

ESSENTIALS OF LAND USE PLANNING AND REGULATION

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

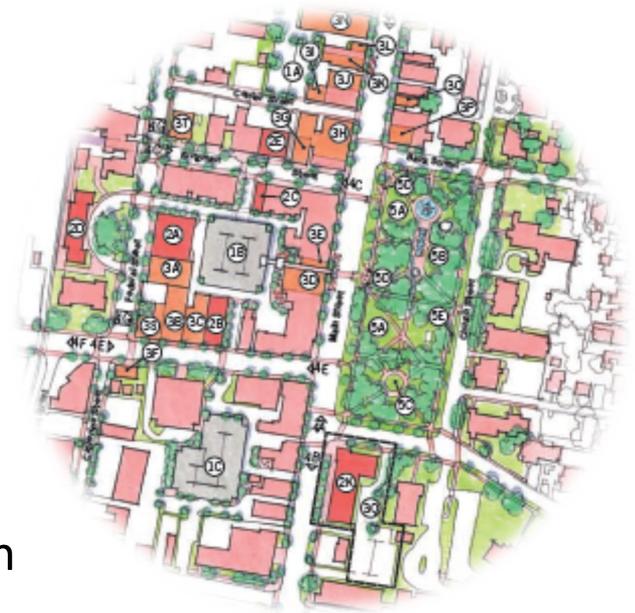
Section 1

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 reviews for Certificates of Public Good
- Grant applications are more competitive

