towns and gores of Essex County; namely Averill, Avery's Gore, Ferdinand, Lewis, Warner's Grant and Warren's Gore, shall act as the planning commission for these towns and gores. 24 V.S.A. § 4327.

D. The Zoning Board of Adjustment

1. **Creation of Zoning Board of Adjustment.** The board of adjustment for a rural town or an urban municipality consists of three to nine members. The legislative body determines the size of the board when it is formed, and may, by resolution, alter its size. The selectboard also appoints the members of the zoning board for a term decided on by the board. The initial appointment must occur promptly after the town adopts its bylaws. The legislative body must fill vacancies for the unexpired terms. 24 V.S.A. § 4460(b).

2. **Members of the Board.** The board of adjustment for a rural town or an urban municipality may consist of the members of the planning commission of that town or may include one or more members of the planning commission. 24 V.S.A. § 4460(b). If two or more municipalities have a joint planning commission it may also have a joint zoning board of adjustment. 24 V.S.A. § 4460(d). Not that there is no legal requirement that board members be residents of the town. This means that a non-resident landowner may serve on this board if the selectboard deems it appropriate.

- 3. Removal.** A member of a board of adjustment may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460(c). This rule is in contrast to the rule that planning commissioners may be removed at will. The selectboard is given less freedom to remove zoning board members to prevent the appointment and removal power to be used to influence outcomes of particular matters before the board.
- 4. Organization.** A board of adjustment elects its own officers, adopts rules of procedure (Roberts Rules for Small Boards, or any other rules, including ones it makes up itself) and schedules its regular meetings at its organizational meeting each year. Meetings of the board of are held at the call of the chair and at such times as the board may determine. 24 V.S.A. § 4461(a).
- 5. Procedure.** All meetings of the board are open to the public (except deliberative sessions which are not public meetings under the open meeting law.) The board must keep minutes of its proceedings, showing the vote of each member on each question, or, if absent or failing to vote, indicating this. (No minutes are necessary in deliberative sessions since the written opinion will serve as the public notice of what occurred.) The board must also keep records of its examinations and other official actions, all of which must be immediately filed in the office of the clerk of the municipality as a public record. 24 V.S.A. § 4461(a). When the board is conducting a hearing or taking an action it must have a quorum of not less than a majority of the members of the board. All actions must be taken by the concurrence of a majority of the board. 24 V.S.A. § 4461(a). If a hearing is continued over a period of time, a board member who cannot make every hearing may nonetheless participate in deciding the matter if he or she reviews all of the physical evidence and listens to tapes of the missed proceedings.

A board of adjustment may examine any property, maps, books or records bearing upon the matters covered in its proceeding, may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information, and may administer oaths. Note that any of the powers granted to a board of adjustment in this section may be delegated by it to a specifically authorized agent or representative, except in situations where the municipal administrative procedures act applies. 24 V.S.A. §4461(b).

6. Powers.

- a. Appeals.** Zoning boards are quasi-judicial bodies that have the power to hear and decide appeals from decisions, acts and failures to act, including enforcement actions, by the zoning administrator. 24 V.S.A. § 445(a). Note that the board may reject an appeal without hearing and render a decision, (including findings of fact) within ten days of the date of filing of the notice of appeal, if the board of adjustment considers the issues raised by the appellant in his or her appeal have been decided in an earlier appeal. 24 V.S.A. § 4464(c).
- b. Variances.** The zoning board may hear and grant or deny a request for a variance under 24 V.S.A. § 4469.

- c. Conditional use.** The zoning board may hear and grant or deny and impose conditions on a request for a zoning permit, under 24 V.S.A. § 1444(3) (conditional use).
- d. Stay of enforcement.** When issuing a permit, the appropriate municipal panel will grant an automatic stay of permit if any appeal is filed in accordance with the local proceedings. If there is a further appeal, the stay continues until the appeal is given to the environmental court and expires 15 days after the environmental court receives the appeal. The environmental court may grant a stay of enforcement in accordance with 10 V.S.A. §8504, or it may act on the appeal.. 24 V.S.A. §4449(a)(3).
- 7. Expenditure for Services.** If the town meeting appropriates money for the zoning board, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. All members of the board of adjustment may be compensated for the performance of their duties, and may be reimbursed by the municipality for necessary and reasonable expenses. 24 V.S.A § 4461(c). Note that if the town meeting fails to appropriate money for these payments, and the selectboard does not wish to cover even the necessary and reasonable expenses, the board has no right to demand payment from the town. 24 V.S.A. § 931.
- 8. Exclusivity of Remedy.** If an interested party fails to appeal a decision of the zoning administrator to the board of adjustment, he or she will have waived the right to appeal to the Environmental Court, except in cases where the constitutionality of a bylaw is in question. 24 V.S.A. § 4472.
- 9. Decisions.** The zoning board of adjustment must render its decision, which must include findings of fact, within forty-five days after completing its hearing. Decisions on conditional use applications must be made within 60 days of the final hearing in the matter. 24 V.S.A. § 4407(2) & (5). In both cases the board must, within the required period, send to the appellant, by certified mail, a copy of the decision. Copies of the decision must also be mailed to every person or body appearing and having been heard at the hearing, and a copy must also be filed with the administrative officer and the clerk of the municipality as a part of the public records. If the board of adjustment does not render its decision within the 45-day period, the board will be deemed to have rendered a decision in favor of the appellant and granted the relief requested by the applicant on the 46th day. 24 V.S.A. § 4464(b)(1). The Vermont Supreme Court has modified this basic rule through case law that provides that there will be no deemed approval if the board renders a decision either orally or in writing before the deemed approval date. For a more in depth discussion of this issue please refer to Chapter VI *Appeals*, herein.

