

REPORT OF THE STUDY COMMITTEE ON STANDARDS FOR MUNICIPAL LAND RECORDS

January 15, 2004

MANDATE:

Act 66, Section 49(b) STUDY COMMITTEE ON STANDARDS FOR MUNICIPAL LAND RECORDS

(a) There is created a study committee on developing guidance for the maintenance of municipal land records in the state...

(b) The commission shall review existing practices of recording municipal land records in the state and in other jurisdictions, with the purpose of modernizing the management of Vermont's municipal land records affecting title to real property. At a minimum, the commission shall consider the following:

- (1) Developing standards for the content and format of land records affecting title to property in the state.
- (2) Developing standards for the indexing of land records throughout the state.
- (3) Developing technology standards for the automation or computerization of land records.
- (4) Recommending sustainable funding sources to support the modernization, automation, and computerization of land records...

EXECUTIVE SUMMARY:

This summer study committee is the third commissioned by the General Assembly since 1998. The first two committees submitted well-reasoned, detailed reports containing immediate calls to action.¹ Little, if any, action has been taken in connection with those reports in the intervening five years. The observations and recommendations contained in the first two reports, however, remain relevant and important today. This committee supports and adopts the conclusions of the prior committees, to wit: Vermont's land record and permit recording systems need significant overhaul. Further delay in addressing the problems is not a reasonable option.²

¹ Act 125, Sec. 7, 1997 (Adj. Sess.) created a Committee to, inter alia, "study, the feasibility, cost, obstacles and ways in which to computerize Vermont's land records..." The Committee submitted a detailed report dated January 15, 1999. The report is attached hereto as Appendix A. It can be found at www.vermont-towns.org/land/comprprt.htm.

Act 46, Sec. 8, 1999 created a Committee to, inter alia, "study the maintenance of, location of, indexing of, costs relating to, and access to the municipal land use permits issued by municipalities, and to develop and recommend a simplified and standardized process for recording permits in Vermont's land records so that those permits may be more easily, more reliably, and less expensively searched. The committee shall also investigate the use of technology to expand access..." The committee submitted a detailed report dated January 15, 2000. The report is attached hereto as Appendix B. It can be found at www.vermont-archives.org/municipal/land/report.htm.

² Act 155, Sec. 66a, 1998 instructed the Secretary of State to determine the condition of the municipal records. A detailed report dated January 15, 1999 was prepared. The report is attached hereto as Appendix C. It can be found at www.vermont-towns.org/Munrec/munrprt.htm

For the reasons detailed in this report, this Committee believes that Vermont must act immediately to protect and preserve the heritage of its land record and permit recording systems while also keeping pace with technological advances occurring in the global marketplace. The speed of commerce and the demands for better and faster technology have become increasingly dictated by multibillion dollar national and international corporations. Failure to act now may likely prevent Vermont from taking a proactive role in determining the future of its land record and permit recording systems. Simply put – Vermont is a small player in the very large game of public information. The window of opportunity to help create the rules governing the process of storing and retrieving our records and permits is closing. Private vendors are already accessing public records for the purpose of putting them on the internet.

Solutions to the challenges before us³, however, will not be solved by creating summer study committees every biennium. Such committees, including the one presenting this report, are incapable of completing the scope of the task assigned in the time period allowed. Moreover, since membership on such ad-hoc committees is not necessarily consistent from year to year, there is little continuity from committee to committee. This results in each newly formed committee spending an inordinate amount of time “getting up to speed” and “re-inventing the wheel”, thus leaving little opportunity to suggest solutions.

The significance of the issues presented requires that a permanent commission or panel comprised of representatives from the groups who generate, use and administer the records, be created by the Legislature. A long-tenured or permanent commission will be better equipped to make expert recommendations to the Legislature over time in order to keep pace with the ever changing demands of a global marketplace. In order to be effective, however, the commission must be adequately funded.

THE IMPORTANCE OF VERMONT’S LAND RECORDS

Consider the economic impact that real estate transactions, and the records they produce, have on this State and the municipal clerks who handle the mountains of paperwork:

- Through November 30, 2003, the sale of real estate generated \$26,633,225 in property transfer tax for the State of Vermont.
- In 2002, the sale of real estate generated \$26,764,285 in property transfer tax.
- In 2001, the sale of real estate generated \$22,745,881 in property transfer tax.
- Through November 30, 2003 Vermont’s municipal clerks had handled 28,546 transfers of property plus 11,565 “other” sales. This does not begin to reflect the volume of work they handled since mortgage refinancings were the order of the day. A typical FnMa 1-4 family mortgage is now 15 pages long.
- An analysis of 22 randomly chosen Vermont municipalities (whose populations totaled 125,465 or 20.46% of the State population) from ten different counties, revealed that: over 161 land record volumes (averaging 645 pages per volume)

³ The challenges are identified in the Section entitled “Existing Problems and Challenges” below.

were created for the period 7/1/02 to 12/31/02; the average volume contained \$4,700,000 in mortgage financings and \$2,500,000 in property sales.

- Volumes were being filled so quickly that most towns are rapidly depleting their remaining vault space.

EXISTING PROBLEMS AND CHALLENGES

As more fully identified and discussed in the three excellent reports previously submitted, the problems and challenges concerning the present state of our land record and permit recording systems manifest themselves as follows:

- Insufficient training and staffing in town clerk's offices has lead title insurers to seriously consider NOT insuring properties in a few Vermont towns. Without title insurance, banks will not lend money in those towns and properties will not be bought or sold.
- Records are not consistently recorded and indexed by Vermont's 247 municipal clerks. Vermont is one of only 3 states in the U.S. that does not have county recording systems. From the time records were first created and preserved in Vermont over 200 years ago, municipal clerks have operated independent of one another with no central oversight. There are no required uniform standards addressing such matters as indexing, maintenance and security of the records or providing for continuing education for clerks and assistant clerks.
- In some town offices the older records are rapidly deteriorating due to increased use and/or poor environmental conditions. The problem exists due to lack of restoration funding or the lack of desire on the part of the town to address the situation. Many towns do not have a disaster plan for their records should a catastrophic situation occur.
- A recent fire in the Winooski City Clerk's office forced the closure of that office. The land records were sent out of state for weeks for restoration. The closure of the land records office inconvenienced innumerable people since title searches could not be performed and closings could not occur. It is impossible to imagine what would have happened if some (or all) of these records had been destroyed by the fire.
- Another town clerk's office has been closed due to mold.
- An article from the December 11, 2003 issue in the Williston Observer illustrates that private vendors are already obtaining public records such as assessment records and posting them on the internet. Since the records are public, towns have little or no choice but to turn them over to vendors, when asked. The citizens of Williston and its selectboard voiced serious concerns about privacy issues. The article further disclosed that the same private vendor has already obtained public information from Essex Junction and South Burlington, too. Without appropriate safeguards, it is not possible to predict when, where or how these public records will be further disseminated by private vendors.
- Many recording offices throughout the U.S. already allow access to public records on-line. Neighboring Canada and several foreign countries have had excellent

electronic systems in place for years. Clearly, there are many resources already available in the market place. A Land Records Commission can evaluate these systems and recommend appropriate courses of action for the State of Vermont.