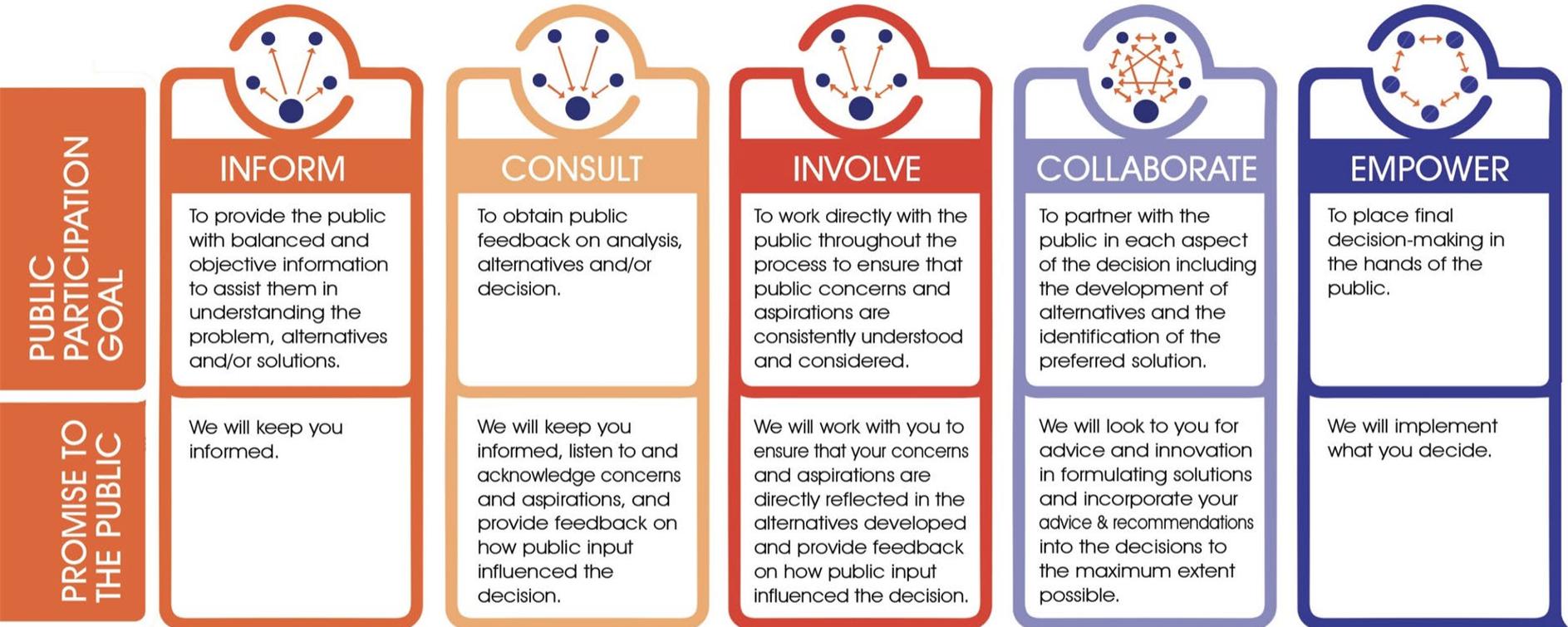




VERMONT PLANNING GOALS (§4302)



IAP2 Spectrum of Public Participation



INCREASING IMPACT ON THE DECISION

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 (including housing targets – new as of 6/17/2024)**
9. Flood Resilience
10. Policies on Preserving Rare Natural Areas
11. Compatibility with Adjacent Municipalities and Region
12. Implementation Program
13. **Map Tier 1A and 1B areas (new as of 6/17/2024)**



Act 250 Exemptions

- Tier 1B
 - Village areas with plans, “good” zoning, and infrastructure
 - Municipal requested, RPC mapped, LURB reviewed
 - Limited Act 250 Exemption for ≤ 50 units of housing
- Tier 1A – Optional Municipal Action
 - Municipal requested, LURB Reviewed
 - Full Act 250 Exemption
 - Requirements:
 - Boundaries consistent with downtown or village centers and planned growth areas on Regional FLU map
 - Infrastructure
 - “Good” zoning (4 stories, smart growth, HP, RTEs)
 - Adequate municipal capacity (staffing, capital planning)

