

# ESSENTIALS OF LAND USE PLANNING AND REGULATION

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1. Planning for a Vibrant Sustainable Community
2. Roles and Responsibilities
3. Implementing the Plan
4. Meetings, Hearings and Due Process

# PLANNING FOR A VIBRANT SUSTAINABLE COMMUNITY

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## Section 1

# Statutory Basis for Planning and Regulation



## Municipal and Regional Planning and Development Act – Chapter 117

1921 – The Vermont Legislature first authorized municipalities to create planning commissions that could draft municipal plans

1931 – The Vermont Legislature first authorized Zoning Regulations.

1968 – Municipal and Regional Planning and Development Act – Chapter 117

- Included purposes of planning and zoning
- Contents of municipal plans
- Adoption process for municipal plans
- Authorized zoning including specific types of review and regulations

1988 – Act 200 substantially updates local and regional planning portions of Chapter 117

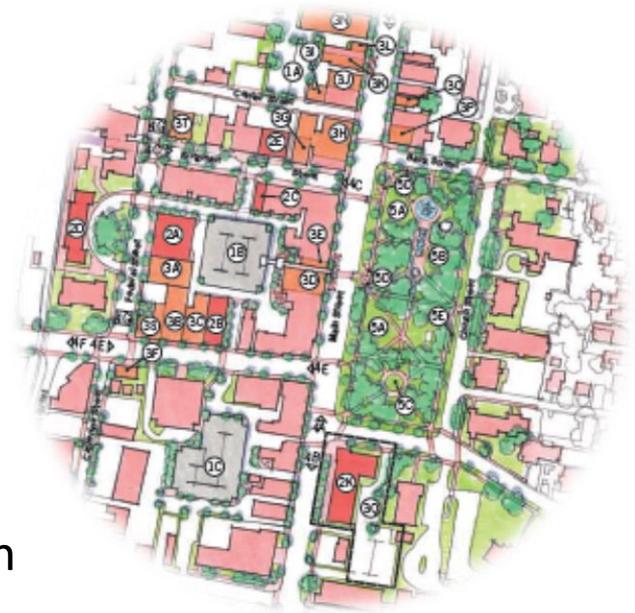
2004 – Act 115 incorporates additional significant updates to the zoning portions of Chapter 117

# What is a Municipal Plan? Why have one?

**What:** A guide for accomplishing community aspirations and intentions through public investments, land use regulations and actions the town can take to achieve its vision.

**Why:**

- Inclusive process develops community-wide vision
- Empowers communities to respond to change in ways that reflect their own goals, needs, priorities and values.
- Allows communities to designate areas to maintain as is, evolve over time or to transform more quickly into a better place.



# With a current plan you can...

- Adopt Zoning, Subdivision and Flood Hazard Regulations
- Act 250 Applications must conform to your Town Plan
- Your Town Plan will be considered in Section 248 Certificate of Public Good Applications
- More competitive grant applications

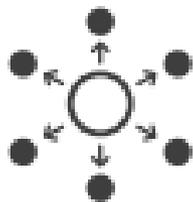


# Vermont Planning Process Goals

## **Planning Process (§4302, §4381-§4387)**

- Coordinated comprehensive process to guide decision
- Citizen participation at all levels
- Consider use of resources and consequences of growth and development locally and beyond
- Work with neighboring municipalities and region to implement plans

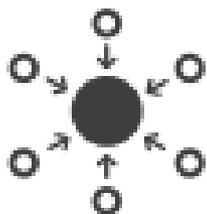
# Types of Citizen Participation



## INFORM

Commit to keeping citizens informed about planning. Help the public understand problems and solutions.

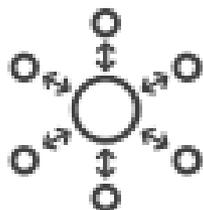
- ★ Fact Sheets
- ★ Newsletters
- ★ Websites



## CONSULT

Provide opportunities for input on existing ideas – listen, acknowledge concerns and answer questions.

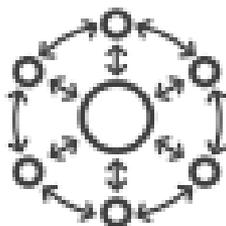
- ★ Surveys
- ★ Public Meetings



## 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)

# VERMONT PLANNING GOALS

(§4302)



# It's Your Municipal Plan (But there are requirements [§4382])

1. Objectives, Policies and Programs
2. Land Use (Map and Statement), including any state designation
3. Transportation (Map and Statement)
4. Utilities and Facilities (Map and Statement)
5. Education (Map and Statement)
6. Energy (Option for Enhanced Energy Plan)
7. Economic Development
8. Housing
9. Flood Resilience
10. Policies on Preserving Rare Natural Areas
11. Compatibility with Adjacent Municipalities and Region
12. Implementation Program

Create a plan for tomorrow,  
not yesterday or today.

