

BASICS OF LAND USE PLANNING & REGULATION

1. Planning for your community
2. Implementing the Plan
3. Roles and Responsibilities
4. Meetings, Hearings, and Due Process

BASICS OF LAND USE PLANNING & REGULATION

- 1. Planning for your community**
2. Implementing the Plan
3. Roles and Responsibilities
4. Meetings, Hearings, and Due Process

Vermont is a Dillon's Rule State

- Towns can only do things enabled by statute
- Towns must do things as specified by statute
- 24 V.S.A. **Chapter 117**, §§ 4301-4498, the Municipal and Regional Planning and Development Act

Elements of land use planning and regulation

- Statute authorizing plans and implementation
- Municipal Plans authorized by statute with required components
- Implementation tools provided for in statute, both regulatory (zoning, etc.) and non-regulatory

What is a Municipal Plan?

A document defining a community's vision for the future and providing guidance for achieving those aspirations and intentions through means such as public investments, land use regulations, and other actions the town can take. Provides policies for orderly growth and development.



Why Have a Municipal Plan?

- Empowers communities to respond to change in ways that reflect their goals, needs, priorities, and values.
- Provides communities a means to designate areas for conservation and development and to designate areas they would like to maintain as is, to evolve over time, or to transform more quickly.
- Establishes transparent, consistent, and predictable public policy
- Promotes wise investments and helps manage future costs

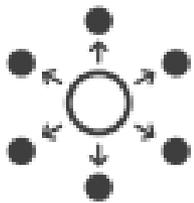
Benefits:

- Town can adopt and amend Zoning, Subdivision, and Flood Hazard Area land use regulations
- Act 250 permits may only be issued upon a finding that the proposed project conforms with the Town Plan
- Recommendations will be given due consideration or substantial deference in Section 248 applications for energy generation/transmission projects
- Town meets eligibility requirements for certain grants and can create more competitive applications

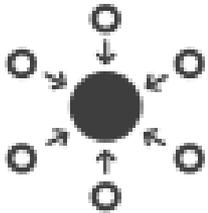


Planning Process Goals

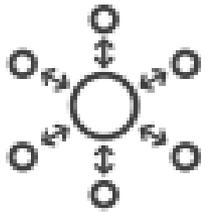
- Establish a coordinated comprehensive planning process and policy framework to guide decision
- Encourage citizen participation at all planning levels
- Consider the use of resources and consequences of growth and development for the region and state, as well as the community in which it takes place
- Encourage and assist municipalities to work creatively together to develop and implement plans



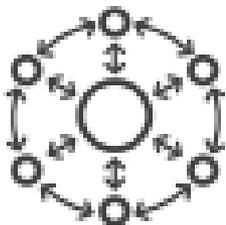
INFORM Commit to keeping citizens informed about planning. Help the public understand problems and solutions. ★ Fact Sheets ★ Newsletters ★ Websites



CONSULT Provide opportunities for input on existing ideas – listen, acknowledge concerns and answer questions. ★ Surveys ★ Public Meetings



INVOLVE Provide opportunities for dialogue and interaction. Obtain advice from the public and generate new ideas. ★ Workshops ★ Focus Groups



COLLABORATE Partner with the public in decision-making, including the development of alternatives and identification of the preferred solution.

- ★ Citizen Advisory Committees
- ★ Participatory Decision Making (charrettes)

Substantive Planning Outcome Goals

Compact Villages	Strong Agricultural and Forest Industries
Strong Diverse Economy	Flood Resilient Communities
Education and Vocational Training	Wise and Efficient Use of Natural Resources
Safe and Affordable Child Care	Preservation of Natural and Historic Resources
Efficient Public Facilities and Services	Quality of Air, Water and Wildlife Resource
Recreational Opportunities	Safe and Convenient Transportation
Safe and Affordable Housing	Energy Efficiency and Renewable Resources

Required Town Plan Elements

1. Statement of Objectives, Policies, and Programs to guide future growth and development and to protect the environment
2. Land Use Plan
3. Transportation Plan
4. Utility and Facility Plan
5. Statement of policies on preserving natural areas, scenic and historic
6. Educational Facilities Plan
7. Recommended Program for Implementation of Objectives
8. Statement of Compatibility with Adjacent Town and Region Plans
9. Energy Plan (Option for Act 174-compliant Enhanced Energy Plan)
10. Housing element
11. Economic Development element
12. Flood Resilience Plan