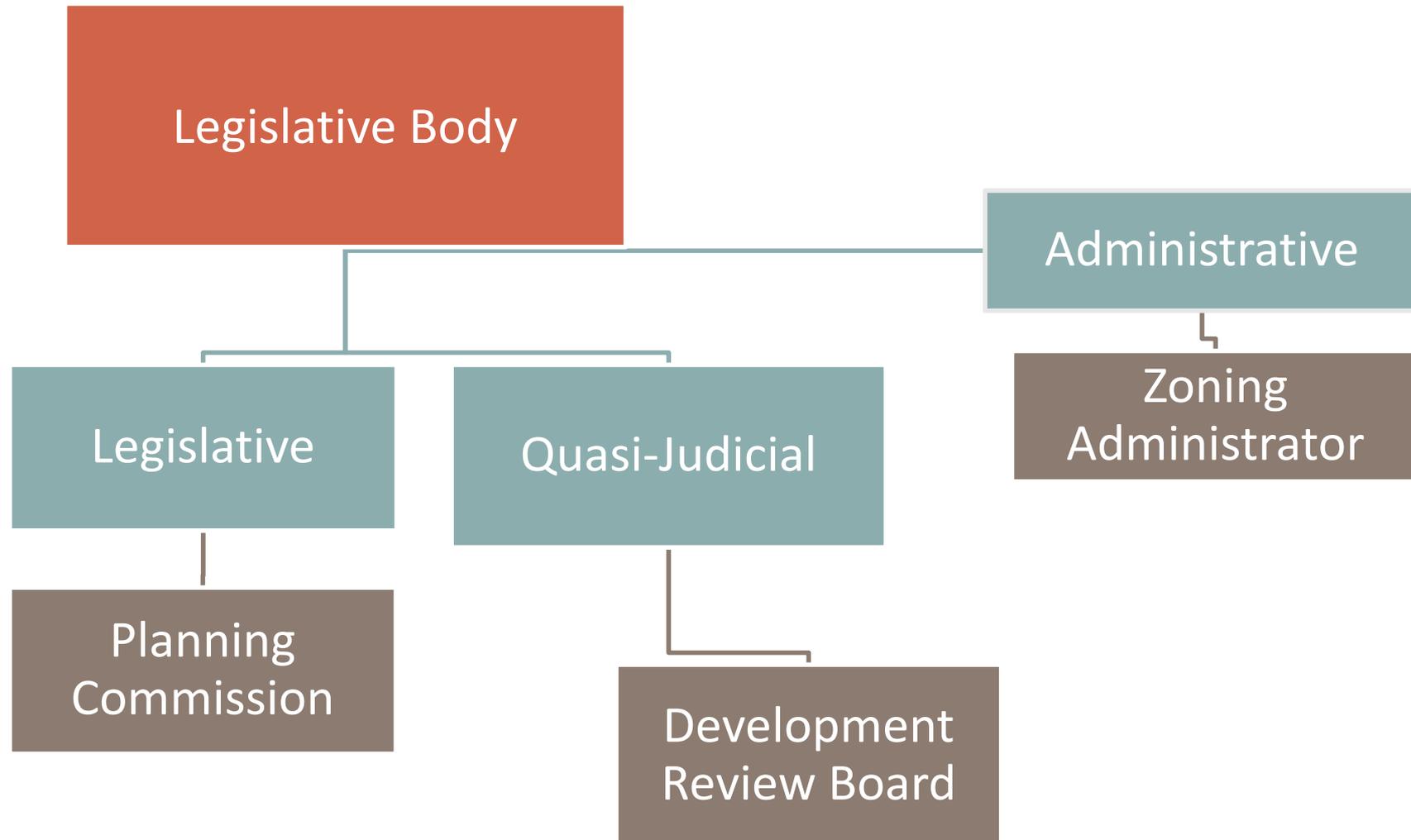
Vermont Planning Manual – www.vpic.info



ROLES AND RESPONSIBILITIES

Section 2

Local Roles and Responsibilities



What's the difference?

