Land Use Planning in Vermont

An Overview
Commission on Act 250
October 25, 2017

Presented in Collaboration with:
VT Association of Planning & Development Agencies
VT Dept. of Housing & Community Development
VT League of Cities & Towns
VT Natural Resources Council
VT Planners Association
Three Part Presentation:

- Historical Perspective
- Planning Today
- Planning and Act 250
Part I

HISTORICAL PERSPECTIVE
The Setting: Climate and Geology

Credit: Walking Distance: Extraordinary Hikes for Ordinary People.
Robert and Martha Manning (http://extraordinaryhikes.com/)
The Law

- **Common Law, Public Trust**—access to resources
- **Federal, State Constitutions**—protected rights
  - Freedoms of speech, religion, public gathering
  - Property rights (takings)
  - Equal treatment, due process
- **Federal, State Statutes**
  - Protected classes, uses, restrictions
- **Delegated Authority (Dillon State)**
  - Municipal charters
  - Police power = ability to plan, regulate
  - Public interest, good (plan) = basis for regulation
The Layout

Bolton, Vermont
Chartered: 1763

- 6 miles square
- 72 equal shares
- Glebe, school, governor lots
- 1-Acre “town lots” in center
- Allowance for highways
- Cultivate 5 acres w/in 5 years
- Annual meeting—2nd Tuesday in March

Population 1860: 645
Population 1960: 237

F. W. Beers Map, 1869
The Land: 19th Century Landscape

Photographer: Homer Locke, Jonesville, Vermont, c. 1910
Source: Town of Bolton
1850: Pop. 314,120

1930: Pop. 359,611

Fig. 1. This map shows the approximate distribution of the 314,120 people who lived in Vermont in 1850. Comparison with Fig. 2 shows the shifting of population in rural areas and the concentration in the cities and larger villages.

Fig. 2. This map shows the approximate distribution of the 359,611 people who lived in Vermont in 1930. Though rural population has decreased materially since 1850, the population of the state as a whole has increased more than 14 percent.
Village Improvement

- Village Incorporations – water, sewer, lighting
- Village Improvement Societies—beautification, restoration
- Call for more “orderly development”

*Town Planning: A Program for Civic Preparedness for Vermont Communities*—K.R.B. Flint (1919)

- Vermont Planning Act (1921)

*To prepare or acquire a plan for the future development of the city, town or incorporated village which shall be based primarily upon convenience, utility and public welfare.*
Sanborn Fire Insurance Map
Source: Library of Congress
VT Country Life Commission (1928)

The immediate purpose of the Commission is that of scientific planning for action leading towards higher goals...

- State Planning Board (1935-45)
Land Conservation

- Camels Hump State Park (1911)
- Long Trail (1912)
- Mount Mansfield State Forest (1914)
- Town Forest Act (1915)
- Green Mountain National Forest (1932)

Green Mountain Parkway (1933-36)

Credit: VT Historical Society
Mid-Century Modern...

Photos: UVM Landscape Change Program, Vermont Historical Society
We're on the verge of the greatest development Vermont has ever seen.

George D. Aiken, 1961.
Comments commemorating the completion of the first segment of Vermont's interstate highway system.

These highways are not only freeing motor vehicles to serve their full economic and social potential, but are also, in inevitable consequence, expected to influence the development of the state no less significantly than the coming of the railroad.


Golden Era

- **HUD 701 Grant Program**—Federal $ for county, city planning
- **Central Planning Office** (1965)
  - Coordinate state, regional, local growth management
  - Technical assistance, reports, legislation
- **Vision and Choice** (1968)
  - State planning goals
  - Development patterns, guidelines
  - State Development Plan
  - Statewide development, environmental regulations
- **State Planning Office** (1970)
  - Act 250 plans
Planning & Development Act (1968)

24 V.S.A. Chapter 117 or “Chapter 117”

- Purpose – “appropriate development” of all lands
- Regional planning commissions
- Regional plans – required
- Municipal planning commissions – optional
- Municipal plans – optional, required for bylaws
- Municipal bylaws – zoning, subdivision, etc.
- Bylaw administration and enforcement
- Appeals – to Superior Court

- Viewed as broadly enabling, with limitations

- **Interim Land Capability Plan** – classify land based on physical suitability for development (1971)
- **Capability and Development Plan** – also consider economic, social factors—planning policies (1973)
- **State Land Use Plan, Map** – designating lands best suited for agriculture, forestry, recreation, urban development (drafted, not adopted—repealed 1984)
- **10 criteria** – including project conformance with local, regional and state plans (criteria 9, 10)
State Land Use Act (Act 250)

<table>
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<tr>
<th>Policies</th>
<th>• <strong>What</strong> public Interests guide development</th>
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<td>Maps</td>
<td>• <strong>Where</strong> development should occur</td>
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<tr>
<td>Criteria</td>
<td>• <strong>How</strong> development should occur</td>
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</table>
Statement of Legislative Intent and Findings (1973, No. 85 § 7):

In order to provide general and uniform policies on land use and development to municipal, regional and state governmental agencies... and to provide the basis for the Vermont land use plan ... the general assembly hereby finds and declares as follows...