- An Errors and omission insurer for Vermont attorneys advises that an attorney whose practice includes 25% or more real estate will see an insurance premium increase of 80%.

The problems and challenges before us, however, are not limited solely to municipal records. Recent Supreme Court decisions have increased the scope of documents required to be searched in the purchase and sale of a home or business. Such records include, by way of example only: state subdivision permits, Act 250 permits, stormwater permits, zoning and planning documents. Consider the dilemma faced by a title examiner:

- State subdivision permits are filed in nine regional offices sprinkled around the State. Permits are not available on-line. Permits are not indexed consistently. They can be indexed and filed under: the owner of the property; the builder or contractor; the potential buyer. While some of the permits are recorded in local jurisdictions, frequently a title examiner has to travel a considerable distance to review the permits.
- Security in the regional offices is virtually non-existent. In many offices, it is possible, without much effort, to remove a file and perhaps permanently extinguish any record or evidence of that permit. Any fire which destroys all or part of these files would be catastrophic.
- Stormwater discharge permits are retained in a separate state office located in Waterbury. While some permits may be recorded in local jurisdictions, a title examiner often has to travel great distances to review the permits. These permits are not available on-line.
- Zoning and planning records are stored in offices other than the town clerk's office. Such records are not available on-line. These offices are frequently staffed by part-time employees. The office hours from town to town are irregular. As with municipal clerks, local planners and zoning officials may have little access to consistent training on indexing, maintenance or security of these valuable records.
- Costs paid by consumers to title examiners to chase down records and relevant information is in the hundreds of thousands of dollars per year. Much of the costs are solely attributable to inefficiencies in the current systems.

CONCLUSION AND RECOMMENDATION

Although the committee was charged with reporting on the issues identified in the Mandate recited above, the committee determined very early in the process that insufficient time was allocated to fulfill the charge.

The committee adopts the conclusions and recommendations enumerated in the prior reports.

This committee recommends that the General Assembly create an adequately funded permanent or long-range Municipal Land Records Commission comprised of representatives from a wide range of groups who generate, use and administer the records who would be charged with, among other things, submitting a more comprehensive report to the General Assembly on or before January 15, 2006.

This committee has prepared a bill to create a Vermont Municipal Land Records Commission. The bill is attached hereto and incorporated as Appendix D.

MEMBERS OF THE COMMITTEE:

Representative Judy Crowley (West Rutland)- Appointed by the House speaker

Senator Mark Shepard (Bennington) - Appointed by the Senate Committee on Committees

Gregory Stanford - The Vermont State Archivist

Mark Reaves - Appointed by the Governor from the department of buildings and general services representing the public records division

William Smith, Esq. - Selected by the Vermont Bar Association

Lori Cohen - Selected by the Vermont Paralegal Organization

John Cushing (Milton), **Pattie McCoy** (Poultney); **Bobbi Brimblecombe** (Marshfield)
Three members selected by the Vermont Municipal Clerks' and Treasurers' Association representing towns with different: populations, grand list sizes, number of land transactions occurring annually, and geographic regions of the state

Peter Chase, L.S. - Selected by the Vermont Land Surveyors

Mark Blucher - Selected by the Vermont Association of Planning and Development Agencies to represent planning commissions

Andrew D. Mikell, Esq. - Appointed by the Governor to represent title insurers

APPENDIX A

REPORT OF THE COMMITTEE ON THE
COMPUTERIZATION OF LAND RECORDS

1/15/99

1

**REPORT OF THE COMMITTEE
ON THE COMPUTERIZATION OF LAND RECORDS
1/15/99**

COMMITTEE MANDATE

Act 125, Sec. 7, 1997 Adj. Session. The Committee shall study the feasibility, cost, obstacles, and ways in which to computerize Vermont's land records in the towns so that Vermont land titles may be more easily, more reliably, and less expensively searched. The Committee shall obtain information on similar efforts outside Vermont to index and make available land records using computer databases. The Committee shall consider, among other options, the following:

The creation of form deeds and mortgages to identify encumbrances on title such as easements, reservations, and options;

The need for authorized electronic signatures;

Mechanisms for financing such a town computerized land records system.

EXECUTIVE SUMMARY

The committee met a total of seven times, including two meetings to take public testimony. It used the Secretary of State's 1998 survey on the condition of municipal records and reviewed what other states are doing to computerize their land records.

The committee finds that computerization of land records, which can cover anything from creating index databases to paper records to the filing of electronic records, is technically feasible and generally desired by those who routinely use land records (by land records we mean municipal records affecting title to property).

There are, however, numerous impediments to the effective and efficient implementation of computerization. These include the lack of a vision of what we want to accomplish through computerization (indeed, what we mean by computerization); lack of goals and objectives, as well as standards and guidance, on how to achieve that vision; and the lack of money to provide the hardware, software, maintenance, upgrading, and training necessary to sustain computerization. The matter is further complicated by the wide range of technology and computer skills currently available to municipal clerks and by differences in how municipalities index and make accessible their land records.

The committee believes it is extremely important to address these impediments in a timely and phased manner. Municipalities have already begun to create computerized indices to their paper land records. Without standards or guidance, any vision that includes a coordinated system, off-site access, etc. will become difficult, if not impossible, while expenses for reconverting existing systems will grow.

The committee, therefore, recommends that the General Assembly create and fund a commission to modernize the management of Vermont's municipal records affecting title to property. The commission would articulate a vision and identify the tools necessary to achieve that vision and to identify sustainable funding for modernization. Those tools could then be used by those municipalities which choose to computerize their land records.

The committee further recommends that the Vermont Municipal Clerks' and Treasurers' Association, using the tools created by the commission, develop a system of accrediting the recordkeeping practices of municipal offices.

As an immediate step the committee recommends that the Vermont Clerks' and Treasurers' Association begin work with the State Archives and the Public Records Division to identify and adapt national indexing standards for the indexing of Vermont land records.

LAND RECORDS

Land records are essential to the social and economic well-being of Vermont. They secure title to the real estate of individuals, businesses and institutions. They are essential to determining property and other taxes; to developing and measuring the effectiveness of planning and zoning; and to identifying rights of way, sources of potential health problems and a host of other private and public sector needs. Vermonters should have a special awareness of the importance of accurate and accessible land records since Vermont was created to resolve conflicting land titles issued by New Hampshire and New York.