# Municipal Plan Adoption

## ➤ **Plans expire every 8 years**

- Revise or rewrite the plan before expiration – at a minimum, make necessary edits to data and implementation program

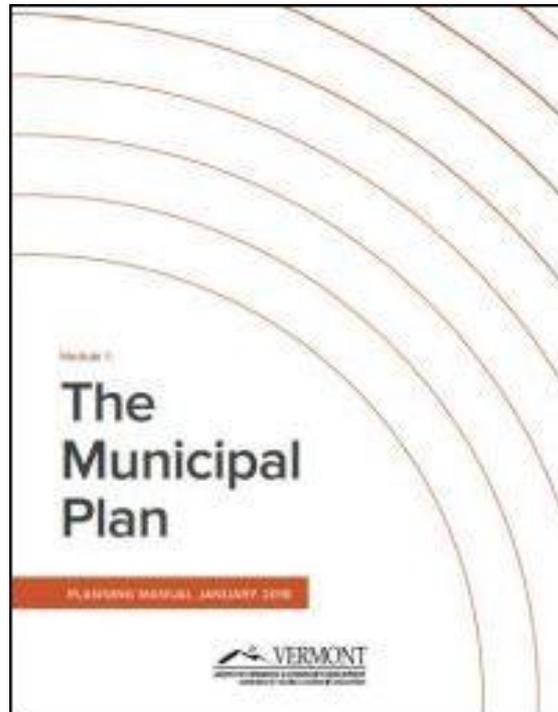
## ➤ **Adoption process can take several months**

- Planning Commission hearing with notice to adjacent communities
- Selectboard/Trustee hearing (1 in rural municipalities and 2 in urban)
- Decision on adoption shall be made by Legislative Body, unless the Legislative Body or voters have elected to decide by Australian Ballot
- Plans go into effect upon adoption

# Regional Plan Approval & Confirmation

- **Municipalities may request RPC approval of the municipal plan.**
  
- **RPCs will confirm the municipal planning process if:**
  - If the municipal plan has been approved by RPC
  - The municipality is engaged in a process to implement the plan
  - Is maintaining efforts to provide funds for planning
  
- **A confirmed Planning Process allows municipalities to:**
  - Apply for state designation of downtowns, village centers, new town centers, neighborhood development areas and growth centers.
  - Apply for Municipal Planning Grants
  - Levy impact fees
  - Have plan considered by state agencies in their planning