Municipal Plan Adoption Process

- Plans expire every eight years
 - Revise, rewrite, or readopt the plan before expiration
 - At a minimum make necessary updates to data and review and update the implementation program

- Adoption process can take several months, plan ahead!
 - Planning Commission hearing with notice to adjacent communities requires distribution 30 days in advance
 - Selectboard hearing
 - Decision on adoption made by Legislative Body
 - Plans go into effect upon adoption

RPC Approval of Town Plan and Confirmation of Planning Process

RPCs shall approve a plan if the plan is:

- Consistent with state planning goals
- Compatible with the regional plan
- Compatible with approved plans of other municipalities in the region
- Contains all the required plan elements

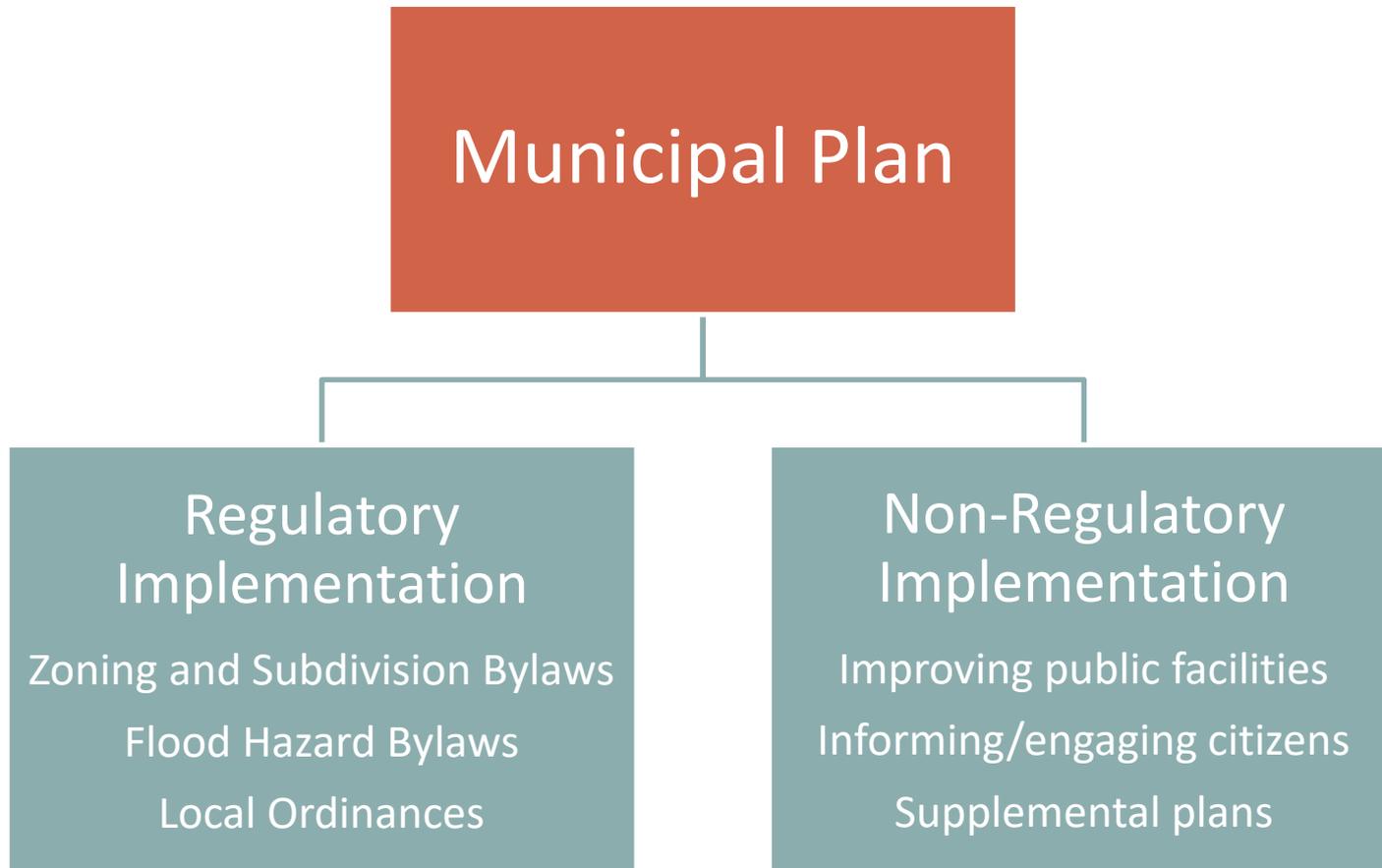
RPCs shall confirm the municipal planning process if a town is:

- Engaged in a continuing planning process that will result in a plan that is consistent with the state planning goals
- Engaged in a process to implement its municipal plan
- Maintaining its efforts to provide local funds for municipal and regional planning purposes.

BASICS OF LAND USE PLANNING & REGULATION

1. Planning for your community
- 2. Implementing the Plan**
3. Roles and Responsibilities
4. Meetings, Hearings, and Due Process

Implementing the Plan



Local Regulation: Types of Review

Type of Review	Function of Review
Zoning	
Permitted Use	Established by right
Conditional Use	Can be established if found to be compatible
Site Plan Review	Ensures good site design
Variances	Stringent statutory standards
Waivers	Flexible local standards
Planned Unit Developments	Allows for flexible design
Subdivision	Controls the pattern of future development

How Does Zoning Work?

- Zoning is used to regulate the location, type, and density of development through the creation of zoning districts
- There is not one right way to organize zoning bylaws – it depends on the community and its goals
- General organization of bylaws:
 - Zoning Districts
 - General Regulations that apply to all uses
 - Standards for specific types of uses
 - Development review process and administrative requirements
 - Definitions
 - Zoning map

Why Have Local Land Use Regulations?

Promote compact, walkable development

Protect important natural resources

Minimize fragmentation of farmland

Incentivize affordable housing

Encourage efficient use of infrastructure

Ensure compatibility with historic character

Establish safe vehicular and pedestrian circulation

Make communities more flood resilient

Limits of Local Land Use Regulations

- Land use regulations tell people what they can and cannot do with their land, but they cannot deprive landowners of all reasonable use of their property
- Town land use regulations can only regulate what is enabled in state statute (Dillon's Rule)
- Chapter 117 Required Provisions and Prohibited Effects and Limitations

Bylaws and Ordinances: What's the Difference?

- Bylaws and regulatory tools governing land use
 - Are adopted and enforced under Chapter 117
 - Include zoning, subdivision, and other regulations

- Ordinances or rules
 - Are adopted under 24 V.S.A. Chapter 59 - Adoption and Enforcement of Ordinances and Rules
 - For any purposes authorized by law; may include land use regulation, e.g., flood hazard area bylaws
 - May be enforced as civil under Judicial Bureau or criminal in Superior Court or under Chapter 117