What is a land record? Land records were traditionally considered plats and instruments recorded in the land record books by municipal clerks, such as mortgage, quitclaim and warranty deeds. Act 125 broadened the definition to embrace a wider range of municipal records, including zoning, planning, subdivision, site plan, health, street, building, or other municipal permits; minutes of meetings that relate to municipal permits; certificates of occupancy; notice of violations of permits, etc. (see 24 V.S.A. §1154). Confusion remains over which municipal records should now be considered as part of the land records. The committee defined land records as municipal records affecting title to property.

Land records document transactions that have a tremendous economic impact on Vermont. According to figures from the Department of Taxes there were 35,362 property transfers in 1997, involving \$1,557,545,440 and generating \$16,902,984 in property transfer taxes.

All these transfers entail the filing and recording of land records with municipal clerks. As would be expected, the importance of the land records is further reflected in their use. The Secretary of State's 1998 survey of the condition of municipal records suggests the volume of use. Seventy-nine clerks provided quantifiable information on annual

requests for records, reporting an aggregate of 152,945 such requests. As some clerks noted in their responses, a single request can entail the actual handling and use of numerous records.

Two of the largest user groups of land records are lawyers doing title searches and surveyors. While title or survey research varies from case to case, some lawyers and surveyors offered estimates on the average number of documents they view during the course of a project. The lawyers estimated reading a minimum of thirty to forty documents per title search (though one search reportedly involved over a thousand documents). The surveyors, whose research must cover a longer time period and include not only the locus property but any adjoining property, estimated reading 200 documents per research. This represents significant expenditures for lawyer and surveyor fees.

Again this is non-scientific data from only a third of the municipalities and estimates by a few users. It does, however, suggest that hundreds of thousands of land records are accessed annually, while millions of individual pages are physically handled.

ENVIRONMENT-VERMONT

Chapter 11, Sec. 62 of the Vermont Constitution requires all deeds and conveyances of land to be recorded in the municipal clerk's office in their respective town.

Land records support over \$1.5 billion in economic activity, including property transfers, taxes, and lawyer and surveyor fees.

There is a need to access these records hundreds of thousands of times a year and to handle millions of individual documents.

Within the resources at their command, Vermont's municipal clerks do a commendable job of preserving and making accessible the land records under their control.

In Vermont, according to the Secretary of State's survey of municipal records, 16.39% of the responding clerks reported creating computerized indices to their land records and 13.11% are using computers in conjunction with their land records (though they did not specify how).

There is no coordination of what hardware and software Vermont clerks acquire, nor any state guidance on making the hardware and software decisions.

While municipal clerks are not receptive to state mandates, they would appreciate guidance.

A patchwork of software and practices is evolving among the municipalities as clerks, vendors such as the Business Records Corporation, the New England Municipal Resource Center, or even local citizens develop or provide programs for indexing land records.

Private vendors have leased hardware and software to allow the computerization of indices to land records and, in some cases, scanning. This allows municipalities that might not otherwise be able to afford to computerize land records to do so. Some vendors require a municipality to record a minimum number of instruments a year in order to be eligible for their services.

Private vendors often use proprietary software restricting the ability to receive electronic copies of the indices or records which are public records. Vendors also vary in how they index and what content they include in the index.

While less than 2% of the responding Vermont clerks are supported by fees, 27% rely on a combination of fees and salary.

ENVIRONMENT-OTHER STATES

A survey of the New England states indicates that indices to land records are being computerized in each state and to varying degrees each is already scanning or is moving toward scanning land records.

Vermont, Connecticut and Rhode Island file and record land records at the municipal level; Maine, Massachusetts and New Hampshire have county based systems.

Vermont, Connecticut and Rhode Island are the only states which record land records at the municipal level.

The Connecticut Public Records Administrator reports that almost 100% of the municipalities computerize their indices; in Rhode Island some municipalities do, though there were no figures on how many.

Most states provide some guidance on standards for scanning and other electronic records issues. Connecticut (<http://www.cslnet.ctstateu.edu/opra.htm>) and Maine, for example, post such policies, while the Massachusetts Secretary of State's Office established a Electronic Records Working Group involving Archives staff and representatives from municipal clerk organizations to develop guidelines. Standards also guide systems provided by private vendors.

None of the New England states apparently support the electronic filing of land records at this time, in most cases because of the lack of a digital signature law or laws addressing the legal admissibility of electronic records.

Massachusetts already provides, on a subscriber basis, on-line access to indices and some scanned land records. In New Hampshire a vendor is providing, on a fee basis, CD-ROM's containing indices and scanned land records.

Though several states such as Connecticut and Maine are moving to scan land and other permanent records, they urge that paper or microfilm copies be made for long term preservation until the stability of optical media, the requirements for migrating records across rapidly changing hardware and software platforms without information loss, and the long term costs of maintaining records exclusively in electronic form are better understood on the basis of experience.

Several states, including New York, Virginia (<http://www.cim.state.va.us/LandRecords/Index.htm>) and Wisconsin, funded task forces to create comprehensive, carefully planned approaches to the computerization of land records and to identify standards for indexing, content, and the automation of land records.

FACTORS INFLUENCING THE SCOPE OF COMMITTEE FINDINGS AND RECOMMENDATIONS

In compiling findings and making its recommendations the committee was constrained by a lack of resources that prevented more in-depth collection of data and by a lack of technical expertise to address specific hardware and software solutions. The Committee recognizes the importance of the study options enumerated in its mandate, though several of them, notably digital signature legislation, must be addressed by the General Assembly in a broader context than land records. Finally, though Internet connectivity was not among the study options, the Committee recognizes that such connectivity would enhance access to computerized land records. The costs and requirements of connectivity should be explored.

As previously noted, the committee defined land record as municipal records affecting title to property.

In addressing its charge to study the "computerization" of land records the committee distinguished among three levels of technology that could be applied to land records.

Computer index. At the most basic level, a computer can be used to create an index to the paper based land records. That process is not difficult from a technology standpoint, but may be costly in terms of staff time needed for data entry, including backfiles. A small percent of municipalities already use various methods of building computer indices to their land records (in this case land records primarily means the deeds traditionally recorded in the bound volumes).

Images with Index. The second level of applying technology to land records is the use of scanners to collect images of pages of the existing land records and create an index using optical character recognition (OCR). We are not aware of any municipality currently using this level of application. OCR allows the computer to read and

interpret information from a printed page and convert that information into a text file or database. OCR using current off-the-shelf technology is 95% to 98% accurate (accuracy rates would probably be less for older, handwritten land records). That means there may be two to five wrong characters out of every hundred characters (a typical printed page averages four to five thousand characters). It is critical to understand that each error in an index or document reduces the reliability of the records in general and may create a law suit, defect in title, or other problems for the person who owns, or holds mortgage, on the affected property.