# Vermont Planning Manual – [www.vpic.info](http://www.vpic.info)



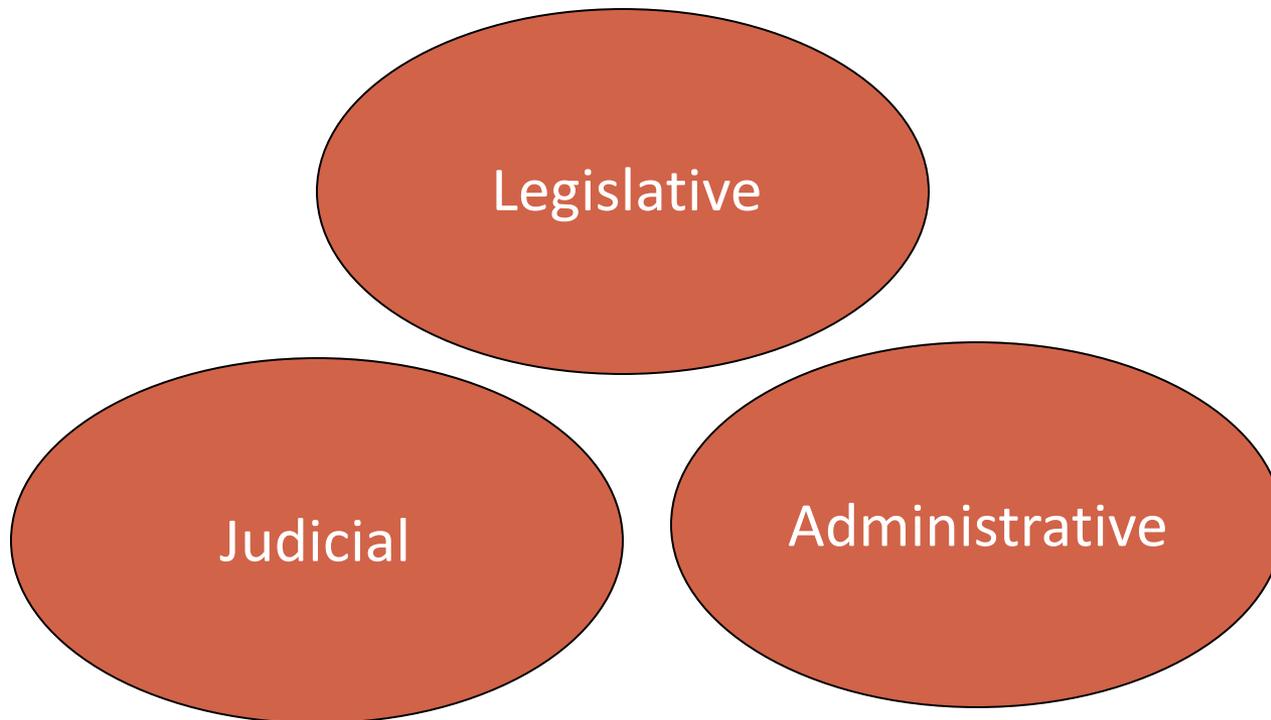
# ROLES AND RESPONSIBILITIES

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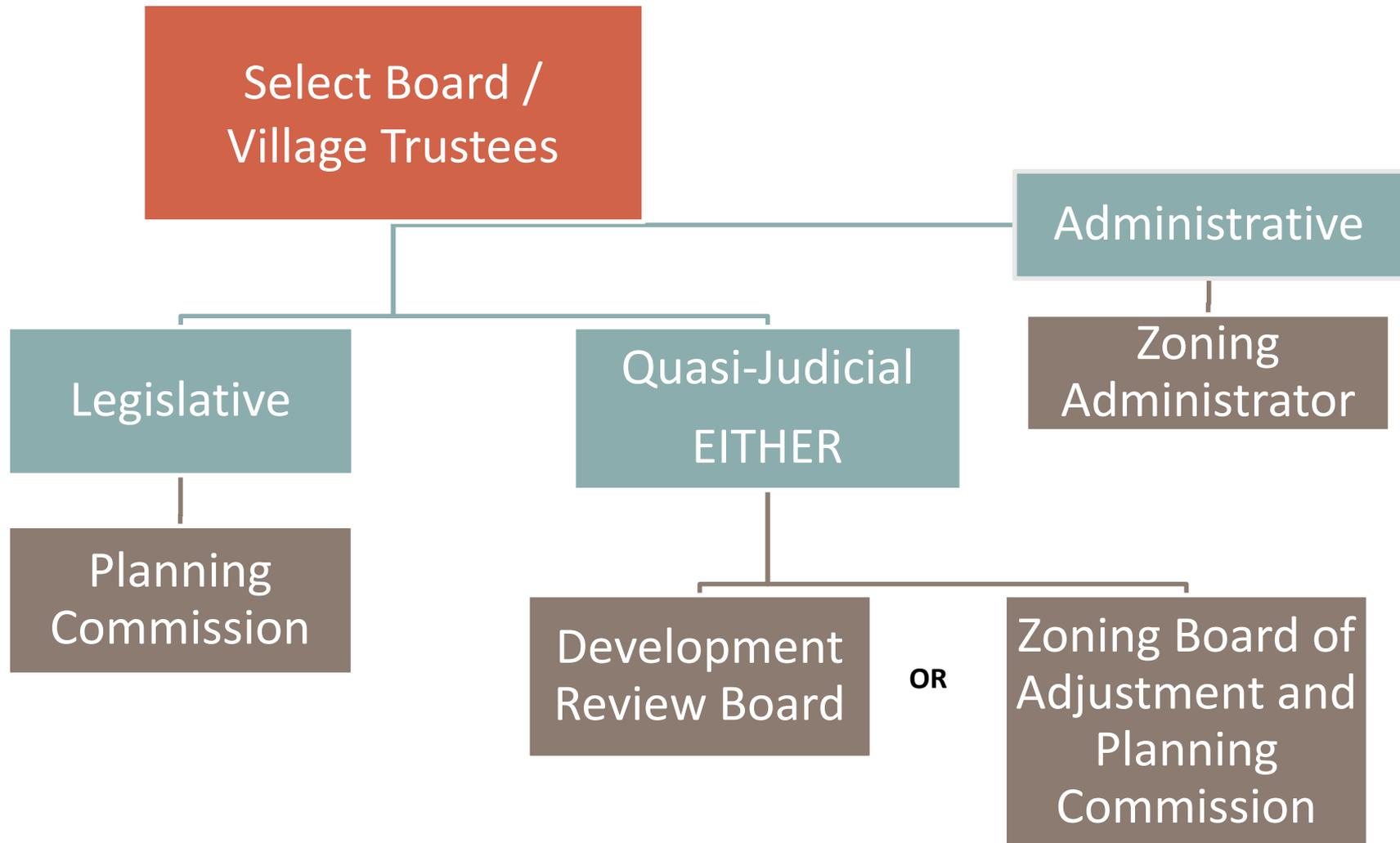
## Section 2