Non-Regulatory Implementation

- Complements regulatory implementation

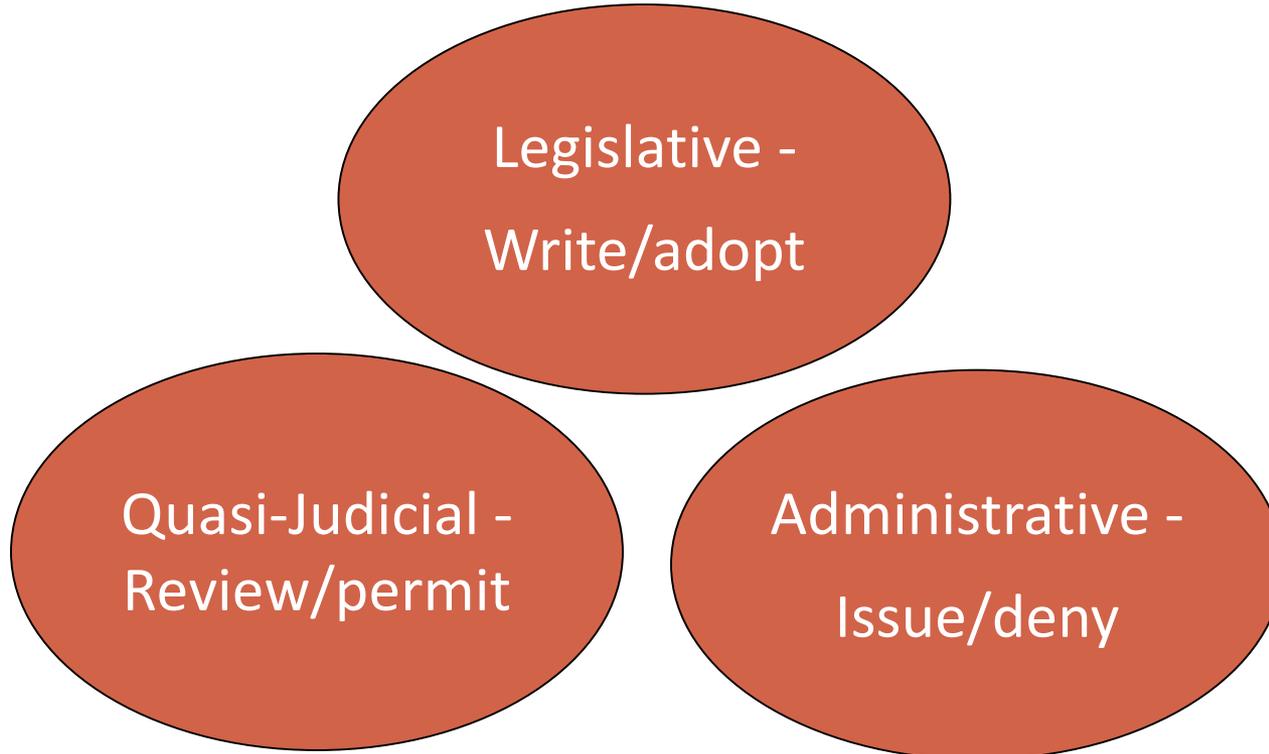
- Chapter 117 Authorizes:
 - Capital Budget and Program
 - Tax Stabilization Contracts
 - Purchase/Acceptance of Development Rights
 - Supporting Plans
 - Advisory Commissions
 - Other projects and studies (whatever your plan recommends)