E. Development Review Board.

A development review board is a single board that performs all of the development review (permitting) functions for the town. It replaces the zoning board of adjustment and takes over the development

review duties of the planning commission so that the planning commission can focus on its planning functions.

1. Creation of Development Review Board. If the legislative body of a municipality creates a development review board to perform all development review functions for the town, that board must consist of five to nine members serving terms that are determined by the selectboard. The selectboard may determine the size of the board when it is formed, and may thereafter, by resolution, alter its size. Vacancies on the board may be filled by the legislative body for the unexpired terms. 24 V.S.A. § 4460(c).

☞ Note that a municipality may not have a board of adjustment and a development review board at the same time. Upon creation of a development review board, the existence of any board of adjustment terminates. 24 V.S.A. § 4460(b).

2. Members of the Board. The development review board for a rural town or an urban municipality may consist of the members of the planning commission of that town or may include one or more members of the planning commission. 24 V.S.A. § 4460(b). If two or more municipalities have a joint planning commission it may also have a joint development review board. 24 V.S.A. § 4460(d).

3. Removal. A member of a development review board may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4461(c).

4. Organization. A development review board elects its own officers, adopts rules of procedure (Roberts Rules for Small Boards, or any other rules, including ones it makes up itself) and schedules its regular meetings at its organizational meeting each year. Meetings of the board are held at the call of the chair and at such times as the board may determine. 24 V.S.A. § 4461(a).

5. Procedure. All meetings of the board are open to the public (except deliberative sessions which are not public meetings under the open meeting law. 1 V.S.A §312 (e).) The board must keep minutes of its proceedings, showing the vote of each member on each question, or, if absent or failing to vote, indicating this. (No minutes are necessary in deliberative sessions since the written opinion will serve as the public notice of what occurred.) The board must also keep records of its examinations and other official actions, all of which must be immediately filed in the office of the clerk of the municipality as a public record. 24 V.S.A. § 4461(a). When the board is conducting a hearing or taking an action it must have a quorum of not less than a majority of the members of the board. All actions must be taken by the concurrence of a majority of the board. 24 V.S.A. § 4461(a).

A development review board may examine any property, maps, books or records bearing upon the matters covered in its proceeding, may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information, and may administer oaths. Note that any of the powers granted to a development review board in this section may be delegated by it to a specifically authorized

agent or representative, except in situations where the municipal administrative procedures act applies. 24 V.S.A. §4461(b).

6. Powers.

- a. **Appeals.** Development review boards (DRB) are quasi-judicial bodies that have the power to hear and decide appeals from decisions, acts and failures to act, including enforcement actions, by the zoning administrator. 24 V.S.A. §§ 4465(a), (c). Note that the board may reject an appeal without hearing and render a decision, (including findings of fact) within ten days of the date of filing of the notice of appeal, if the development review board considers the issues raised by the appellant in his or her appeal have been decided in an earlier appeal. 24 V.S.A. § 4470(a)
- b. **Variances.** The DRB may hear and grant or deny a request for a variance. 24 V.S.A. §4469 (generally).
- c. **Conditional use.** The DRB may hear and grant or deny and impose conditions on a request for a zoning permit, under 24 V.S.A. § 4464(b)(2).
- d. **Stay of enforcement.** When issuing a permit, the appropriate municipal panel will grant an automatic stay of permit if any appeal is filed in accordance with the local proceedings. If there is a further appeal, the stay continues until the appeal is given to the environmental court and expires 15 days after the environmental court receives the appeal. The environmental court may grant a stay of enforcement in accordance with 10 V.S.A. §8504, or it may act on the appeal.. 24 V.S.A. §4449(a)(3).
- e. **Subdivision.** The DRB may hear and grant or deny and impose conditions on requests for subdivision approval. 24 V.S.A. § 4463 (generally).
- f. **Site plan review.** The DRB may review site plan applications and impose conditions and safeguards as provided by law. 24 V.S.A. § 4416.
- g. **Planned unit development (PUD) /.** The DRB may hear and grant or deny and impose conditions on applications for PUDs. The board may modify the applicable zoning regulations. 24 V.S.A. §§ 4417(f), (g).
- h. **Design review district.** If the zoning regulations provide for a design review district no structure within the district may be erected, substantially altered, restored, moved, demolished, or changed in use without approval of the appropriate municipal panel. A design review board may be appointed by the legislative body of the municipality to advise any appropriate municipal panel. 24 V.S.A. § 4414(E)
- i. **Historic district.** If the zoning regulations create an historic district the DRB may review all applications to erect, rehabilitate, substantially alter, restore, move, demolish, or change the external appearance of a structure in this district. 24 V.S.A. § 4414(1)(F).