Digital records. The ultimate phase of applying technology to land records is to digitize the records by filing digitized instruments (computer files validated by a digital signature); by filing scanned copies of instruments which have been converted to text files through optical character recognition; or by filing scanned images which have not been converted to text files but which are included in the computer index with the other digital records.

FINDINGS

a. Computerizing land records is technically feasible.

Computerization is technically feasible as evidenced by our surveys of the New England and other states which reveal on-going efforts to computerize land records or subsets of land records. That this is feasible in a state where land records are recorded and preserved at the municipal level is demonstrated by Connecticut's report that almost all its towns have computerized indices to the records and a few are beginning to experiment with scanning land records. In Vermont some municipalities (less than 17%) are using computers in conjunction with land records.

b. Computerizing land records, if properly defined, funded, and guided, is desirable.

Testimony from municipal clerks, surveyors, lawyers, title insurance companies and other users of land records demonstrated broad recognition of the potential benefits of using new technologies in conjunction with land records. Benefits range from enhanced access, to potential linking with other related land records and systems, to preservation through the reduced handling of original documents.

To achieve these benefits efficiently and effectively requires, at a minimum, clearly articulated goals, adequate and sustainable funding, and a support structure capable of providing timely professional guidance on records and technical issues. These minimum components for a successful program are not yet in place in Vermont.

c. The transition to the computerization of land records is currently fragmented and lacks a coordinating set of goals and objectives.

Computerization of land records covers a wide range of possible approaches. Vermont municipalities currently "computerizing land records" are primarily focusing on

indexing. Those municipalities have either contracted with vendors for indexing software and other services, or have developed their own, in-house systems.

Even within this limited application there are differences in what information is being included in the index, in how names are indexed (State of Vermont or Vermont, State of), and in the procedures required of users to locate and retrieve the records (including whether the indices are captured on proprietary software or otherwise restricted in terms of access). The use of idiosyncratic indexing practices is a continuation of the approach taken with paper records.

Within municipal governments, officers and departments often do not coordinate their use of computers in order to link related records to gain the greatest efficiencies. This is an important consideration given the range of municipal records that must now be linked to land records under Act 125.

d. There is no vision of what we want to accomplish through "computerization" of land records; no commonly agreed upon goals and objectives for achieving that vision; and no authoritative standards or guidelines for the indexing, content or automation of land records.

The fragmented approach noted above is largely the consequence of the lack of a vision and the tools needed to achieve that vision. What do we want to accomplish through the computerization of land records?

There are no adopted and widely accessible state or municipal technical standards for automating records. There are no sustained and progressive educational opportunities for those municipalities, or municipal clerks, wishing to automate. There are no adopted goals and objectives that can guide municipalities to develop automated land record systems, including indexing, and the standards needed for compatibility and future connectivity.

e. Municipal clerks want guidance but would not support mandated computerization.

A coordinating vision, technical advice, and standardized practices are necessary to avoid current steps that would make future connectivity difficult or impossible. While these components are essential if there is to be a systematic approach to automating land records, municipal clerks are aware that such a vision cannot be achieved without the availability of resources and funding. To simply mandate a goal of computerizing land records without providing the tools and resources to achieve that goal would not be acceptable. Tools and resources should be available to those municipalities that choose, at whatever level, to computerize their land records.

f. The cost of computerizing land records will be high.

Even a graduated approach to computerizing land records, beginning with computerized indices, will be expensive and beyond the ability of some municipalities to

sustain. While we did not conduct a technology survey to see what hardware and software are currently being used by municipal clerks, anecdotally we are aware that there is a wide disparity of capabilities among the town systems available to the clerks.

The costs of providing common capabilities would probably parallel those associated with providing municipalities with computers under Act 60. The Tax Department provided the listers of each municipality meeting the Act 60 requirements with \$2,000 worth of hardware and purchased 246 licenses to allow each municipality access to the same grand list software package.

Computers provided municipalities under Act 60 did not, as a rule, go to municipal clerks. Most went to listers and are unavailable to the clerks.

Obviously, any additional steps to computerize land records, beyond indexing, would bring additional costs. Testimony from vendors suggests, for example, an additional \$4,000 to \$5,000, per municipality, would be needed to provide scanning hardware. One vendor reported a maintenance charge of \$990 a year for a scanning system, plus \$650 a day for installation and training charges.

If a goal is to provide direct user access to the indices or to digitized land records, there may be additional costs for providing in-house, public access terminals and eventually Internet connectivity. Currently those towns which have computerized indices to their land records cannot provide public access to their database without disrupting business operations and compromising security. In some cases the clerk will provide a printout from the database; in others the users still must rely on the card or general index.

In-house access to digitized land records also entails additional expenses. One clerk noted that she could have from seven to nine users researching land records at once. She would need an adequate number of public terminals to allow simultaneous access to the digitized records.

There are also recurring costs associated with system upgrades and continued staff training, as well as the costs of indexing or scanning backfiles of land records. Some vendor agreements reduce short term costs by providing the necessary hardware, but without guidelines on compatibility, open systems, etc., use of vendors might exacerbate the fragmentation of land records systems.

The experience of Gary Snider, Town Clerk of Richford, suggests two aspects of the cost of computerizing land records. In an October 19, 1998 letter to the committee Mr. Snider noted that Richford had a computerized index to its land records going back 1965 and had had the capacity to scan land records for five years. His first point was that "as technology changes we must be aware of the media that our records are stored on. Since I became Town Clerk we have changed our storage media several times and had to make sure that we migrated our records properly each time...The fast pace in which technology changes is of great concern."

In addition to the costs associated with the rapid turnover in technology, Mr. Snider expressed concern about being unable to recoup the costs of creating and maintaining his system. He wrote that he could "not see the town paying out thousands of dollars to computerize when we must then sell this information for next to nothing." There is currently no ability to charge fees that reflect the costs of providing enhanced access, creating a disincentive to computerize. Indeed, the whole issue of recording fees and copying charges for land records must be examined because of Act 125's expansion of which municipal records must be recorded with, or referenced to, in the land records and because existing charges based on number of pages are confusing in a world of electronic formats and media.

g. The lack of an articulated vision, adopted goals and objectives, technical support, or standards, as well as the cost of computerization, are all barriers to achieving an efficient and effective system for land records.