# 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

- Reviews and may edit Municipal Plan and either adopts or sends to voters
- Reviews and may edit Zoning Bylaws/Development Regulations and either adopts or sends 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
- Appeals of ZA decisions

OR

## Planning Commission

- Site plans
- Subdivisions
- Lots without frontage

## Zoning Board of Adjustment

- Conditional Uses
- Variances
- 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:** \_\_\_\_\_

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**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.

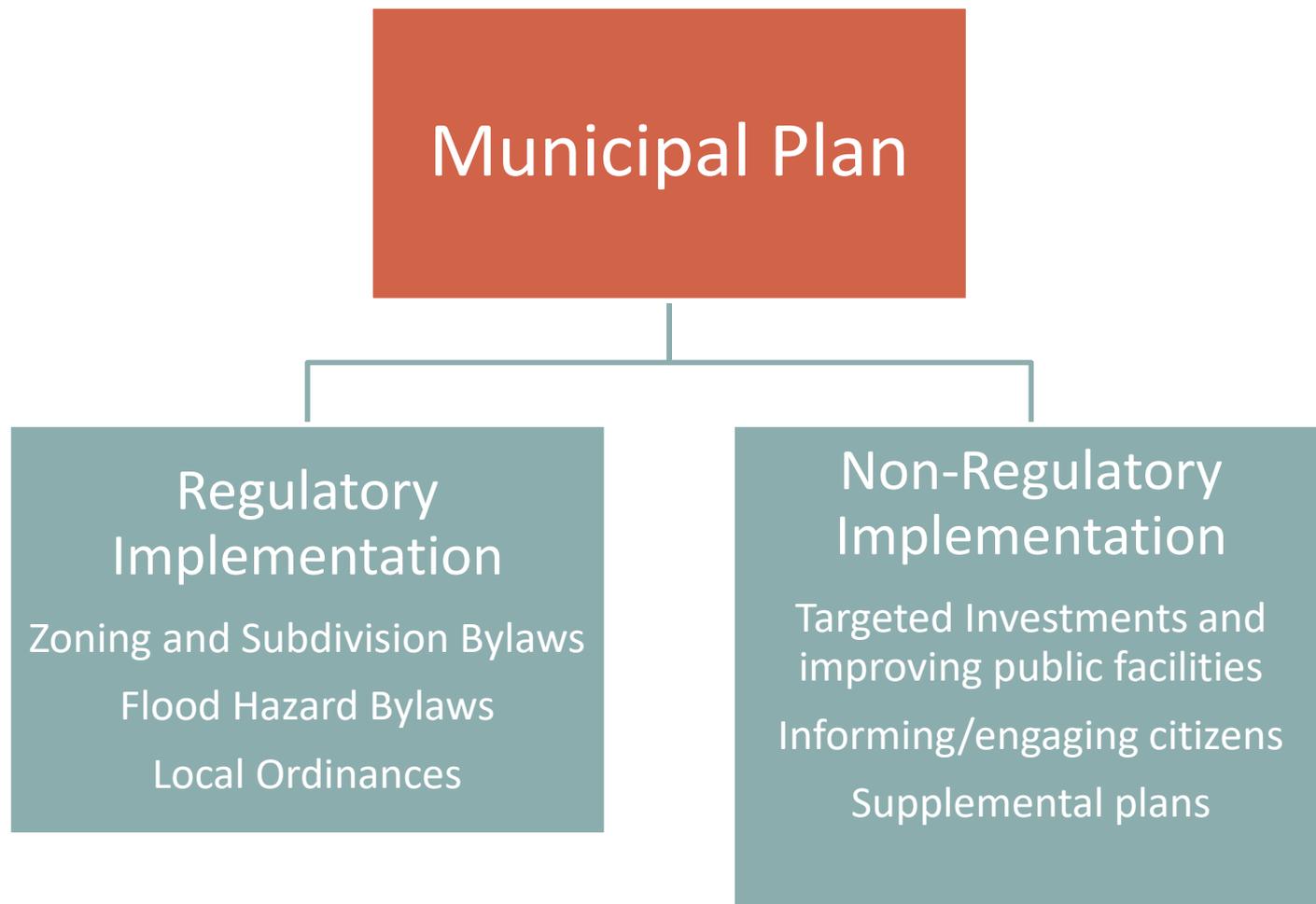
VERMONT LAND USE  
Education & Training Collaborative