- j. Transfer of development rights.** 24 V.S.A. § 4423 allows the DRB to permit development at an increased density if additional development rights have been transferred to the parcel.
 - k. Bonds.** The DRB may require an applicant to post a bond to ensure faithful performance of conditions to a site plan or subdivision. 24 V.S.A. §4464(b)(2).
 - l. Act 250.** If the municipality has adopted the Municipal Administrative Procedures Act and has a duly adopted plan and bylaws, and the bylaws authorize the DRB to review municipal impacts of development undergoing the Act 250 process, the DRB may determine whether state development or subdivision applications conforms with the town plan and will not pose an unreasonable burden on educational or municipal services. 24 V.S.A. §§ 4401, 4420 (generally).
- 7. Expenditure for Services.** If the town meeting appropriates money for the DRB, the board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. All members of the DRB may be compensated for the performance of their duties, and may be reimbursed by the municipality for necessary and reasonable expenses. 24 V.S.A § 4461(c). Note that if the town meeting fails to appropriate money for these payments, and the selectboard do not wish to cover even the necessary and reasonable expenses, there is not right to demand payment. 24 V.S.A. § 931.
- 8. Exclusivity of Remedy.** If an interested party fails to appeal a decision of the zoning administrator to the DRB (or the zoning board, if there is no DRB), he or she will have waived the right to appeal to the Environmental Court, except in cases where the constitutionality of a bylaw is in question. 24 V.S.A. § 4472.
- 9. Decisions.** The DRB must render its decision on an appeal, and on subdivisions, within forty-five days after completing its hearing, and it must, within that period, send to the appellant, by certified mail, a copy of the decision. Copies of the decision must also be mailed to every person or body appearing and having been heard at the hearing, and a copy must also be filed with the administrative officer and the clerk of the municipality as a part of the public records. If the DRB does not render its decision within the 45-day period, the board will be deemed to have rendered a decision in favor of the appellant and granted the relief requested by the applicant on the 46th day. 24 V.S.A. §§ 4464(b)(1), 4464(b)(3). Decisions on site plan reviews must be made within 60 days of receipt of the site plan, and decisions on conditional use applications must be made within 60 days of the final hearing in the matter. 24 V.S.A. §§ 4407(2) & (5). The Vermont Supreme Court has modified this basic rule through case law that provides that there will be no deemed approval if the board renders a decision either orally or in writing before the deemed approval date. For a more in depth discussion of this issue please refer to Chapter VI *Appeals*, herein.

F. Board of Alternates.

Many towns in Vermont have a hard time retaining a quorum in matters before the local land use boards because of conflicts of interests and vacancies on the board. Accordingly, a few years ago the legislature authorized selectboards to create a Board of Alternates so that individuals can be drawn from this board to participate in matters that might not otherwise have a quorum. According to 24 V.S.A. § 4460(c) the municipal legislative body may appoint alternates to a board of adjustment or a development review board for a term to be determined by the legislative body. Alternates may be assigned by the legislative body to serve on the board of adjustment or the development review board in situations when one or more members of the board are disqualified or are otherwise unable to serve. Not that this law does not permit a member of the board of alternates to serve on the planning commission.

☞ **Municipalities should use a board of alternates to prevent quorum problems!**

G. Selectboard.

The selectboard plays a very important role in every part of the local land use development process. Although the board has no direct control over the planning commission, zoning board and/or development review board decisions, the selectboard is involved in nearly every other aspect of local land use regulation.

1. Creation of Boards and Appointments. The selectboard is charged with creating the planning commission, zoning board of adjustment or development review board and board of alternates for the town. It appoints board members for terms of office that the selectboard establishes (except for towns that elect their planning commissioners.) It may remove members for cause (except for planning commission members who may be removed at will, unless they are elected. Elected commissioners may not be removed by the selectboard.) The selectboard may also fill vacancies. The selectboard may create a design review board, and appoints the zoning administrator, upon the advice of the planning commission. In an urban municipality the selectboard may appoint a planning director and an advisory planning board. The selectboard also votes to join a regional planning commission and appoints members to that board. 24 V.S.A. §§ 4321, 4341, 4343, 4414, 4448 and 4461.

☞ The selectmen of a rural town, or not more than two elected or appointed officials of an urban municipality who are chosen by the legislative body of the urban municipality, area also nonvoting ex officio members of a planning commission. 24 V.S.A. § 4322.