Without an overall vision of what we want to achieve, and the tools needed to achieve that vision, computerization of land records will simply continue the fragmented approach currently followed in indexing and providing access to paper records. The lack of these key components means each municipality (at least those that can afford to) will commit to different formats, systems, indexing practices, etc. Certainly the potential for self-service searching or on-line access or the improved marketability of title will be diminished if each municipality creates its own system for computerizing land records and their indices. Similarly, efforts to logically link to other land records and land record databases (such as those of the Geographic Information Systems, the Vermont Coordinate System, or the Tax Department) will become more difficult.

There is a need to move in a timely fashion to create this larger framework for computerization. As more and more municipalities commit time and resources to developing their own systems, it will be that much more costly and time consuming to retroactively implement a coordinated system and realize the full benefits of automating the land records.

h. Form deeds can be used in connection with technology to improve public access to and use of land records.

There are already a number of form deeds which are widely and regularly used. The best example is the FNMA/FHLMC form of mortgage deed which is used in nearly every residential transaction involving Vermont property. The FNMA/FHLMC deed consists of a front page where the names of the mortgagor, mortgagee, the location of the property and basic information about the amount secured by the mortgage are inserted, followed by six to eight pages of standard text which never varies, and finally a signature page and a schedule with the property description.

The other form deeds widely in use are the warranty deed and the quitclaim deed. Each of these deeds has a standard set of language and a standard form by custom and usage. The warranty deed and quitclaim deed are far less "standard" in appearance

than the FNMA/FHLMC mortgage because people who use the deeds have put the deed language into wordprocessors with different typefaces, formatting and other characteristics.

Presently there are no statutory forms of deeds, though there is a statutory form of mortgage discharge. Other than the discharge and requirements applicable to land plats, the only statutory requirements regulate the formalities of the execution of the instruments. Currently the instruments used in conveyancing, mortgaging and leasing property must be sufficiently flexible to cover the myriad of situations which arise in the ordinary course of creating interests in real property, as well as in transferring and mortgaging those interests.

In order to create an effective set of form deeds, it will be necessary to adopt a comprehensive code relating to the creation, transferring, and mortgaging of property interests. Within that comprehensive scheme of conveyancing, the forms and, most importantly, the meaning and effect of those instruments could be established by statute, bringing stability and predictability to the conveyancing area. In the process of creating the statutory forms of instruments, it would be possible to mandate forms, organization of information, typefaces and sizes which would contribute significantly to the application of technology to indexing and storing these new forms of instruments.

Form deeds and other instruments will enhance the application of technology to the indexing, maintaining and storing of the land records. A form deed with a specified format for identifying the parties to the land transfer and the description of the property being transferred would facilitate the indexing of the document, whether done manually or by computer. Using a statutory form of instrument in connection with a comprehensive real estate code would encourage (or mandate) the use of standard forms of presenting the information contained in the deed and the standard use of terminology relating to the parties to, and the purpose and effect of, the instrument.

For imaging and optical character recognition indexing mandating the form and format of the deed not only facilitates the process, but also may be required to make the process work. By requiring a specific typeface, font, and size, the readability of the final image is enhanced and the accuracy of the OCR process for creating the indexing is improved. One system that has worked well is being used by some counties in New York. Each instrument submitted for recording must be accompanied by a cover sheet on which the information necessary to create the index is laid out in a specified format which improves the accuracy of the OCR process.

If we reached the stage of using digital records to create searchable databases of land records, it would be critical to require that most instruments be submitted in a specific electronic form for recording.

RECOMMENDATIONS

The Committee makes three recommendations:

the General Assembly should create and fund a commission to modernize the management of Vermont's municipal records affecting title to property.

the Vermont Municipal Clerks' and Treasurers' Association should develop a system for accrediting the recordkeeping practices of municipal offices. If the General Assembly creates and funds the commission recommended above, the VMCTA should use the tools it creates to establish accreditation standards.

the Vermont Municipal Clerks' and Treasurers' Association should begin work immediately with the State Archives and Public Records Division to identify and adapt national indexing standards.

A. Commission to modernize the management of Vermont's municipal records

The General Assembly should create and fund a commission to modernize the management of Vermont's municipal records affecting title to property. The commission would be charged with:

articulating a vision for modernizing the management of municipal records affecting title to property (hereafter referred to as land records)

producing a strategic plan to achieve that vision and to eliminate current impediments to modernization of land records management. This would include:

developing standards for land records content and format

developing statewide indexing standards

developing a progressive and sustained educational program to keep municipal clerks abreast of automating, indexing, and other standards and practices

conducting an inventory of technology currently being used by municipalities

recommending technology standards for automating land records

identifying sustainable funding sources to support modernization and automation of land records management.

The commission's mandate shall be to provide those municipalities which wish to computerize their land records with the recommended standards, best practices, models and other tools necessary to accomplish the overall vision. The commission shall not

have the authority to mandate that municipalities computerize their records that affect the title to property.

Membership of the commission should include custodians and users of land records, as well as records specialists. The membership shall be:

three municipal clerks, one representing municipalities of over 10,000 people, one under 10,000, and one under 3,000, selected by the Vermont Municipal Clerks' and Treasurers' Association.

one representative from the State Archives

one representative from Buildings and General Services

one representative selected by the Vermont Bar Association

one representative of a planning or zoning commission, selected by the Vermont League of Cities and Towns

one representative selected by the Vermont Land Surveyors' Association.

one representative selected by the Vermont Paralegal Organization

The organizational meeting should be called by the State Archivist.

The budget for the commission should be adequate to pay travel expenses of non-state government members for attending six meetings a year; for conducting technology surveys of municipal offices; for secretarial support; and to provide for expert testimony, notably from those involved in similar efforts in other states and from people with the technical expertise to identify systems that best meet the requirements for managing land records in the most effective and efficient manner.

Initial funding could come from the General Fund, until the commission can identify revenue streams for long term support.

The commission shall undergo sunset review every four years.

The vision should be comprehensive and embrace the management of land records rather than the "computerization" of land records.

There are several possible model visions developed by other states. New York, for example, envisioned creation of a land records system that links uniquely identifiable parcels of land (based on the state's coordinate system) to deeds, mortgages, tax information, GIS data, maps, environmental data, and all other real property information collected at all levels of government. Virginia's task force defined land

records management as the uniform indexing and preservation of the instruments and data relating to land integrated with local and state geographical information systems (GIS) layered data, assessment information, and other public records relating to land and made available to the public.

Any Vermont vision must recognize that our municipal-based system of land records is relatively unique, requiring a phased implementation and voluntary participation. The commission should continue to look closely at possible models from Connecticut and Rhode Island, the only other states with municipal-based systems.