# IMPLEMENTING THE MUNICIPAL PLAN

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## Section 3

# Implementing the Plan



# Why Have Local Land Use Regulations?

- Implement the vision and goals in your municipal plan, such as:



Promote compact, walkable, high quality development



Protect important natural resources, limit impacts to neighboring properties



Minimize fragmentation of farmland



Incentivize affordable housing



Encourage efficient use of infrastructure



Ensure compatibility with historic character



Establish safe vehicular and pedestrian circulation

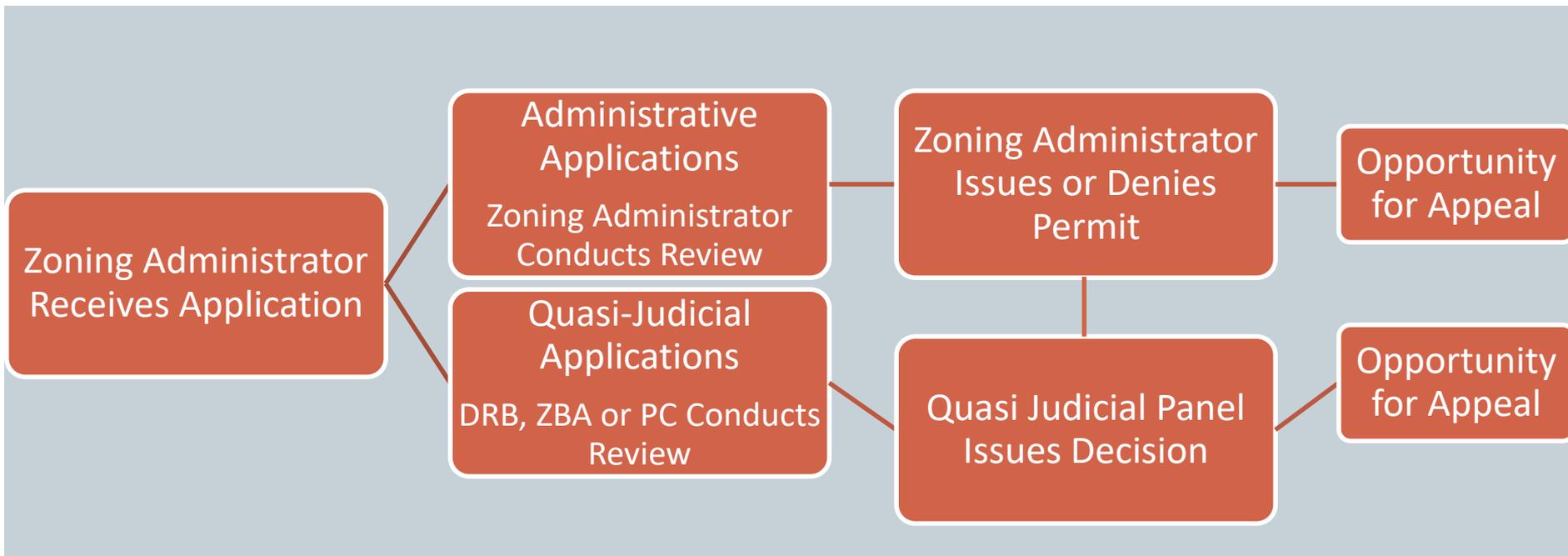


Make communities more flood resilient

# Limits of Local Regulation

- Land use regulations tell people what they can and cannot do with their land, but generally cannot deprive landowners of all use of their property
- Land use regulations can only regulate what is enabled in Vermont Statute (Dillon's Rule)
- Vermont Limitations and Prohibited Effects (§4412 and §4413):

# Players and processes potentially involved in local regulation



# Local Regulation: Types of Review

## Land Development:

- *Division of a parcel into 2 or more parcels*
- *Construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure*
- *Or of any mining, excavation, or landfill*
- *Any change in the use of any building or other structure, or land, or extension of use of land*

Type of Review	Function of Review
<b>Zoning</b>	
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
<b>Subdivision</b>	Controls the pattern of future development