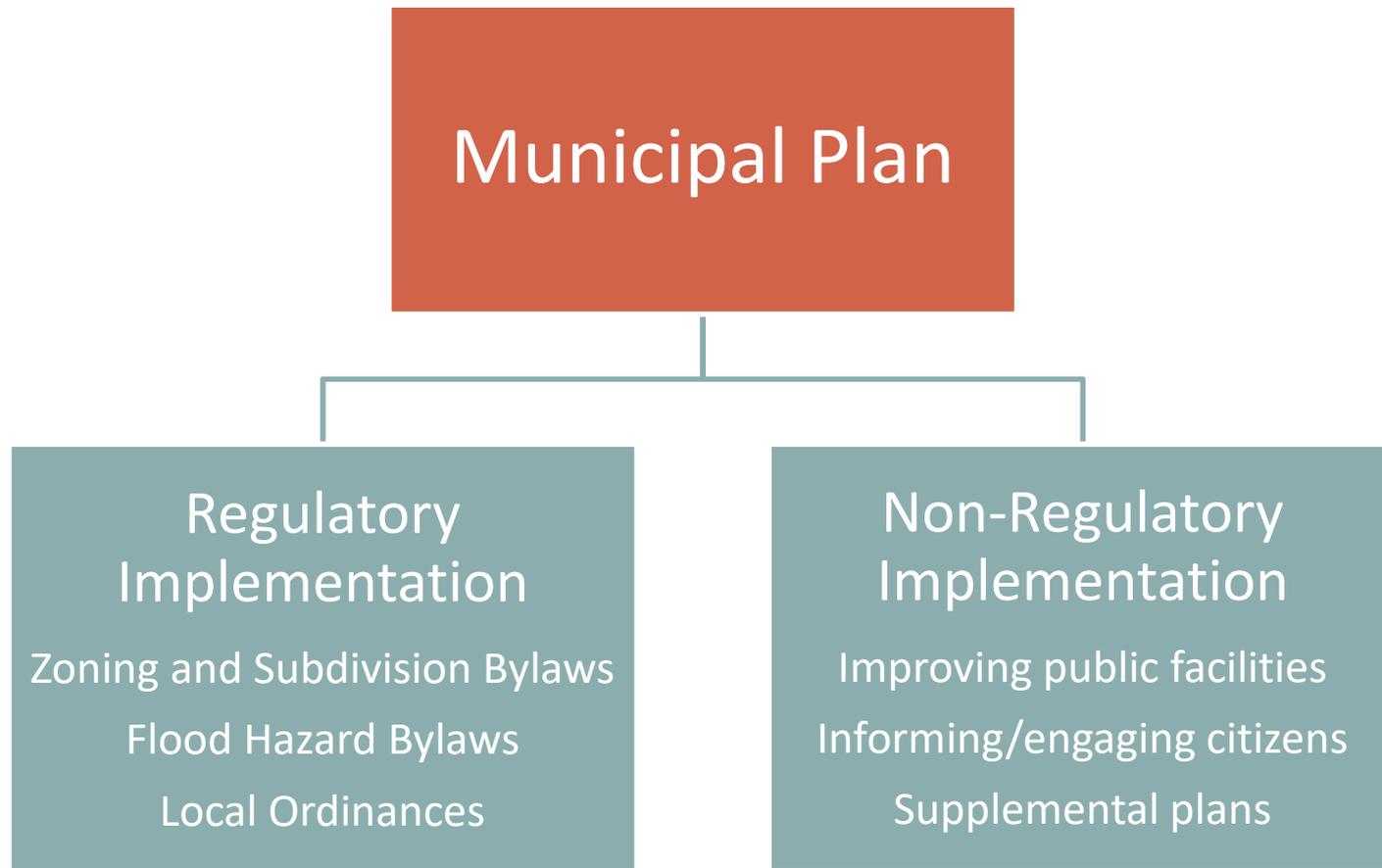
- Regulation
- Bylaw
- Ordinance



IMPLEMENTING THE MUNICIPAL PLAN

Section 3

Implementing the Plan



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)

HELPFUL RESOURCE - CCRPC's Searchable Funding Website:

<https://www.ccrpcvt.org/funding-opportunities/>

Non-Regulatory Implementation - Process

Process for transportation /infrastructure/ building projects



Example Project 1: Build a new sidewalk

1. Planning (Scoping Study)
 - Funding: CCRPC UPWP (20% local match)
2. Design
 - Funding: VTrans Bike/Ped Grant
3. Construction
 - Funding: VTrans Bike/Ped Grant

Example Project 2: Build a child care center

1. Planning (Conceptual Planning/NEPA)
 - Funding: VCDP Planning Grant (10% local match)
2. Design
 - Funding: USDA-RD Direct Loans & Grants
3. Construction
 - Funding: USDA-RD Direct Loans & Grants

Why Have Local Land Use Regulations?