The strategic plan must address all municipal records that affect title to property, must be designed so it can be phased in over time as impediments to the vision are eliminated, and meet the needs of Vermont's smallest, as well as wealthiest, municipalities.

Possible components for the strategic plan were outlined above.

Standardizing indexing practices will eliminate one of the impediments and will ensure indices adaptable to any future effort to create on-line access.

Standardizing the content (what gets included) and formats includes exploring models in other states for streamlined forms, such as a standard cover sheet, and the use of cadastral maps.

Educational opportunities are crucial if standards are to be understood and adopted. Initial educational efforts should focus on indexing standards.

A technology inventory is important to understand what, and how, municipalities are employing technologies. This will help frame steps toward greater compatibility.

Technology standards will provide clerks, and vendors, with guidance in determining what hardware and software best meets their needs without frustrating any future efforts to realize the comprehensive vision. Technology standards will also help prevent the capture of public records on proprietary software that cannot be easily accessed by the public.

Funding is crucial given the costs associated with implementing the vision. There are some models in other states that should be explored, while recognizing the uniqueness of the Vermont environment. One possibility would be to have the Tax Department set a portion of the property transfer tax aside for automation of municipal records affecting title to property. In that way a portion of the state revenue generated by such records can be applied to improving the marketability of record titles.

Other possibilities include exploring higher fees for enhanced access via indices on CD-ROM or on-line through a subscription fee. Such fees or subscriptions would reflect the

cost to municipalities in providing enhanced access. States that have followed this tact still provide access to public terminals in the municipal office.

In considering any revenue stream for the support of these efforts it is important to recall the volume of economic activity associated with land records.

B. Implementation of commission recommendations

Our study underscored two competing tensions: a) "computerization" of land records can not be effectively and efficiently accomplished without standards and b) municipalities are extremely wary of state mandates, particularly when they involve the potential expenditure of large sums of money and the erosion of local prerogatives. So the question we confronted was how to have unmandated standards that would be implemented.

We recommend that the commission identify minimum to optimum requirements that should be in place in a municipal office to assure the efficient and effective automation of land records. The Vermont Municipal Clerks' and Treasurers' Association would use these gradated standards to certify municipal offices (as opposed to municipal clerks).

If nothing else was done it would at least put pressure on non-certified offices to begin taking minimal steps. If a statewide pool of funds was created through use of the property transfer tax, the availability of that funding could be linked to attaining various degrees of accreditation.

The legislatively-mandated survey on the condition of municipal records, conducted by the Secretary of State's Office, echoed the recommendations that there be guidance on basic preservation and conservation practices and that a program for certifying municipal offices be explored.

C. Begin work on standardized indexing

While the commission on the management of municipal records affecting title to property is key to creating an effective and coordinated system for land records, some steps can begin immediately. Therefore we recommend that the Vermont Municipal Clerks' and Treasurers' Association immediately begin to work with the State Archives and Public Records Division to identify indexing standards, such as the American National Standards Institute's alpha-numeric indexing standard, and adapt them to the requirements of Vermont's land records.

Further, we recommend that the VMCTA identify ways to begin teaching those adapted standards to their constituents.

APPENDIX B

REPORT ON THE COMMITTEE ON MUNICIPAL
LAND USE PERMITS

1/15/00

REPORT OF THE COMMITTEE ON MUNICIPAL LAND USE PERMITS
1/15/00

MANDATE:

Act 46, Sec. 9 (1999).

"a) A committee shall be established to study the maintenance of, location of, indexing of, costs relating to, and access to the municipal land use permits issued by municipalities, and to develop and recommend a simplified and standardized process for recording permits in Vermont's land records so that those permits may be more easily, more reliably, and less expensively searched. The committee shall also investigate the use of technology to expand access. The committee shall obtain information on efforts inside and outside Vermont to maintain, index, and make available land use permits."

MEMBERS:

Michael Brands, Zoning Administrator, Woodstock (co-chair)

Linda Spence, Town Clerk, Manchester (co-chair)

Kathy DeWolfe, Secretary of State's Office

Gail Fallar, Town Clerk, Tinmouth

Ken Lerner, Planning Office, Burlington

Liam Murphy, Langrock, Sperry and Wool

Gregory Sanford, State Archivist (Secretary of State's Office)

John Yacavoni, Public Records, Department of Buildings and General Services

The Committee thanks Molly Dugan of the Vermont League of Cities and Towns for her participation. The Committee also thanks the firm of Langrock, Sperry and Wool for providing the resources to conduct a survey of municipal clerk, planners, and zoning administrators.

EXECUTIVE SUMMARY:

Committee members encompassed a variety of perspectives as creators, custodians and users of land use permits. The Committee met five times, conducted surveys with municipal officers (clerks, zoning and planning administrators) and lawyers and paralegals, and sent a

representative to the December 10, 1999 Vermont Land Surveyors' Association to gather further input (including information on the land record system being implemented in the Province of Quebec).

Municipal officials made it clear to the Committee that recent changes to municipal land use permit processes have strained local resources and that additional mandates would not be welcomed. Others, notably representatives of the legal community, made it clear that Bianchi v. Lorenz altered the practice of title searches, requiring changes in how land records are managed and researched in order to diminish new potential liabilities confronting landowners, lawyers, banks and others. The Committee heard recommendations ranging from returning to pre-*Bianchi* practices to making wholesale changes to how land records in general, and permits in particular, are managed.

The Committee noted the lack of mechanisms for sustained and effective communication among all those who must record, preserve, and use land records and permits. Consequently, there is little measurable data from which issues stemming from *Bianchi* can be defined, much less addressed. Anecdotal testimony, for example, suggested that land use permits and land records were often stored in different locations, creating barriers to access. This was not borne out by the Committee's survey; in 170 out of 174 responses, permits were held in, or "nearby," the same building as the municipal clerk's office.

Until effective tools are developed and implemented for measuring the management and use of land records and permits, any attempt to address issues will be seriously hampered. This suggests the need for sustained communication among the interested parties and adequate resources to better identify and address issues.

Coupled with the need for better tools, the Committee believes there has to be more effective follow-up to those resources that already exist, ranging from the model of a "memorandum of municipal action" developed in response to Act 125 (1998, Adj. Session) and currently posted (Note: no longer posted-9/03) on the Public Records Division webpage, to the report of the Committee on the Computerization of Land Records (also created in response to Act 125 and posted on the Secretary of State's webpage).

The Committee found the lack of effective tools or sustained legislative support surprising in light of the amount economic activity associated with land records and municipal land use permits. A review of State figures from 1998 indicates there were 31,257 property transfers, involving \$1.9 billion, and raising \$18 million in state property transfer taxes. These figures closely parallel the findings of the Committee on the Computerization of Land Records for 1997: 35,362 property transfers involving almost \$1.6 billion and raising almost \$17 million in state property transfer taxes. Despite the amounts of activity and dollars involved, the State has not committed resources towards achieving its apparent intent of establishing a more coordinated system for our land records, including the implementation of computerization.