BASICS OF LAND USE PLANNING & REGULATION

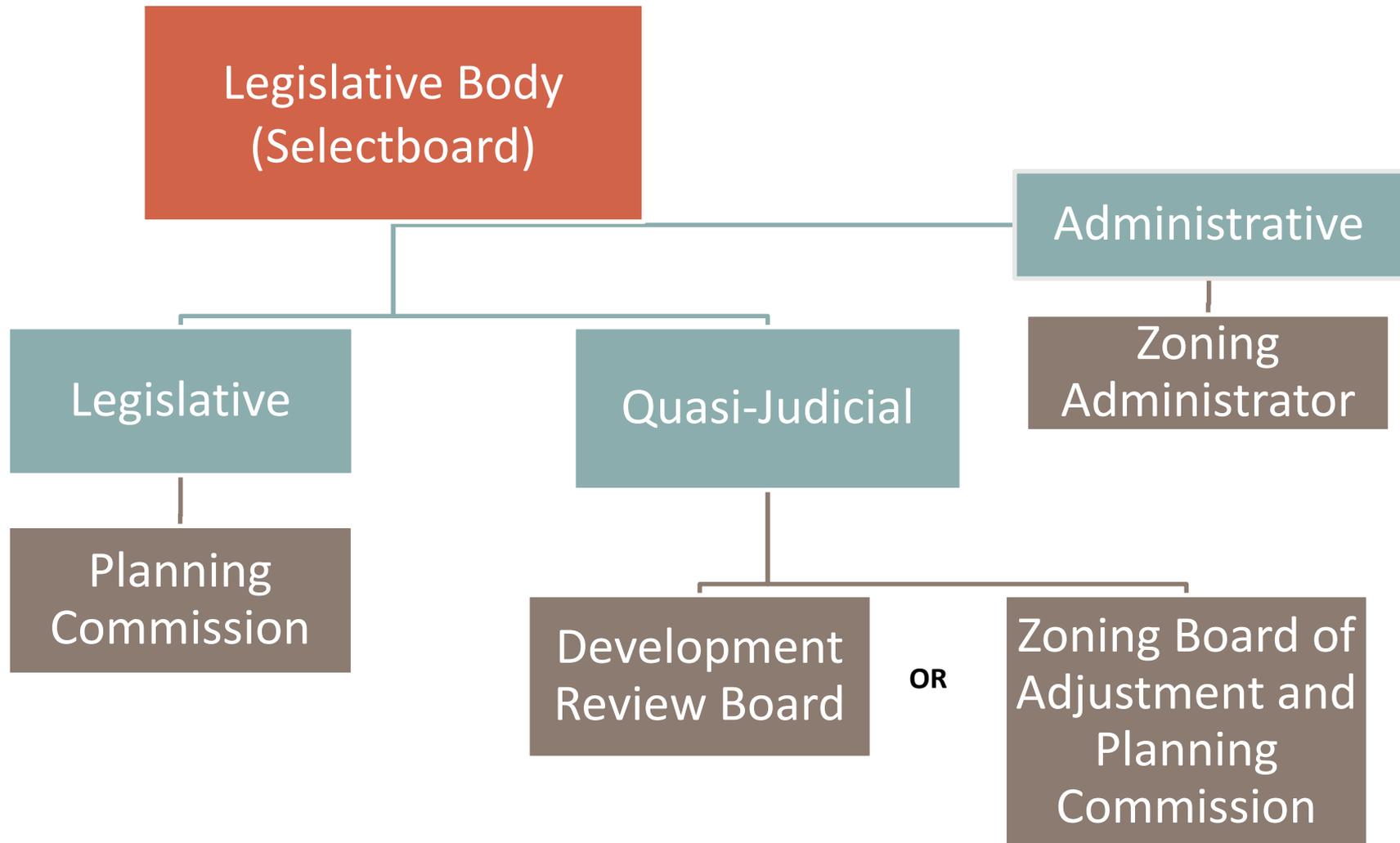
1. Planning for your community
2. Implementing the Plan
3. **Roles and Responsibilities**
4. Meetings, Hearings, and Due Process

Local Roles and Responsibilities

- Roles and responsibilities are delineated both by statute and by function:



Local Roles and Responsibilities



Legislative Function

Planning Commission

- Prepares the Municipal Plan
- Prepares Zoning/Development Regulations
- Can prepare or edit Capital Budget and Program
- Prepares other studies

Legislative Body (Selectboard)

- Reviews and may edit Municipal Plan and either adopts or sends it to voters for adoption
- Reviews and may edit Zoning Bylaws/Development Regulations and either adopts or sends them to voters
- Prepares or edits and adopts Capital Budget and Program

Quasi-Judicial Function

Development Review Board

- Site plans
- Subdivisions
- Conditional uses
- Lots without frontage
- Variances & Waivers
- Appeals of ZA decisions

OR

Planning Commission

- Site plans
- Subdivisions
- Lots without frontage

Zoning Board of Adjustment

- Conditional Uses
- Variances & Waivers
- Appeals of ZA decisions

Administrative Function

Zoning Administrator

- Issues zoning permits
- Conducts enforcement
- Assists applicants
- May staff DRB, PC, or ZBA

PERMIT NOTICE

Address: _____

Applicant: _____

Project Description: _____

Permit / Approval
Type: _____
Date Issued: _____
Appeal by: _____

Public Hearing
Date / Time: _____
Place: _____
Purpose: _____

For more information contact:

Applicant: This notice shall be displayed on the subject premises and be clearly visible from the public way. Notice shall be displayed at the time of application and shall not be removed until after the appeals expiration date.