2. Adoption of Town Plan and Bylaws. When the municipality wants to adopt, amend or repeal a town plan or land use regulations (bylaws) the selectboard reviews the proposals, makes minor changes, if any, and holds one or more public hearings. 24 V.S.A. §§ 4384, 4385. See *In re Cottrell*, 158 Vt. 500 (1992) (Selectboard may only make minor [non-substantive] changes to proposed bylaws because legislative policy reflected in our law requires amendments be initiated by the body entrusted with the responsibility for town planning. Although there is no similar caselaw involving town plans, the same principal will hold true. This means that if the board wishes to make substantive changes to the plan it

must send it back to the planning commission for reconsideration.) The town plan is adopted by the selectboard unless the voters have voted to adopt the plan at an annual or special town meeting. 24 V.S.A. § 4385. Bylaws and their amendments and repeals are also enacted by vote of the selectboards in urban municipalities unless the voters have petitioned for a plebiscite vote. 24 V.S.A. § 4442. The selectboard decides whether or not to adopt the regional plan. 24 V.S.A. § 4349.

- 3. Interim Zoning.** The selectboard may adopt interim bylaws (zoning, subdivision, shoreland, flood hazard area and the official map regulating land development) for the municipality after a public hearing, upon public notice, so long as the municipality has taken action to conduct studies, or has held or is holding a hearing for the purpose of considering a bylaw. The purpose of interim zoning is to temporarily preserve the existing land uses and maintain the status quo while the town is working on adopting permanent regulations. *Town of Mendon v. Ezzo*, 129 Vt. 351, 358 (1971). The interim bylaw will be in effect for 2 years, and may be extended or reenact by the selectboard after a public hearing for an additional year. 24 V.S.A. § 4415.

Interim zoning bylaws are administered and enforced by the zoning administrator, like any other bylaw of the municipality. However, under interim zoning bylaws, the legislative body may, upon application, authorize the issuance of permits for any type of land development (as a conditional use) not otherwise permitted by the bylaw. The board must hold a public hearing in the matter and it may only authorize the development if it finds that the proposed use is consistent with the health, safety, and welfare of the municipality and that it does not negatively impact the capacity of existing or planned community facilities, services or lands, the existing patterns and uses of development in the area, environmental limitations of the site or area and significant natural resource areas and sites or municipal plans and other municipal bylaws, ordinances or regulations in effect. In addition, the applicant and all abutting property owners must be notified in writing of the date of the hearing, and of the legislative body's final determination. 24 V.S.A. § 4415.

Proposed Bylaws and Municipal Panel Approval. **First, a public notice for the first hearing on the bylaw must be published by the local legislative body pursuant to §4442(a). The hearing may be in respect to the adoption or amendment of a bylaw, or an amendment to an ordinance adopted under prior enabling laws. The administrative officer for the legislative body will review any new application that comes in following the public notice for a period of 150 days. Any new application filed after the date of the notice shall be reviewed in light of the proposed bylaw or amendment and applicable, existing bylaws and ordinances. If the new bylaw or amendment has not been adopted by the conclusion of the 150-day period, or if the proposed bylaw or amendment is rejected, then the permit shall be reviewed under existing bylaws and ordinances. An application that has been denied under a proposed bylaw or amendment that has been rejected, or that has not been adopted within the 150-day period, shall be reviewed, at no cost, under the existing bylaws and ordinances, upon request of the applicant. Any determination by the administrative officer under this section shall be subject to appeal as provided in section 4465 of this title.**

5. **Miscellaneous Approvals.** The selectboard is called upon to make a variety of permit decisions or other approvals when land is being developed.
 - a. **Public highways.** Whenever a subdivision plat shows streets or highways, those roads will remain private roads unless the selectboard formally accepts them as public streets and highways. The board may also name all public streets and number and renumber all lots to provide for existing and future development. 24 V.S.A. § 4463(c).
 - b. **Curb cuts.** Whenever a landowner wants to put in a driveway or a private road with access to the public highway, he or she must receive a curb cut approval from the selectboard. The board may consider public safety and the integrity of the public highway (i.e. whether water from the proposed driveway will harm the public road) when deciding whether to grant a curb cut permit. 19 V.S.A. § 1111.
 - c. **On-site septic.** The selectboard, acting as the local board of health may be called upon to determine whether a proposed septic system meets the requirements of a local health ordinance. 18 V.S.A. § 613.
 - d. **Bonds for gravel and sand or soil removal site restoration.** The selectboard may set a bond for gravel and sand excavation or soil removal uses of property to ensure that the site will be restored as required by the zoning ordinance or permit conditions. 24 V.S.A. § 4407(8).
6. **Capital Budget Approval.** The selectboard votes to adopt, amend or repeal a capital budget and program for the town. This may only be done following one or more public hearings, upon public notice. Note that if a municipality has not adopted, as part of the town plan, a utility and facilities plan (24 V.S.A. § 4382(a)(4)), then it may not adopt a capital budget. 24 V.S.A. § 4443(a). The adoption of a capital budget will enable the municipality to assess impact fees. 24 V.S.A. ch. 131.
7. **Public Streets and Highways.** Every street or highway shown on a plat filed or recorded as part of the subdivision process will be deemed to be a private street or highway until it is formally accepted by the municipality as a public street or highway by ordinance or resolution of the legislative body of the municipality. No public municipal street, utility or improvement may be constructed by the municipality in or on any street or highway until it has become a public street or highway. 24 V.S.A. § 4463(c). Note that, the legislative body has authority after a public hearing on the subject, to name and rename all public streets and to number and renumber lots so as to provide for existing as well as future structures. 24 V.S.A. § 4463(c).
8. **Enforcement.** When the zoning administrator believes it is necessary to take a case to court for enforcement, he or she must seek authorization from the selectboard to spend the necessary funds. Note that the selectboard does not have to authorize the zoning administrator to issue the initial notice of violation or a Civil Complaint (ticket) that is heard in the Traffic and Municipal Ordinance Bureau. Rather, the selectboard only becomes involved if the administrator needs to bring an action in Environmental or Superior Court since this requires payment of court fees and the hiring of an attorney. Although the zoning