Therefore the Committee recommends:

--The General Assembly should review and act upon the recommendations of the Committee on the Computerization of Land Records, notably the recommendation for creation of an adequately funded oversight committee of interested parties charged with addressing all aspects of the management and use of land records and permits.

--A system for providing unique identifiers for land parcels, based on tax lot numbers, E-911 numbers, or some other existing system, to facilitate access to land records and permits.

--The General Assembly should provide funding to municipalities to implement, or convert to, a uniform tax map system.

--Every municipality should have written, posted policies on its record filing system for land records and permits.

--Zoning administrators, planning officers, and municipal clerks should coordinate their hours so, to the extent practical, land records and land use permits can be researched during a single visit. If such coordination is impractical in municipalities with part time zoning administrators, one or more of the following steps are recommended:

--a minimum number of hours when the records would be available, overlapping with the clerk's hours, should be established and posted;

--arrangements should be made to allow municipal clerks to provide supervised access to the permits;

--or, a policy for making appointments to review permits, coordinated with the clerk's hours, should be adopted and posted.

--Land records and land use permits should be housed in municipal offices, preferably within a single complex.

--The Secretary of State's Office or other organizations which routinely network with municipal offices shall continue to maintain and publicize lists of municipal clerks, zoning administrators, planning officers and their hours, addresses, and location.

--All municipal records series associated with property, including land records and permits, should be reviewed and evaluated to determine how long they must be kept in order to meet legal, evidentiary, fiscal, or other requirements.

--A custodian of municipal land use permits may charge the same user and copying fees set for municipal clerks and the fees should be used to help preserve the permits.

--The Vermont Municipal Clerks' and Treasurers' Association, the Vermont Bar Association, the Vermont Land Surveyors' Association, the Vermont Planners' Association and other organizations should provide cooperative and coordinated educational opportunities on the creation, maintenance, indexing, and use of municipal records.

ENVIRONMENT:

--land records and land use permits support significant economic activity, involving \$1.9 billion in property transfers in 1998 and \$1.6 billion in 1997 and raising \$18 million in state property transfer taxes in 1998 and almost \$17 million in 1997.

--changes to recordkeeping made in the wake of *Bianchi v. Lorenz* have added significant costs to municipalities, from increased pressure on limited and expensive vault space to the need to purchase supplies conforming to the long term preservation of municipal land use permits. For example, a ream of non-archival NCR paper costs \$5.80 versus \$50 a ream for archival quality paper. Without archival quality supplies, however, municipalities would confront even higher, long-term conservation costs.

--responses to the Committee's surveys indicate a wide disparity of perspectives among the creators, custodians and users of municipal land use permits and land records. Anecdotal examples offered include:

(lawyers and paralegals)

--"I find the majority of places (in which I search) I need to go back or phone in order to get access to Zoning records. The minority allow access and then there are those who sign off for you and then claim no liability."

--"..you must pay [the town] to 'collect together the file' for you to review and must request that they do so in advance. Usually it's not too much of a problem to plan ahead, but...client's do not always give you the luxury of advance notice."

--"...the records are not organized, and only seem accessible for the last couple of years. There is no index to speak of; my recollection is that they are kept in the order filed. In a recent matter, I was investigating some development on abutting property, and there was no way to tell from the records whether the development was permitted, other than thumbing through a pile of permits and hoping."

--"my experience...is that each of the towns have a separate zoning office that keep separate hours of operation--some are more part time than others. If lucky one can co-ordinate viewing the permit files as well as the land records. Usually, however, one must call ahead to be sure the officer is in and the office open."

--"The keepers of the records have extremely limited hours and each Town does it their own way. Also, the hours that the Town Clerk's office and the Administrator's office are open, often do not coincide. Two trips are the norm."

(

municipal officers)

--"I feel very strongly that zoning permits should not have to be recorded as long as they are indexed in the land records & filed so they are available for anyone to see--If they have to be recorded, the Land Records would fill up so fast that we'd all run out of vault space."

--"Currently by recording permits in the land records, I am duplicating all permits. Our records are available to review in their entirety, indexed by tax map #. Towns our size should not have double & triple paperwork in the same office building."

--"It is redundant to have a book AND a card in the file in addition to the actual permit--wouldn't the card suffice? we're slowly sinking under piles of paper."

--"The major cost [our town] has seen comes from staff time, all the extra recording, protecting records because of increased use as well as increased time spent helping lawyers (and bankers) complete title searches."

--"May eventually require add'l vault space be added. Zoning records previously not kept in the vault but are now. Increased recording requires add'l time from town clerk and space in land records. Recording has increased dramatically and books are filling up faster and faster."

--there is no mechanism for sustained measurement against which anecdotal experiences can be weighed or solutions developed. The Committee's surveys indicate that not all-anecdotal accounts are widely applicable. While there were numerous references to land records and land use permits being held in two different locations within a municipality, 98% of municipal survey responses indicate the records and permits are housed in the same building or in a "nearby" building.

While numerous users noted that clerks and zoning administrators had different hours, complicating research, the Vermont League of Cities and Towns' list of office hours indicate that in 184 municipalities they have the same hours; in four they have "the same morning hours;" in five, zoning administrators were available by appointment; and forty-four municipalities did not have zoning. The Committee survey found that 150 of 172 responses said the municipal clerk had access to zoning and planning records when the administrator or planners were not in.

--there is not mechanism for creators, custodians or users of land records and land use permits to routinely communicate their requirements and perspectives, occasionally leading to misunderstandings and complicating efforts to arrive at mutually agreeable solutions to common problems. **RECOMMENDATION:**

The General Assembly should review and act upon the recommendations of the Committee on the Computerization of Land Records, notably the recommendation for creation of an adequately funded oversight committee of interested parties charged with addressing all aspects of the management and use of land records and permits.

GOAL: To provide the necessary mechanism and funding to effectively identify the issues, develop responses, and implement any possible changes.

Issues surrounding the management, preservation, and use of municipal land use permits and land records are complex and involve revisiting long established practices and mandates. Municipalities do not want unfunded mandates, noting additional costs linked to changes in how land use permits and land records are managed. There is no sustained, coordinated base line information gathering to define issues and frame solutions. There is a wide disparity of practices and perspectives among creators, custodians and users of land use permits and records. Transactions dependent on land records and municipal land use permits involve over a billion dollars a year and raise millions in taxes.