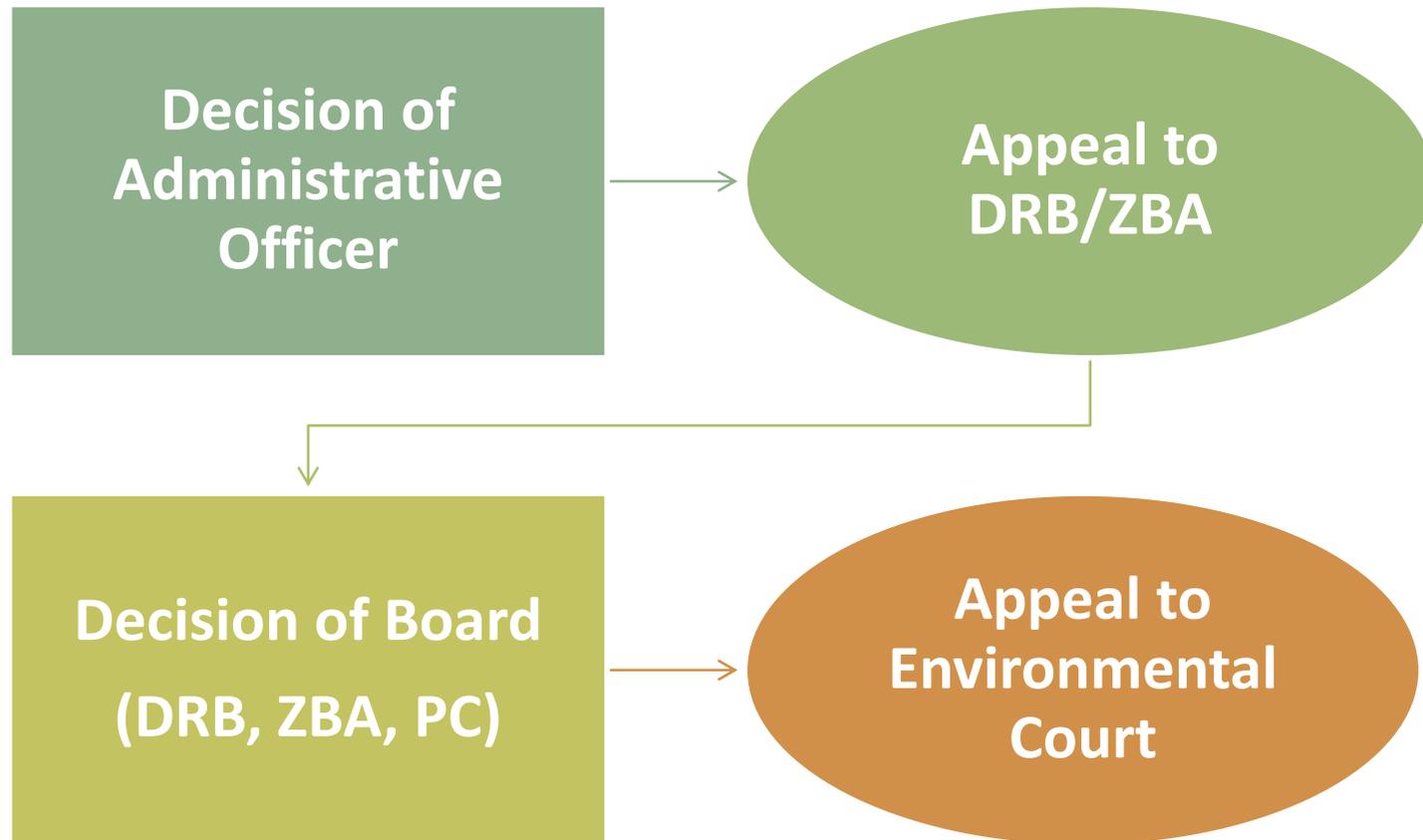
VERMONT LAND USE
Education & Training Collaborative

Regulatory Decisions

- “Shall be issued in writing”
- “Shall include a statement of the factual bases on which the appropriate municipal panel has made its conclusions and a statement of the conclusions”
- Must be based on review standards in the regulation
- Minutes may suffice, if containing necessary information
- “The quasi-judicial panel shall adjourn the hearing and issue a decision within 45 days after the adjournment of the hearing, and failure of the panel to issue a decision within this period shall be deemed approval and shall be effective on the 46th day.”
- The decision does not need to be made the day of the hearing.

Appeals

Appeals under Chapter 117 may be at either local or state levels.



Who May Appeal?

Pursuant to 24 V.S.A. § 4465(b)

- The applicant
- The municipality and any adjoining municipality
- Property owners in the immediate neighborhood of the subject proposal
- Any ten persons (combination of voters or property owners) by signed petition
- Any department or administrative subdivision of the state owning property or any interest in property within a town
- ACCD

Only interested persons who have participated may appeal.