administrator is generally the primary official involved in pursuing the enforcement action, only the selectboard may settle cases on behalf of the town. 24 V.S.A. § 872; See generally, *Town of Cabot v. Britt*, 36 Vt. 349 (1863).

9. **Appeals.** Towns very rarely are permitted to appeal a decision of one of its own boards. This is because the zoning board, planning commission or development review board is acting on behalf of the town when it decides a matter. The selectboard has no power to second-guess those decisions. The only time the selectboard may appeal a decision of the land use board is when the town is the applicant. This might occur, for example, when the town seeks conditional use approval for a new town garage or other public facility.

The selectboard may participate as an interested party in an appeal to the environmental court if the plan or bylaw is an issue in the case. This means that if the appeal will determine the meaning of a particular bylaw the town will be permitted to participate; however, if the appeal will determine only how a bylaw will apply to a particular fact situation, the town will be excluded from participation. The Environmental Court judge tends to be fairly liberal in allowing the town to enter an appearance in a case for the purpose of ensuring that any settlement will not violate the language or intent of the town's ordinance.

H. Planning Director.

In any urban municipality, the legislative body may create a planning department headed by a planning director as a substitute for a planning commission. The role of the planning director is regulated by the selectboard, however, he or she is generally given all of the powers and duties of planning commissions. 24 V.S.A. § 4321.

I. Advisory Planning Council.

In communities that have a planning director, the legislative body creates an advisory planning council that advises the planning director in the exercise of his or her powers and duties. The planning council may have other functions assigned to it by the legislative body. For example, the advisory planning council may also be given authority to function as a design review board for the community. 24 V.S.A. § 4321.

J. Design Review Board.

If a town bylaw has designated an area of the community as a design review district the selectboard may appoint a design review board to advise the planning commission or development review board on development requests in this district. The design review board does not bind the planning commission or DRB, but brings a broader community perspective to decisions about areas of the community that may contain structures of historical, architectural or cultural merit and other areas in which there is a concentration of community interest and participation such as a central business district, civic center or a

similar grouping or focus of activities. 24 V.S.A. §4414(1)(E). The legislative body may determine how many members will serve on this board, the terms of office and rules of procedure that will apply.

K. Advisory Panels.

§ 4433. Advisory commissions and committees

Municipalities may at any time create one or more advisory commissions, which for the purposes of this chapter include committees, or a combination of advisory commissions to assist the legislative body or the planning commission in preparing, adopting, and implementing the municipal plan. Advisory commissions authorized under this section and under chapter 118 of this title may advise appropriate municipal panels, applicants, and interested parties in accordance with the procedures established under section 4464 of this title.

1. Creation of an advisory commission. Advisory commissions not authorized in chapter 118 of this title shall be created as follows:

A. An advisory commission may be created at any time when a municipality votes to create one, or through adoption of bylaws, or if the charter of a municipality permits it, when the legislative body of the municipality votes to create one.

B. An advisory commission shall have not less than three members. All members should be residents of the municipality, except that historic preservation, design advisory, or conservation commissions may be composed of professional and lay members, a majority of whom shall reside within the municipality creating the commission.

C. Members of the advisory commission shall be appointed, and any vacancy filled, by the legislative body of the municipality. The term of each member shall be as established by the legislative body, except for those first appointed, whose terms shall be varied in length so that in the future the number whose terms expire in each successive year shall be minimized. Any appointment to fill a vacancy shall be for the unexpired term.

D. Any member of an advisory commission may be removed at any time for just cause by vote of the legislative body, for reasons given to the member in writing, and after a public hearing on the issue if the member so requests.

2. Procedures for advisory commissions. Advisory commissions not authorized in chapter 118 of this title shall establish the following procedures:

A. At its organizational meeting, an advisory commission shall adopt by majority vote of those present and voting such rules as it deems necessary and appropriate for the performance of its functions. It shall annually elect a chairperson, a treasurer, and a clerk.

B. Times and places of meetings of an advisory commission shall be publicly posted in the municipality, and its meetings shall be open to the public in accordance with the terms of the open meeting law, subchapter 2 of chapter 5 of Title 1.

C. The advisory commission shall keep a record of its transactions that shall be filed with the town clerk as a public record of the municipality.

D. The advisory commission shall comply with ethical policies or ordinances as adopted by the town.

3. Duties and powers of historic preservation commissions. In addition to the requirements set forth in subdivision (2) of this section, all historic preservation commissions shall comply with all the following:

A. To the extent possible, have among their members professionals in the fields of historic preservation, history, architecture, archaeology, and related disciplines.