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



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

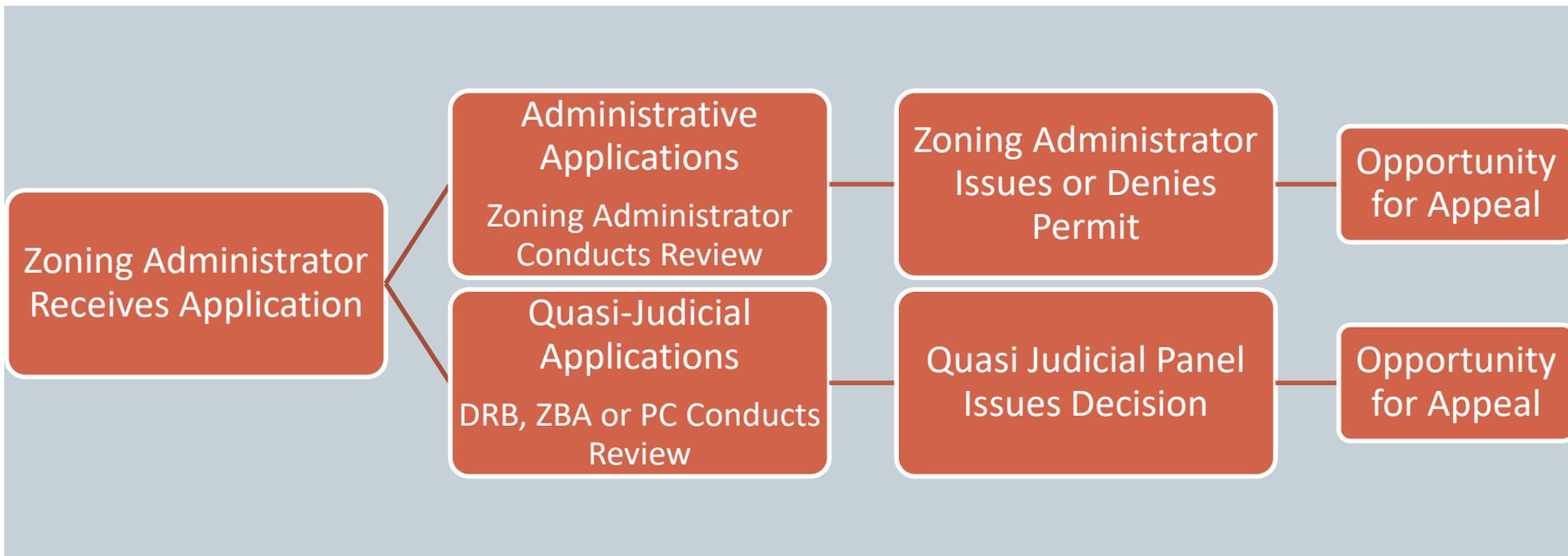


Make communities more flood resilient

Limits of Local Regulation

- 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 (5th and 14th Amendments)
- Land use regulations can only regulate what is enabled in Vermont Statute (Dillon's Rule)
- Vermont Limitations and Prohibited Effects (24 V.S.A. §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
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

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
- Be based on review standards in bylaw
 - Case-by-case adjustments to standards not allowed for housing development
- Minutes may suffice
- Should memorialize concurrence of majority of board

Timeline:

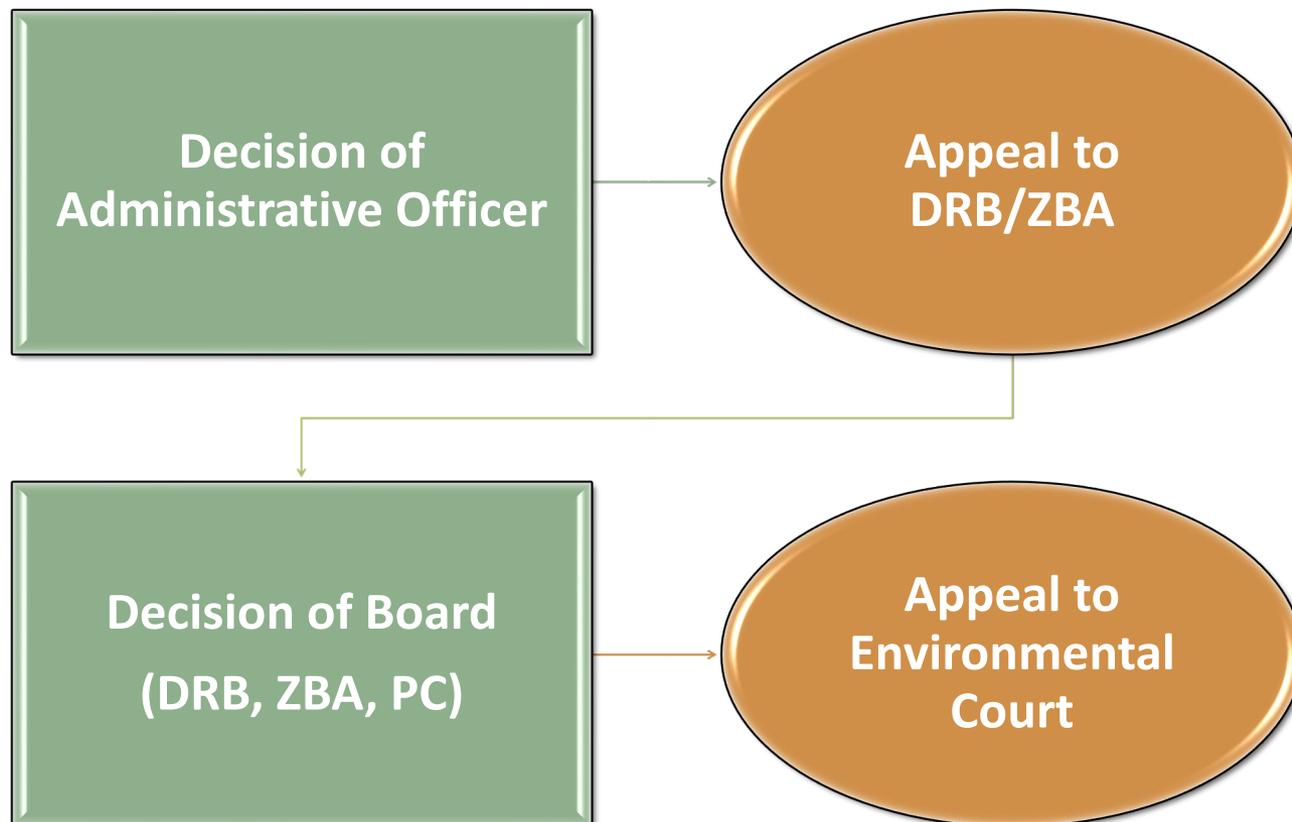
The quasi-judicial panel must issue written decision within 45 days of close of final public hearing. **DOES NOT NEED TO BE THE SAME NIGHT OF HEARING!**

*****Act 181 ***** Within 120 days of an application being deemed complete, the appropriate municipal panel shall notice and warn a hearing on the application.

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 twenty persons (combination of voters, landowners, & residents*)
- 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!

Local Regulations Adoption Process

- **Planning Commission (or anybody)**
 - Proposes & reviews amendments, or accepts public petition
 - Reports on changes and consistency with statute / plan to State, regional planning commission, and adjacent municipalities
 - Conducts at least 1 public hearing & forwards to Legislative Body
 - Submits post-adoption report to State

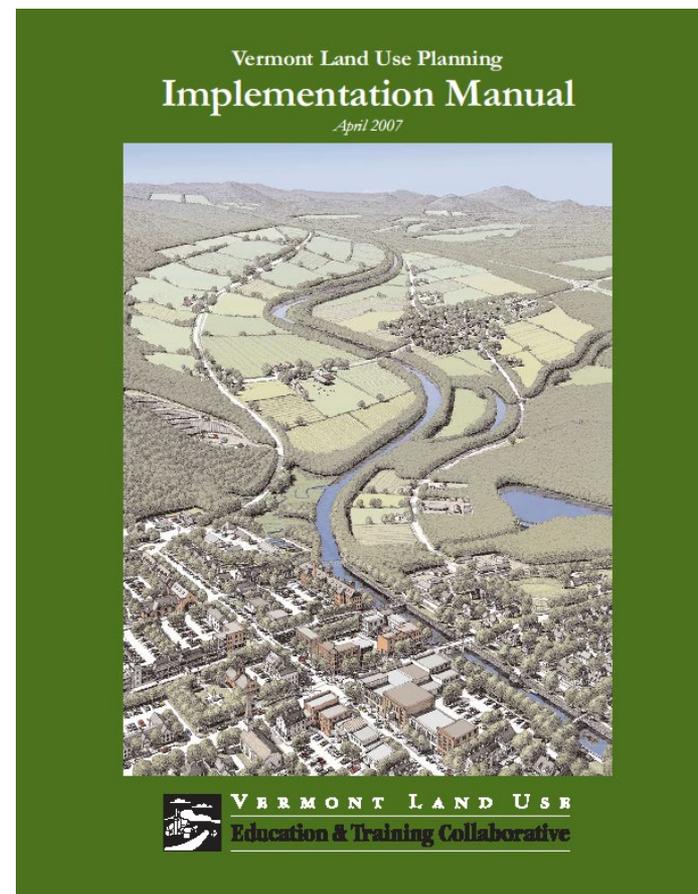
- **Legislative Body (Selectboard, City Council, Trustees, etc.)**
 - Conducts at least 1 public hearing
 - New permits are reviewed under new bylaws for up to 150 days
 - May amend proposal, vote to adopt, or put up for public vote
 - Substantial changes require new PC report & hearing
 - 5% of voters can petition for public vote by Australian ballot
 - Otherwise, regulations go into effect 21 days after adoption