The municipal board can choose not to make interested person determinations and leave that to the Environmental Court.

BASICS OF LAND USE PLANNING & REGULATION

1. Planning for your community
2. Implementing the Plan
3. Roles and Responsibilities
4. **Meetings, Hearings, and Due Process**

Meetings vs. Hearings

What
happens...

Meetings

- Discuss business or take action
- Generally legislative

Legislative Hearings

- Receive public comment on a course of action (e.g., a plan or bylaw update)

Quasi-judicial Hearings

- Hear from parties seeking board approval

Who
does it...

- All Public Bodies

- The Planning Commission
- Selectboard

- Boards that review proposed development

Public Notice Requirements

Meetings

- For regular meetings:
1 V.S.A. §§ 310-314
- At least 48 hours
- In or near town office
and two other
designated places

Legislative Hearings

- For preparation and
adoption of plans (24
V.S.A. §§ 4384 and
4385) and bylaws
(24 V.S.A. §§ 4441,
4442, and 4444);
requirements also
apply for updates
and amendments
- 15 days
- Newspaper of record
- Posting in three or
more public places
- Certified Mailings

Quasi-Judicial Hearings

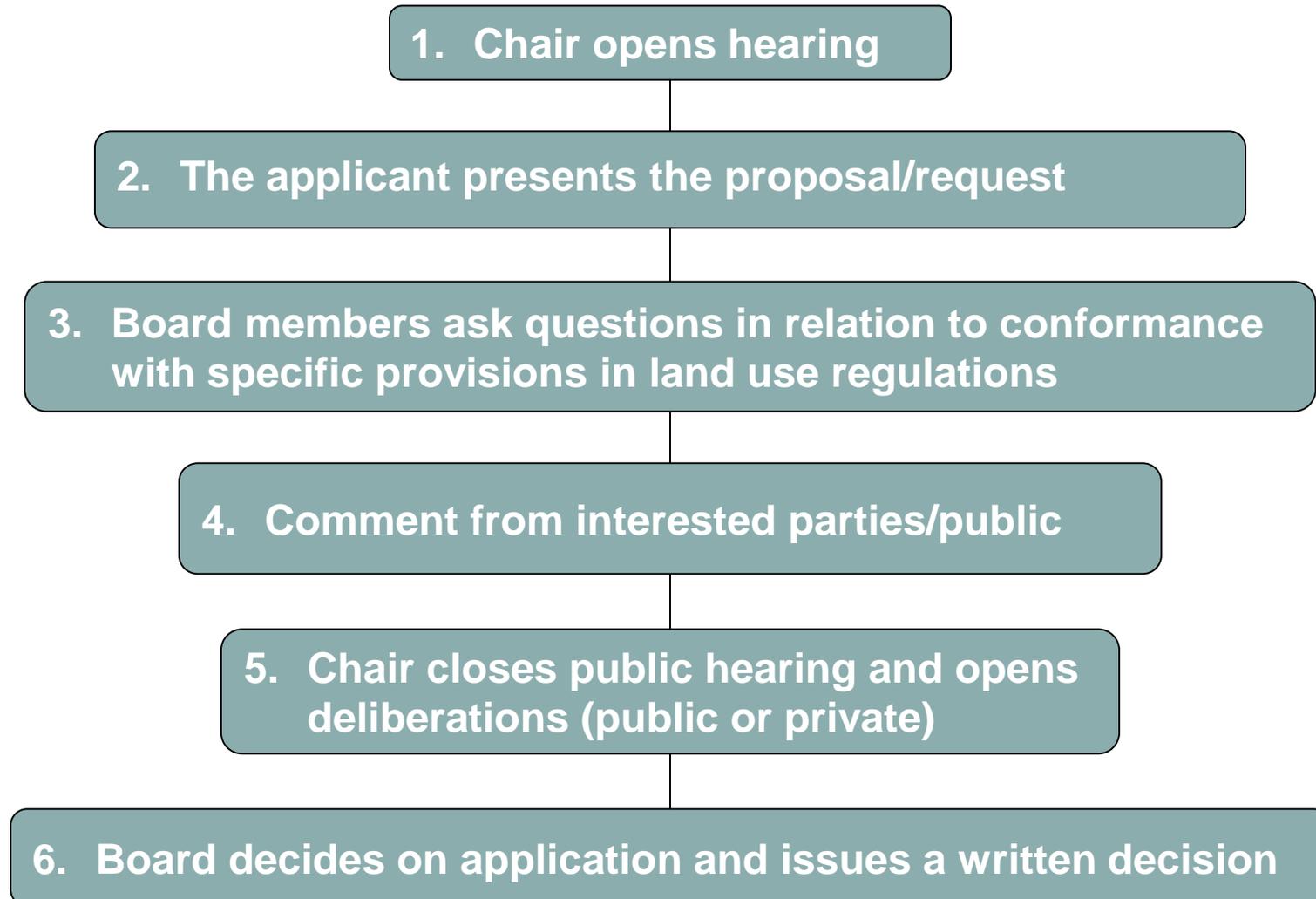
- For development
review (pursuant to
24 V.S.A. § 4464)
- Either 7 or 15 days
depending on the
subject matter
- Newspaper of record
- Posting in three or
more public places
- Mailed to applicants
and abutters
- Posting within view
of nearest public
ROW