B. Meet no fewer than four times each year and maintain an attendance rule for commission members.

C. Have responsibilities set forth in the commission's rules of procedure that include:

(i) Preparation of reports and recommendations on standards for the planning commission in creating a local historic district bylaw under this chapter.

(ii) Advising and assisting the legislative body, planning commission, and other entities on matters related to historic preservation.

(iii) Advising the appropriate municipal panel and administrative officer in development review and enforcement pursuant to subdivision 4414(2)(C) and section 4464 of this title.

(iv) If provided in the bylaw, advising and assisting the legislative body, appropriate municipal panel, and administrative officer in creating and administering a design review district or downtown or village center district pursuant to subdivision 4414(1)(A) or (B) of this title.

(v) If provided in a bylaw developed in cooperation with the division for historic preservation, those procedural and advisory powers required of a Certified Local Government under the National Historic Preservation Act.

4. Powers and duties of design review commissions. In addition to the requirements set forth in subdivision (2) of this section, all design review commissions shall:

A. To the extent possible, have among their members professionals in the fields of architecture, landscape architecture, urban planning, historic preservation, and related disciplines.

B. Have responsibilities identified by the legislative body that include:

(i) Preparation of reports and standards for the planning commission in creating a design review district bylaw under this chapter.

(ii) Advising and assisting the legislative body, planning commission, and other entities on design-related matters in the creation of plans and bylaws and planning for public improvements.

(iii) Advising appropriate municipal panels and the administrative officer in development review and enforcement pursuant to subdivisions 4414(1)(E) and (F) and section 4464 of this title.

5. Powers and duties of housing commissions. In addition to the requirements set forth in subdivision (2) of this section, housing commissions may:

A. Make an inventory of the current stock of housing units in the municipality and identify any gaps in the housing stock according to household incomes or special needs of the community. The inventory may include documentation of the affordable housing cost index for an average citizen of the municipality, the average cost of rental units and vacancy rates, and the annual average sales price of homes.

B. Review the zoning ordinances, subdivision bylaws, building codes, and the development review process of the municipality, make recommendations to facilitate the development of affordable housing in the municipality, and promote bylaws that increase densities for the purpose of providing affordable housing.

C. Assist the local appropriate municipal panels pursuant to section 4464 of this title and the district environmental commission by providing advisory testimony on the housing needs of the municipality, where pertinent to applications made to those bodies, for permits for development.

D. Cooperate with the local legislative body, planning commission, zoning board of adjustment, road committee, or other municipal or private organizations on matters affecting housing resources of the municipality. This may include working with the municipality on a wastewater and water allocation policy that reserves a percentage of the capacity for future affordable housing.

E. Collaborate with not-for-profit housing organizations, government agencies, developers, and builders in pursuing options to meet the housing needs of the local residents.

L. The Town Clerk.

The town clerk has a number of responsibilities that are related to local land use regulations.

1. Accepting Petitions. The town clerk accepts petitions from registered voters and landowners that wish to petition for voter approval of the town plan, land use regulations or interim bylaws. 24 V.S.A. §§ 4442(d), 4415.

2. Repository of Public Records. The town clerk records municipal land use permits and notices of municipal land use permits, violations and permit denials. 24 V.S.A. § 1154(a) (6) & (7). A notice of a municipal land use permit or a notice of violation must list

- as grantor, the owner of record title to the property at the time the municipal land use permit or notice of violation is issued;
- as grantee, the municipality issuing the permit, certificate or notice;
- the municipal or village office where the original, or a true, legible copy of the municipal land use permit may be examined;
- whether an appeal of such permit, certificate, or notice has been taken;
- tax map lot number or other description identifying the lot.

The clerk also makes available copies of the proposed town plan, bylaws or their amendments and repeals for public review. The clerk also files, and makes available as a public record, the minutes of the local board proceedings, and records of its examinations and other official actions. 24 V.S.A. § 4461. The clerk also keeps, as a public record, all zoning board decisions on appeals. 24 V.S.A. § 4464(b)(3).

3. Recording Subdivision Plats. The clerk is responsible for recording subdivision plats. 24 V.S.A. § 4463. The clerk may only record a plat that shows a new street or highway if it has been endorsed by the planning commission or development review board, or if the clerk certifies that the board failed to take action within the required forty-five day period. If an individual submits a subdivision plat that has not been approved by the planning commission, in order to avoid confusion later on about the status of the property, it is good practice for the clerk to affix a notice to the plat that states that a plat that has not been approved by the planning commission and does not constitute a subdivision.

4. Clerk's Certificate. If the lawful adoption of a plan, bylaw capital budget or amendment is challenged, a certificate from the clerk regarding its publication, posting, consideration and adoption will be presumptive proof that it was so done. 24 V.S.A. § 4447.

M. Regional Planning Commission

The regional planning commission often serves as an important resource for local zoning, subdivision and development review boards. They provide planning assistance to the planning commissions and are often able to help answer many of the mundane questions about how the local planning and zoning office should be administered.