Zoning For Great Neighborhoods



**ENABLING BETTER PLACES:
A ZONING GUIDE FOR
VERMONT NEIGHBORHOODS**

Learn More at www.vpic.info





MEETINGS, HEARINGS AND DUE PROCESS

Section 4

Meetings vs. Hearings

What happens...

(Quorum of members = Meeting)

Who does it...

(Use Parliamentary Procedure)

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)

- The Planning Commission
- Selectboard

Quasi-judicial Hearings

- Hear from parties seeking board approval

- Boards that review 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 website, if your town has one
- Let the public participate, accommodate requests for access
- **Make the minutes available within five calendar days**
- Address complaints of violations
 - Post procedures for submitting violation notices on municipal website

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 and 2 other places

Legislative Hearings

- For plans and bylaw amendments
- Plans: 30 days
- Bylaws: 15 days
- Newspaper of record
- Certified Mailings
- 3 or more public places for bylaws

Quasi-Judicial Hearings

- For development review
- 7/15 days notice**
- Newspaper of record
- 3 or more public places
- Mailed to applicants and adjoiners
- Posting within view of nearest public ROW

Meeting Format

Non-Advisory vs. Advisory Bodies

3 V.S.A. § 310(1): “Advisory body” means a public body that does **NOT** have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters.

Municipal Non-Advisory Body Examples:

- Selectboard
- Development Review Board
- Zoning Board of Adjustment

Non-advisory bodies must provide a designated, staffed, *physical location* for all regular or special meetings.



Non-advisory bodies must *record* their meeting (audio or video) and post it online for at least 30 days.



Emergency meetings and meetings held during a *local incident* or state of emergency may be remote only. “Local incident” might mean a weather event, loss of telecommunications, a public health emergency, etc.

Municipal Advisory Body Examples:

- Planning Commission
- Housing Committee
- Conservation Commission / Committee
- Recreation Committee
- Energy Committee