Vermont Open Meeting Law

- Post advance notice of meeting
- Make the agenda available before the meeting
 - In or near the municipal office
 - In at least two other designated places
 - On the town website, if the town has an official one
- Let the public participate
- Make the minutes available within five days
- Address complaints of violations

www.vlct.org/vermont-local-government/vermont-open-meeting-law/

Flow of Quasi-Judicial Public Hearing



Opening a Quasi-Judicial Hearing

1. Review order of events for hearing
2. Remind participants of the importance of order
3. Make copies of the **rules of procedure** and **ethics policies** available.
4. Review definition of **interested persons** and ensure documentation of participants. Administer oath.
5. Request disclosure of **conflicts of interests** or **ex parte communications**

Role of the Board Chair

A Chair administers the agenda, keeps board members focused on the issue at hand, and ensures the board finishes on time.

- A Good Chair Should:
 - State the Question
 - Ask for Discussion (without giving own opinion)
 - Bring the board to resolution after discussion (Coaxing a Motion)

Board Member Role at Quasi-Judicial Hearing

In order to determine a project's conformance with your regulations and protect due process:

- Listen to testimony and evidence
- Ask questions
- Refer to your regulations
- Avoid conflicts of interest
- Base decision on evidence presented
- Must not prejudge a matter or publicly express opinions on a pending case

Deliberative Session

- Exempt from Open Meeting Law
- No requirements for notice or minutes
- May be public or private
- Doesn't have to reveal how board members voted
- Board has 45 days to issue a decision from the **close** of hearing or approval is deemed issued

Conflicts of Interest

- Financial interest (direct or indirect)
- Personal interest (direct or indirect)
- Known bias or prejudice
- Ex parte communication

It can take years to build trust with the public, but just one misstep can destroy it.

Managing Conflicts of Interest

- Adopt Rules of Procedure and Ethics and follow them!
- Ex parte communication is very difficult to avoid, so ALWAYS disclose
- Recuse oneself when necessary
- Use alternates for members than need to recuse

In Summary: Protecting Due Process

- Provide proper public notice
- Give people an opportunity to be heard
- Conduct an orderly proceeding
- Ensure proper management of evidence
- Provide appropriate management of conflicts of interest

Learn more: www.vpic.info



Essentials of Local Land Use Planning and Regulation



Plan and Bylaw Adoption Tools
Two checklists and report forms



Rules of Procedure and Ethics Manual

And more resources at www.vpic.info

Tools and Resources Available

- Title 24, Chapter 117, V.S.A, current and up to date: <https://legislature.vermont.gov/statutes/>
- Your local Regional Planning Commission: <http://windhamregional.org/>
- Vermont League of Cities and Towns (VLCT): www.vlct.org
- Department of Housing and Community Development: <http://accd.vermont.gov/community-development>

My contact information

- Email: mbachler@windhamregional.org
- Telephone: (802) 257-4547 ext. 112