19 policy statements:
- Planning for Land Use and Economic Development (8)
- Resource Use and Conservation (6)
- Government Facilities and Public Utilities (5)

- Legislative findings shall not be used in consideration of applications (under criterion 9)
“No” to State Land Use Plan

Abandoned 1976, Repealed 1984
Guidelines for Growth (1988)

A Process to Guide Vermont into the Future...

Key Finding:

A coordinated, comprehensive planning process and policy framework must be established to guide decisions by local governments, regional planning commissions and state agencies.
Growth Management Act (Act 200)

Framework for coordinated planning:

- State planning goals (32)
- State agency “Act 200” plans (17)
- Regional review/approval of municipal plans (local option)
- Regional confirmation of municipal planning
- Council of Regional Commissions—state, regional plans
- Municipal and Regional Planning Fund

State, regional, approved municipal plans must be “consistent” with state planning goals, and “compatible” with other plans.
State Planning Goals  (24 V.S.A. § 4302)

32 Goals, Policy Statements (“reduced” to 12, 2 added)

(1) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

... 

(6) To maintain and improve the quality of air, water, wildlife, forests, and other land resources.

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).
Required Plan Elements

- Policies for growth, development, environmental protection
- **Land Use Plan, Map** (Designations 2013; Forests, Wildlife 2015)
- **Transportation Plan, Map**
- **Utility and Facility Plan, Map**
- Educational Facilities Plan, Map (municipal plans)
- Policies to preserve historic, natural, scenic resources
- Housing Plan
- Economic Development Plan (2011)
- Flood Resilience Plan (2013)
- Regional Coordination, Relationships
- **Implementation Program**
“No” to Act 200 Plans...

Towns voting “no” to Act 200 planning in 1990...
Approved Municipal Plans

1991

1997

2003

Municipal Plans approved by RPCs
- No plan, or plan not approved by RPC
- Plan approved by RPC

Endangered Vermont (1993)

Threats:

- Commercial strip development
- Leapfrog housing development
- Big box development
Smart Growth Vermont

Revitalization of our communities and downtowns and dealing effectively with sprawl are among the most urgent and difficult issues facing Vermonters.

-- Gov. Howard Dean, MD
Downtowns, Village Centers

Core Designations

- Village Centers (2003)
- Downtowns (1998)

Add-On Designations (must have a core designation to qualify):

- Neighborhood Development Areas (2013)
- Growth Centers (2006)

Source: VT DHCD
Working Landscape

There is a tremendous opportunity for Vermont to build a farm and forest Renaissance as a foundation for the future of the land, culture, and economy of the state...

VT Working Landscape Partnership (2011)
Permit Reform (2003)

Chapter 117 Update: Plan Implementation

• Regulatory tools
• Nonregulatory tools

Codify “Consistency Doctrine” in statute:
All regulatory and nonregulatory tools adopted to implement a plan “shall be in conformance with the plan...” [§ 4401]

➢ As “conformance with the plan” is defined in statute...
Part II

PLANNING TODAY
VT Planning Community

<table>
<thead>
<tr>
<th>Groups</th>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Volunteers (Local Commissions, Boards)</td>
<td>2,300</td>
</tr>
<tr>
<td>Vermont Planners Association</td>
<td>190</td>
</tr>
<tr>
<td>American Planning Association</td>
<td>87</td>
</tr>
<tr>
<td>Northern New England Chapter (VT, NH, ME)</td>
<td>98</td>
</tr>
<tr>
<td>American Institute of Certified Planners (AICP-VT)</td>
<td>67</td>
</tr>
</tbody>
</table>

- VT Dept. of Housing and Community Development
- VT Association of Planning and Development Agencies – Regional Planning Commissions
- VT League of Cities and Towns
- VT Natural Resources Council – Sustainable Communities
- University of Vermont, Center for Rural Studies
- Education and Training Collaborative (ad hoc) -- VT Planning Information Center
Municipal & Regional Planning Fund