# Regulatory Decisions

## Decisions must:

- Be in writing and contain:
  - ✓ Findings of fact on which each decision is based, and
  - ✓ Conclusions of law on how the bylaw applies
  - ✓ Any required conditions to approval
- Be based on review standards in bylaw
- Should document concurrence of majority of board

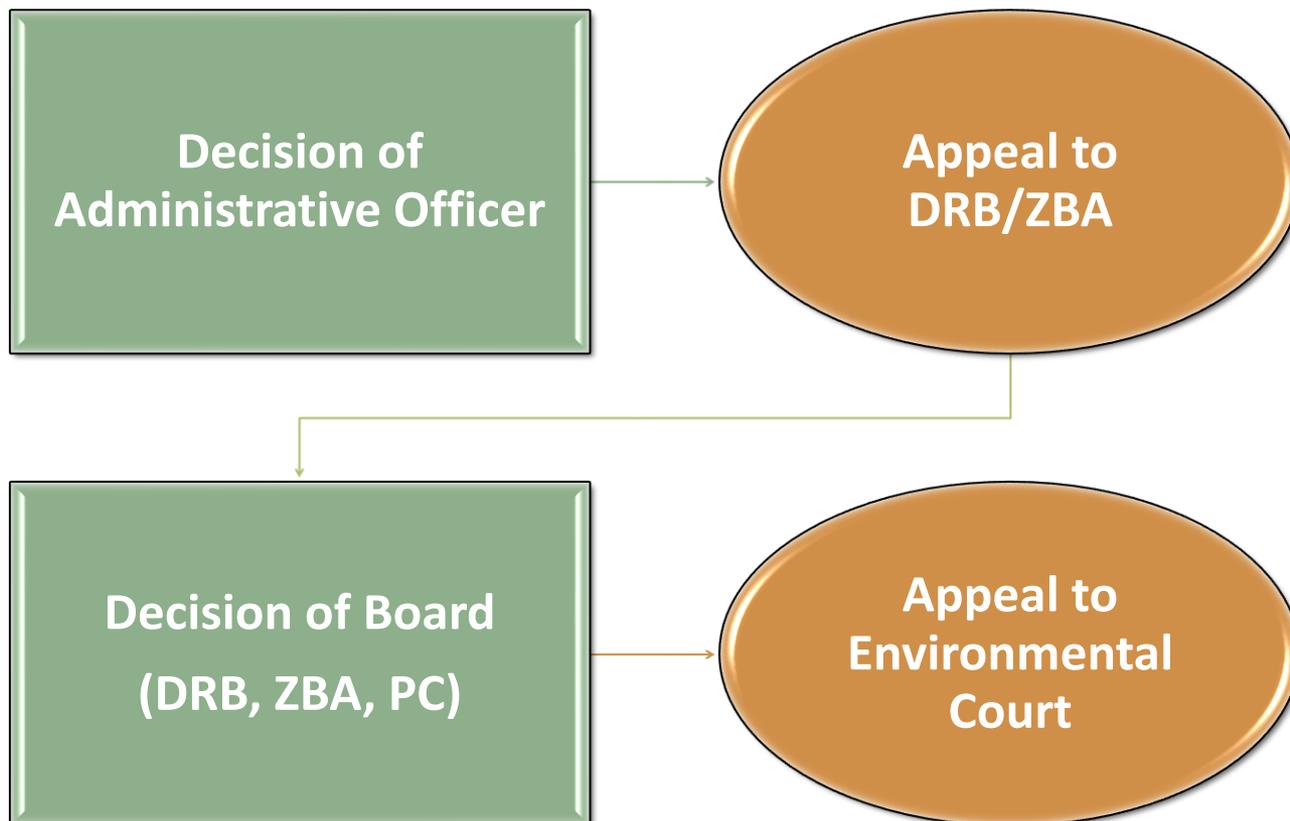
## Timeline:

The commission or board must issue written decision within 45 days of close of final public hearing. **DOES NOT NEED TO BE THE SAME NIGHT OF HEARING!**

**Who is responsible for preparing decisions?**

# Appeals

Appeals may be at either local or state levels.