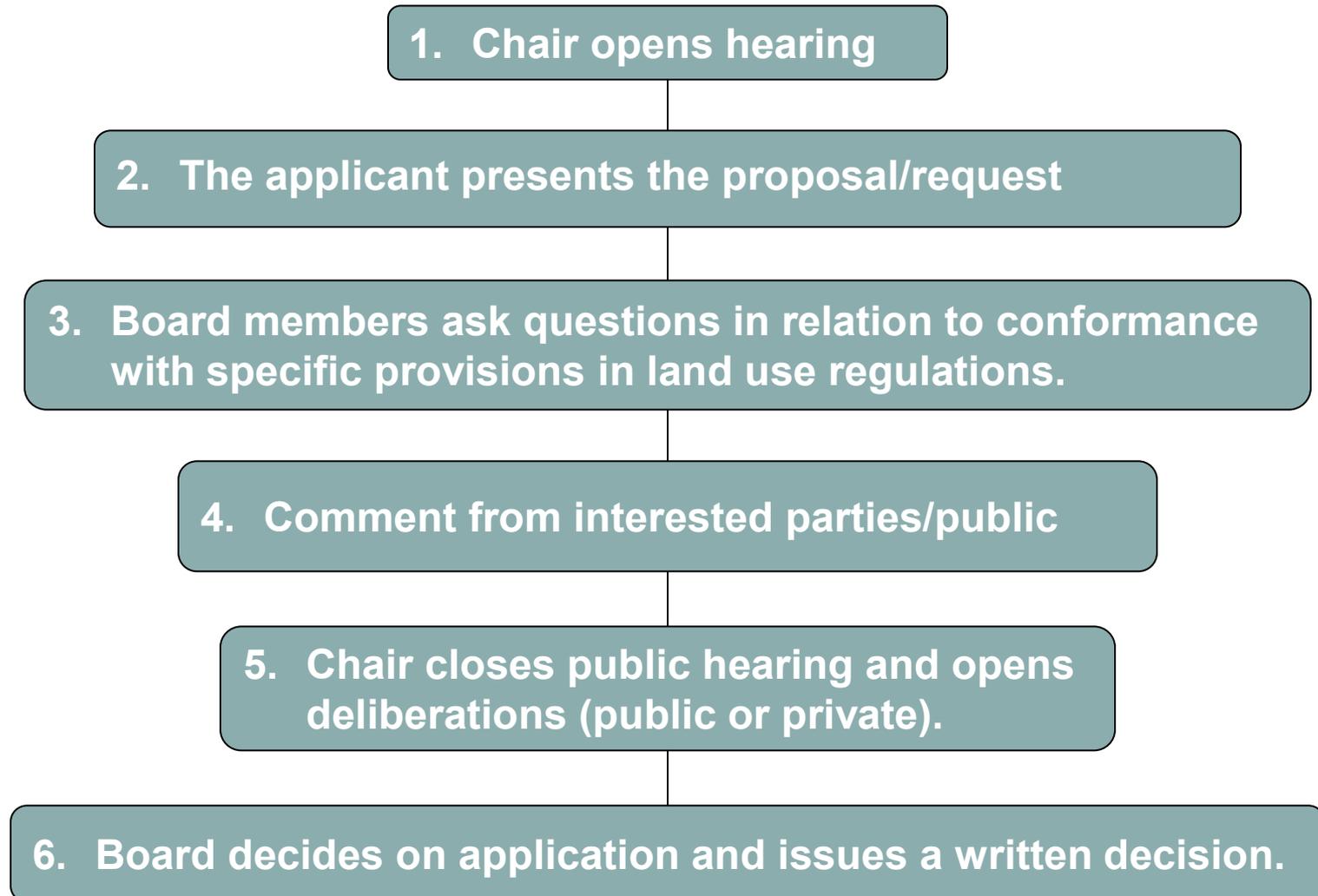


Advisory bodies may hold *remote-only, hybrid, or in-person* meetings, subject to public participation requirements. Advisory bodies are not required to record via audio or video.



Specific requirements exist for how to shift to remote-only in the case of an emergency meeting.

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 (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 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 – know them and follow them!
- Ex parte communication is very difficult to avoid, so ALWAYS disclose
- Recuse oneself when necessary
- Use alternates

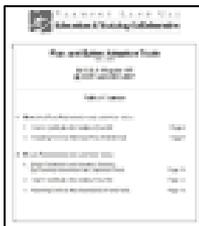
In Summary: Protecting Due Process

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

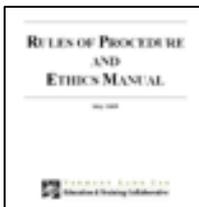
Learn more: www.vpic.info



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

QUESTIONS?



Tools and Resources Available:

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