Notwithstanding...
Planning Info, Data Sources

- State Data Center, Data Collaborative – UVM Center for Rural Studies
- Vermont Center for Geographic Information—ACCD
- Planning manual, guides, program information—DHCD
- Population data, vital statistics—VDH
- School Data – Education
- Housing Data—VHFA
- Tax, income data—Tax Department
- Natural Resource Atlas, Biofinder, databases, guides—ANR
- Transportation system information, maps, data—VTrans
- Economic data, profiles—VDL, Ag Agency, VT Food Atlas
- VT Planning Information Center (website)
- Vermont Insights—Building Bright Futures
- Community Energy Dashboard—Energy Action Network, VSJF

- No central warehouse; no consistent/adopted population, housing, employment projections for use in local, regional state planning
VT Geographic Information System

Welcome to the VT ANR Natural Resources Atlas

The Vermont Agency of Natural Resources has been busy making the Natural Resources Atlas the best online mapping tool for Vermont's Natural Resources. With over 150 map layers available to make your custom map from across all of our departments and other state and municipal agencies, you can use the Atlas to create a robust map for any purpose.

Issues with Unresponsive Script Errors?
Are you using Firefox? Click Here

The Natural Resources Atlas Webinar is now online!

Please visit the NEW FAQ before contacting ANRUSI!
State Planning

- **State Planning Office**—still on the books, does not exist (3 V.S.A. § 2104)

- **State Agency Planning** (3 V.S.A. Ch. 67) – plans must be consistent with state planning goals, compatible with regional, approved municipal plans (still on the books, no longer in effect?)

  - **Agency, Department Plans** – as required under federal programs, state statutes, or by current administration
State Plans

- HUD Consolidated Plan | Housing Needs Assessment
- Historic Preservation Plan
- Comprehensive Economic Development Strategy
- Farm to Plate Strategic Plan
- Long Range Transportation Plan | Sector Plans
- Comprehensive Energy Plan
- Electric Plan
- Telecommunications Plan
- Healthy Vermonters 2020 | State Health Improvement Plan
- State Hazard Mitigation Plan
- Statewide Comprehensive Outdoor Recreation Plan (SCORP)
- Air Quality Implementation Plans
- Lake Champlain TMDL Implementation Plan
- Tactical Basin Plans
- Wildlife Action Plan
- Forest Action Plan
SCORP: I-89 = Scenic Corridor

Basis for initial Act 250 denial of a proposed motel at Exit 4, under Criterion 8 (late 1970s)
State Policies, Programs

VT DHCA (2004)

VT Smart Growth Collaborative (2007)
Regional Planning

- 11 Commissions
- Governed by member municipalities
- No taxing, regulatory authority
- MRPF, Contracts, Grants, Local $
- 8-Year regional plans
- Plan implementation:
  - Municipal technical assistance
  - Regional programs, projects
  - Collaborations
    - Participation in Act 250, 248
Regional Programs

- Municipal Planning, Plan Implementation
- Regional Planning
- Brownfields
- Economic and Community Development
- Transportation Planning
- Emergency Preparedness and Disaster Recovery
- Geographic Information Services
- Energy Planning, Conservation and Development
- Watershed Planning and Project Development
- Special Projects

VAPDA Annual Reports
Municipal Planning

Optional – communities are not required to plan
• Planning commission—appointed or elected volunteers
• Commission – prepares plans, bylaws, improvement programs
• Plan—updated/readopted every 8 years

Must have a plan in effect to:
• Adopt/update zoning, subdivision regulations
• Apply for state designations, planning grants
• Be considered in Act 250 (Criterion 10), Section 248
• Conduct “Local Act 250” reviews

➤ Local planning capacity, staff, resources vary greatly
Municipal Bylaws

No Regulations 20%
Zoning 23%
Subdivision 3%
Zoning & Subdivision 54%

VT DHCD (Sep 2015)
State Designations: 159

- Village Centers: 123
- Downtowns: 23
- New Town Centers: 2
- Neighborhoods: 6
- Growth Centers: 6

VT DHCD (June 2017)

Good:
- Goals – framework
- State planning $
- GIS mapping
- Improved municipal, regional plans

Not so good:
- No coordination
- CORC (repealed 2009)
- State agency plans (consistency w/goals)
Vermont by Design (2006)

- Promise of Act 200 unfulfilled
- No state commitment to long-term planning
- Poor vertical, horizontal communication
- No coordinated state planning
- RPC plans inconsistent
- Process unwieldy, inefficient
- Plans vague, hard to interpret

- Reinstate Office of Planning Coordination
- Update planning statutes
Regional Planning Assessments

VAPDA
Vermont Association of Planning and Development Agencies
2011 Statewide Strategic Assessment