# Interested Persons 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
- Petition of ten persons (combination of voters or property owners)
- Any department or administrative subdivision of the state owning property or any interest
- ACCD

***Only interested persons who have participated may appeal!***

***Board can choose not to make interested person determinations and leave it to the Environmental Court!***

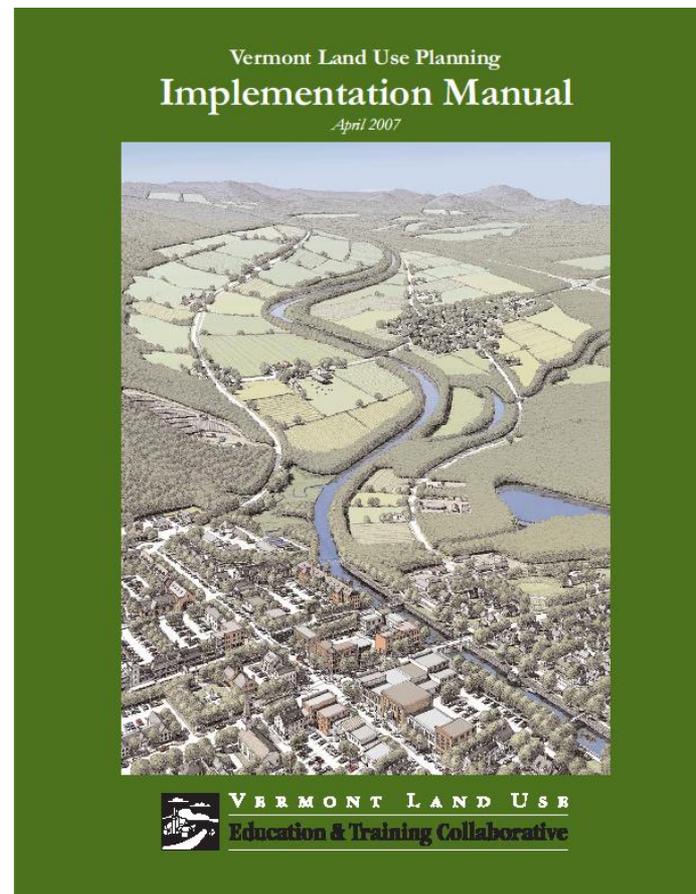
# Non-Regulatory Implementation

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)

Learn More at [www.vpic.info](http://www.vpic.info)



# MEETINGS, HEARINGS AND DUE PROCESS

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## Section 4

## Meetings vs. Hearings

**What** happens...

*(Quorum of members = Meeting)*

**Who** does it...

### Meetings

- Discuss business or take action
- Generally legislative

- All Public Bodies

### Legislative Hearings

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

- Planning Commission
- Select Board or Trustees

### Quasi-judicial Hearings

- Hear from parties seeking PC/Board decision on an application or appeal

- Commission or Board reviewing proposed development

# Vermont's Open Meeting Law

(1 V.S.A. §§310-314)

- Post advance notice
- **Make the agenda available before the meeting**
  - At the municipal office
  - 2 other designated places
  - A Web site, if your town has one
- Let the public participate
- **Make the minutes available within five days**
- Address complaints of violations

Exemptions

Remote Meetings

[www.vlct.org/vermont-local-government/vermont-open-meeting-law/](http://www.vlct.org/vermont-local-government/vermont-open-meeting-law/)

# Public Notice

## Meetings

- For regular meetings: 1 VSA §§310-314
- At least 48 hours\*
- At town offices and 2 other places