1. Creation. Regional planning commissions are created by vote of the legislative body or voters of each of a number of contiguous municipalities, upon the written approval of the Agency of Commerce and Community Development. 24 V.S.A. § 4341, et seq. There are twelve regional planning commissions in Vermont and each commission is made up of at least one representative appointed from each member municipality. The charter and bylaws of the regional planning commission will determine the terms of the commissioners.

Commissioners are appointed, and vacancies filled, by the individual legislative bodies of participating municipalities. A regional planning commission may also have at large members, who may be elected or appointed in such manner as the regional planning commission may establish in its rules.

Note that regardless of regional planning commission bylaws, representatives to the commission serve at the pleasure of the legislative body. The legislative body may, by majority vote of the board, revoke a commission member's appointment at any time.

2. **Organization.** A regional planning commission elects a chair and a secretary, and at its organizational meeting must adopt rules by a two-thirds vote of those representatives present and voting at the meeting. These rules may include establishing the number and qualification of members, terms of office, and provisions for municipal representation and voting.
3. **Duties.** The regional planning commission performs a variety of functions. 24 V.S.A. § 4345a. These include the following:
 - Promote the mutual cooperation of its municipalities and assist and advise municipalities, compacts and authorities within the region to facilitate economic development programs for the appropriate development, improvement, protection and preservation of the region's physical and human resources.
 - Advise municipal governing bodies with respect to public financing.
 - Provide technical and legal assistance to municipalities in the preparation and maintenance of plans, capacity studies and bylaws and in related implementation activities.
 - Cooperate with the planning, legislative or executive authorities of neighboring states, regions, counties or municipalities to promote coordination of planning for, conservation and development of the region and adjoining or neighboring territory.
 - Prepare a regional plan and amendments that are consistent with the goals established in 24 V.S.A. § 4302, and compatible with approved municipal and adjoining regional plans.

When preparing a regional plan, the regional planning commission shall:

- develop and carry out a process that will encourage and enable widespread citizen involvement;
- develop a regional data base that is compatible with, useful to, and shared with the geographic information system established under 3 V.S.A. § 20;
- conduct capacity studies;
- identify areas of regional significance. Such areas may be, but are not limited to, historic sites, earth resources, rare and irreplaceable natural areas, recreation areas and scenic areas;

- use a land evaluation and site assessment system, that at a minimum, uses the criteria established by the commissioner of agriculture, food and markets under 6 V.S.A. § 8, to identify viable agricultural lands;
 - consider the probable social and economic consequences of the proposed plan;
 - prepare a report explaining how the regional plan is consistent with the goals established in 24 V.S.A. §4302.
- Prepare implementation guidelines that will assist municipalities and the regional commission in developing a planning process that will attain, within a reasonable time, consistency with the goals established in 24 V.S.A. § 4302.
 - Prepare, in conjunction with the commissioner of the department of housing and community development, guidelines for the provision of affordable housing in the region, share information developed with respect to affordable housing with the municipalities in the region and with the commissioner of the department of housing and community development, and consult with the commissioner when developing the housing element of the regional plan.
 - Confirm municipal planning efforts, where warranted, as required under 24 V.S.A. § 4350 and provide town clerks of the region with notice of confirmation.
 - At least every five years, review the compatibility of municipal plans, and if the regional planning commission finds that growth in a municipality without an approved plan is adversely affecting an adjoining municipality, it shall notify the legislative body of both municipalities of that fact and shall urge that the municipal planning be undertaken to mitigate those adverse effects. If, within six months of receipt of this notice, the municipality creating the adverse effects does not have an approved municipal plan, the regional commission shall adopt amendments to the regional plan as it may deem appropriate to mitigate those adverse effects.
 - Develop strategies specifically designed to assist municipalities in defining and managing growth and development that have cumulative impacts.
 - Review proposed state capital expenditures for compatibility with regional plans.
 - Assist municipalities to review proposed state capital expenditures for compatibility with municipal plans.
 - Appear before district environmental commissions to aid them in making a determination as to the conformance of developments and subdivisions with the criteria of 10 V.S.A. § 6086.
 - Appear before the public service board to aid the board in making determinations under 30 V.S.A. § 248.
 - Hold public hearings.
 - Before requesting review by the council of regional commissioners or the services of a mediator pursuant to 24 V.S.A. § 4305, with respect to a conflict that has arisen between adopted or proposed plans of two or more regions or two or more municipalities located in different regions, appoint a joint interregional commission, in cooperation with other affected regional commissions for the purpose of negotiating differences.