REGIONAL PLAN ASSESSMENTS

REGIONAL SERVICES REPORT
January 15, 2011

Prepared by the
Vermont Association of Planning & Development Agencies
c/o Two Rivers-Ottauquechee Regional Commission
3117 Rose Hill
Woodstock, VT 05091
802-457-3188
Municipal Planning Surveys
In Sum

Planning today is more...
- Comprehensive
- Technical and sophisticated
- Complicated and messy
- Legally driven

Challenges include...
- No state coordination
- Planning capacity—volunteers, staff, resources, training
- Lack of good info, commonly accepted forecasts
- Technology, social media
- Community engagement

Median Population, VT Towns: 1,222
Part III

PLANNING AND ACT 250
117 Act 250: Party Status

“Parties by Right” under Act 250 include:

- Municipality (legislative body)
- Municipal planning commission
- Regional planning commission
- Affected state agencies

Each may address or appeal any or all of the ten Act 250 criteria
§ 4345a. Duties of regional planning commissions

A regional planning commission... **shall:**

(13) *Appear before District Environmental Commissions* to aid them in making a determination as to the conformance of developments... **with the criteria of 10 V.S.A. § 6086.**

(17) *As part of its regional plan, define a substantial regional impact*, ... . This definition shall be given due consideration, where relevant, in State regulatory proceedings.
Act 250 jurisdiction varies for:

- **“10-Acre Towns”**—zoning and subdivision (or unified) regulations
  - Commercial, industrial on > 10 acres
  - Subdivisions creating 10+ lots of any size

- **“1-Acre Towns”** — only zoning or subdivision, or no regulations
  - Commercial, industrial on > than 1 acre
  - Subdivisions creating 6+ lots of any size

- **State Designated Centers**
  - Ex: priority housing projects
117 Act 250: Criteria

- **Party status under all 10 criteria** – plan policies, maps may inform each

- **Criterion 10:**
  - Conform to local, regional plans, improvement program
  - If municipal plan is ambiguous, shall consider bylaws that implement, are consistent with plan

- **Other criteria often considered in relation to plans:**
  5 – Traffic
  6 – Educational services
  7 – Municipal, governmental services
  8 – Aesthetics (Quechee Test), Wildlife
  9A (Growth impacts), 9B (ag soils), 9H (scattered development), 9K (public investments), 9L (settlement patterns)
Conditional Use Review (24 V.S.A. § 4414)

One or more review criteria under 10 V.S.A. § 6086 may be adopted as standards for use in conditional use review.

Local Act 250 Review (24 V.S.A. § 4420)

- On the record review of municipal impacts caused by “development” or “subdivision” as defined under Act 250 under criteria 6, 7, 10

  Local determinations serve as presumptions under Act 250
In Act 250 proceedings, when the provisions of a regional or municipal plan are relevant to the determination of any issue:

(1) the provisions of the regional plan shall be given effect to the extent that they are not in conflict with the provisions of a duly adopted municipal plan;

(2) to the extent that such a conflict exists, the regional plan shall be given effect if it is demonstrated that the project under consideration...would have a substantial regional impact.
Quechee Highlands: Exit 1

The Exit 1 interchange is not an ‘existing or planned settlement center’ under the regional plan, and therefore, it is not an appropriate location for major development.

VT Supreme Court, In re B&M Realty (2016)
117 Act 250: Plan Language

- 1979... Plans are not written like zoning bylaws... but this does not mean that they are legally meaningless

- 1996... a “specific” plan policy:
  - Pertains to the area
  - Guides or proscribes conduct or land use within the area
  - Is sufficiently clear to guide the conduct of an average person, using common sense and understanding

- 2005... Despite fact that plans are abstract and advisory, Commissioners are obliged to give them regulatory effect.

**Two questions are asked:**

- Are the plan’s provisions specific or ambiguous?
- Is the language in the plan “**mandatory**” or merely “guidance”? [Ex: “should” vs. “shall”]
Cartography is the New Code...

Where development occurs is as important as how it occurs – maps matter...

Wired (Nov 2017)
Is Fundamental Change Afoot...?

What we face...

- Climate change
- Effects of the past
- Diminishing, finite resources
- Aging infrastructure
- Demographic, economic, social shifts
- Rapid technological advances
- Increasing complexity
- Decreasing affordability
- Changing values?
Vermont 2075?

- How do we address changing definitions of “community” and “place”?
- How do we manage the increasing complexities and cost of governance?
- How do we adapt our 19th century landscape to meet 21st century realities and needs?
If you don't know where you are going, you'll end up someplace else.

— Yogi Berra