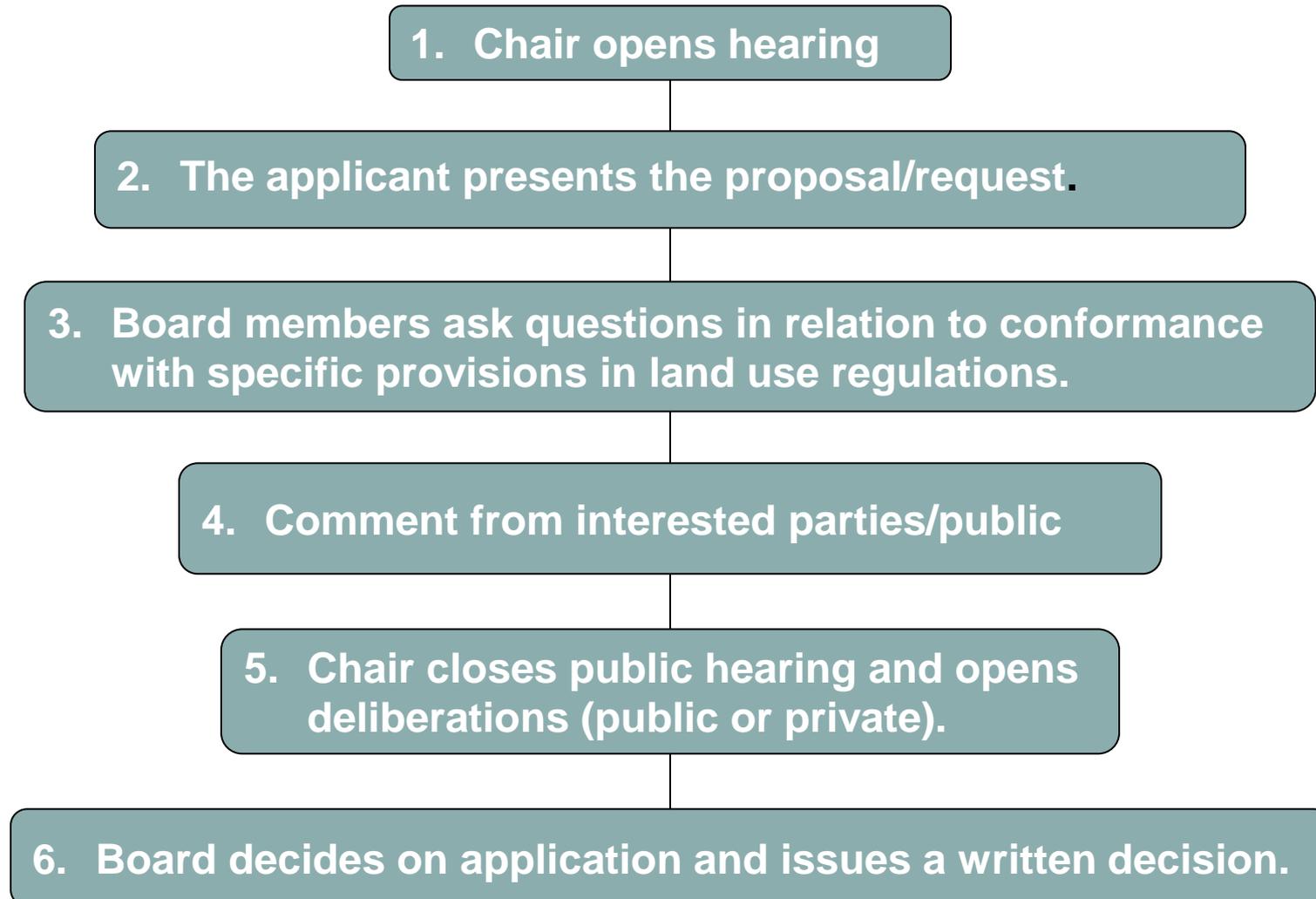
## Legislative Hearings

- For plans and bylaw adoption/amendments
- 15 days
- Newspaper of record
- Certified Mailings
- Electronic Notification with verification of receipt

## Quasi-Judicial Hearings

- For development review
- 15 days notice
- Newspaper of record
- 3 or more public places
- Mailed to applicants and adjoiners
- Posting within view of nearest public ROW

# Flow of Quasi-Judicial Public Hearing



# Opening a Quasi-Judicial Hearing

1. Review order of events
2. Remind 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



# 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 requirement for notice or minutes
- Public or private
- Don't have to reveal how board members voted
- 45 days to issue a decision or deemed approved



# Conflicts of Interest

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

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



# Managing Conflicts of Interest

- Adopt Rules of Procedure and Ethics
- Ex parte communication is very difficult to avoid, so ALWAYS disclose
- Recuse oneself when necessary  
(leave the table)
- Use alternates

## In Summary: Protecting Due Process

- Proper public notice
- People are given an opportunity to be heard
- An orderly proceeding
- Proper management of evidence
- Proper management of conflicts of interest

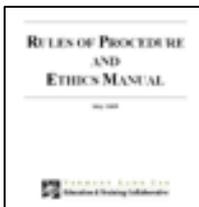
Learn more: [www.vpic.info](http://www.vpic.info)



Essentials of Local Land Use Planning and Regulation



Plan and Bylaw Adoption Tools



Rules of Procedure and Ethics Manual

And more resources at [www.vpic.info](http://www.vpic.info)

# Tools and Resources Available:

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

# COVID-19 Impacts

During Governor's declared state of emergency:

- **Open Meeting Law**
  - Physical meeting location not required
  - Use technology for public participation
  - 10-day window for publishing mtg minutes if reduced staffing
- **Deadlines Extension**
  - State agencies and municipal corporations may extend or waive deadlines/expiration dates until 90 days after the declared state of emergency ends

**March 30, 2020:  
Executive Order  
H.681**

**Declared State of  
Emergency began:  
March 13, 2020**