- As part of its regional plan, define a substantial regional impact, as the term may be used with respect to its region. This definition shall be given due consideration, where relevant, in state regulatory proceedings.
- If a municipality requests the assistance of the regional planning commission in coordinating the way that its plan addresses projects of substantial regional impact with the way those projects are addressed by its neighbors' planning efforts, the regional planning commission shall convene an ad hoc working group to address the issue. The working group shall be composed of representatives of all municipalities likely to be affected by the plan in question, regardless of whether or not they belong to the same region. With the assistance of a facilitator provided by the regional planning commission, the ad hoc working group will attempt to develop a proposed consensus with respect to projects of substantial regional impact. If a proposed consensus is developed, the results of the consensus will be reported to the planning commissions and legislative bodies represented. 24 V.S.A. § 4345

3. Optional Duties. In addition to the duties described above, the regional planning commission is given the authority to perform additional functions as described below:

- Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, and wetland protection;
- Require each municipality in its area and all state agencies to provide it available information relating to the work of the regional planning commission;
- In the performance of its functions, commissioners or staff may enter upon land, with prior approval of the landowner, to make examinations and surveys;
- Retain staff and consultant assistance in carrying out its duties and powers;
- Undertake comprehensive planning, including related preliminary planning and engineering studies;
- Carry out, with the cooperation of municipalities within the region, economic development programs for the appropriate development, improvement, protection and preservation of the region's physical and human resources;
- Perform other acts or functions as is necessary or appropriate to fulfill the duties and obligations imposed by, and the intent and purposes of, this chapter. 24 V.S.A. § 4302.

N. Council of Regional Commissions.

The Council of Regional Commissions is made up of a representative from each regional commission and three members appointed by the Governor who are state agency or department heads and two members representing the public. 24 V.S.A. § 4305. The council receives administrative support from the department of Housing and community affairs.

1. **Organization.** The council membership includes a representative appointed by each regional planning commission established under 24 V.S.A. § 4341. In case of a vacancy the replacement is also appointed from among the commission's municipal representatives. Three additional members who are state agency or department heads are appointed by the governor as are two members representing the public. The council annually elects one of its members as chair and another member as vice-chair. The powers and duties of these officers are determined by the council. A majority of members constitute a quorum. Members of the council, other than state officials, are entitled to the per diem and expenses authorized under 32 V.S.A. § 1010.
2. **Duties.** The council mediates disputes between municipalities, state agencies and regional commissions, and reviews proposed state agency and regional plans or amendments. Specifically, the council performs the following functions:
 - a. Provides, on request, an impartial mediator to help resolve disagreements between and among municipalities and regional planning commissions, and between and among regional planning commissions and state agencies, with respect to the compatibility of their plans with each other, and related matters.
 - b. Reviews proposed regional plans or amendments, after public notice, and determines the following:
 - whether the plan, as amended, contains the elements required by law;
 - whether the plan is compatible with the plans of adjoining regions; and
 - whether the plan, as amended, is consistent with the goals established in 24 V.S.A. § 4302.
 - c. If a municipality requests that a proposed regional plan or amendment be reviewed for compatibility with an approved municipal plan, the council conducts that review.
 - d. Upon completion of a review under this subsection, one or more representatives of the council appear before the regional planning commission and present the council's comments and recommendations.
 - e. The council shall review state agency plans or amendments proposed under 3 V.S.A. chapter 67, after providing public notice as required under 3 V.S.A. § 839 with respect to administrative rules notwithstanding the notice requirements established in section 4444 of this title, and determine the following:
 - whether the plan or amendment is compatible with the plans of other state agencies;
 - whether it is consistent with the goals established in 24 V.S.A. § 4302;
 - whether it is compatible with regional plans; and
 - whether it is compatible with approved municipal plans of municipalities that have requested review by the council.

Upon completion of a review under subdivision (1) of this subsection, one or more representatives of the council must appear before the state agency and present the council's comments and recommendations.

- f. After the agency has adopted a plan or amendment, the council, after providing public notice as required under 3 V.S.A. § 839 shall review the plan, as amended or adopted, and shall prepare a written evaluation of the plan's compliance with the criteria established in 24 V.S.A. § 4305. The written evaluation must be sent to all people who requested a copy in writing, to the governor, to the speaker of the house and president of the senate, who shall forward them to appropriate legislative committees. If the council determines that the plan or amendment as adopted is not compatible with a regional plan or is not compatible with the approved municipal plan of a municipality that has requested review by the council, the evaluation shall be sent also:
 - to the regional planning commission,
 - to the legislative body and planning commission of the relevant municipality and to the state representatives that represent that municipality, and
 - to state senators who represent the relevant region or municipality.

- 3. Rules.** The council adopts rules to establish a process to conduct formal review of the sufficiency of an adopted regional plan or amendment and formal review of regional planning commission decisions with respect to the confirmation of municipal planning efforts, and the approval or disapproval of municipal plans or amendments. See 3 V.S.A. chapter 25. The rule must provide that formal review is conducted by a three-person regional review panel composed of council members, including at least two representatives of regional planning commissions, all assigned by the council in a manner established by rule. A representative of a regional planning commission may not participate in formal review of the actions of the regional planning commission which the person represents. Council members who participate in the review of a regional plan also may not participate in a formal regional review panel proceeding on the same matter.

The council may also adopt rules that are necessary for the performance of its functions.

O. The Environmental Court.

The Environmental Court is a trial level court that was created in 1989 to review environmental appeals and enforcement actions including local zoning and land use matters. 4 V.S.A. § 1001 and 10 V.S.A. § 8001 et seq. All appeals from decisions of local boards are appealed to the Environmental Court. Appeals to Environmental Court must be taken in accordance with the provisions of V.R.C.P. 76a and V.R.A.P. 3 and 4.