In 1998 and 1999 the General Assembly created study committees to examine aspects of the management of land records and land use permits

Neither committee was accorded adequate resources. The Committee on Municipal Land Use Permits had to rely on the resources of its members and their parent institutions to conduct surveys and prepare a report. Other governments that have launched efforts to explore the same issues, such as the Commonwealth of Virginia and the Province of Quebec, provided sustained funding and other resources to define the issues and develop solutions.

The goals suggested by the committees' mandates are important and the potential economic impact great. The only way for Vermont to effectively move forward is to adequately fund an oversight committee with sufficient authorities to move the concerned communities toward those goals. The 1998 Committee on the Computerization of Land Records' recommendation for a commission to modernize the management of Vermont's municipal records affecting title to property is an appropriate first step and should be considered for legislative action.

RECOMMENDATION:

Land use permits and land records should be indexed through a consistent system using unique parcel identifiers, based on tax lot numbers, E-911 numbers, or some other system to facilitate access land records and permits.

GOAL:

Facilitate access to the land records and permits using a unique parcel identification number to a) track property through changing ownership and use and b) provide a common reference point in a general index so all land records and permits associated with a parcel can be identified in one place. A long-term goal would be to use the parcel identification number to facilitate any move toward electronic indexing and searching.

Within statutory guidelines each municipality follows its own indexing practices. The Committee's survey of indexing practices found that seventy-one municipalities used alphabetical indexing for their zoning records, with nineteen further indicating they did it

alphabetically by owner. Forty-three indexed the records chronologically, six by address, eighteen by permit number, and twenty-six by parcel ID or tax map number.

Users of these records expressed frustration with coping with these different practices. They also reported difficulty in associating permits with land records over time. Many municipal offices have adopted practices that could serve as useful models. Many offices indicated a desire for guidance on indexing. Creators and users noted the additional costs associated with inadequate indexing.

As the Committee on the Computerization of Land Records reported, any future effort for a coordinated electronic indexing will be frustrated without common indexing practices, including a common way of associating permits with land records.

RECOMMENDATION:

In support of the above recommendation the General Assembly should provide funding to municipalities to implement or convert a uniform tax map or other indexing system.

GOAL:

To provide adequate support for any implementing any changes in current practices.

Any change in indexing practices will cause significant local expense, not only in implementing a new system, but also in the possible conversion of existing indexes to a new system. The state property transfer tax, which is dependent on accessible records affecting title to property, is a logical funding source.

RECOMMENDATION:

Every municipality should have written, posted policies on its recordfiling system for land records and permits.

GOAL: To provide users with an understanding of how a municipal office files its permits and land records.

In the absence of a uniform system, written and posted information on a municipality's recordfiling practices would alert users to how to access records and help alleviate some of the confusion and delays reported in the surveys.

RECOMMENDATION:

Zoning administrators, planning officers, and municipal clerks should coordinate their hours so, to the extent practical, land records and land use permits can be researched during a single visit.

If such coordination is impractical in municipalities with part time zoning administrators, one or more of the following steps are recommended:

--a minimum number of hours when the records would be available, overlapping with the clerk's hours, should be established and posted;

--arrangements should be made to allow municipal clerks to provide supervised access to the permits; or,

--a policy for making appointments to review permits, coordinated with the clerk's hours, should be adopted and posted.

GOAL:

To facilitate research by eliminating barriers to access caused by incompatible hours among the custodians of land records and land use permits.

In almost all cases land records and land use permits must be researched in conjunction with one another. Property owners, lawyers, paralegals, surveyors and others who must research property titles and land use should be able to review both sets of records within a single visit, or, at a minimum, know prior to visiting town offices when both sets of records will be available.

In many municipalities the clerk's hours are more extensive than those of the zoning and planning administrators and it is unrealistic to anticipate that zoning and planning offices can be open whenever the clerk has hours (including special evening or weekend hours in conjunction with other responsibilities). In such cases allowing the clerk to retrieve the permits from the zoning or planning office and supervise their use could facilitate use of the records. If that is not possible, if the permits are in a separate location, for example, then the municipality should publish hours when the records can be reviewed.

RECOMMENDATION:

Land records and land use permits should be housed in municipal offices, preferably at a single complex.

GOAL:

Facilitate access by allowing users to go to a single complex in order to review records.

Though land and land use records are primarily researched at the same time, in some municipalities they are maintained at different locations. In a few cases municipal land use permits are held in the home of the zoning administrator. This complicates the task of those who must use the records, adding to the cost of research. Having the records in a single, municipal building enhances access; would allow the clerk, if it is municipal policy, to retrieve records when the zoning or planning staff are absent; and would strengthen the

authenticity of the records by keeping the records within the municipal offices. If records are in separate buildings, those buildings should be in close proximity (i.e. walking distance).

RECOMMENDATION:

The Secretary of State or other organizations that routinely network with municipal offices shall continue to maintain and publicize current lists of municipal clerks, zoning administrators, planning officers and their hours, addresses, and location.

GOAL:

Facilitate access to the records by providing potential users with information on when, where, and through whom the records can be used.

Knowing when all offices associated with title searches and other land record research are open can reduce frustration and produce savings in the costs of such research.

RECOMMENDATION:

All municipal records series associated with property, including the land records and permits, should be re-viewed and evaluated to determine how long they must be kept in order to meet legal, evidentiary, fiscal, or other requirements.

GOAL:

To provide the best possible recordkeeping system for municipal land and permit records which meets legal requirements and enhances access.

A comprehensive review of land records and permit has not been conducted in years, though statutes and case law have changed practices and requirements governing such records. The increase in records that must be filed or recorded has added pressure on municipal vault and office space with the potential for additional municipal expense. A reappraisal of the records could better determine what records are being preserved, whether duplicate records are held in more than one department, how (or whether) the records are necessary for meeting evidentiary and other requirements, whether specific statutory references to books and cards are adequate in current office environments, and other issues. This would lead to a more precise identification of the records and how long each series of records must be kept.

RECOMMENDATION:

A custodian of municipal land use permits may charge the same user and copying fees set for municipal clerks (such as those in 32 V.S.A. §1671) and the fees should be used to help preserve the permits.

GOAL: To develop user-based resources to help defray the costs of preserving land records and land use permits. These costs are associated with the cost of preservation, storage and use.

While zoning and planning offices perform many of the same records duties that clerks do, notably in maintaining files, allowing research in the records, and making copies they cannot recoup any of the associated costs through fees. Fees consistent with those accorded clerks would help maintain the records and the costs related to their use.

RECOMMENDATION:

The Vermont Municipal Clerks' and Treasurers' Association, the Vermont Bar Association, the Vermont Planners' Association, the Vermont Land Surveyors, and other organizations should provide cooperative and coordinated educational opportunities on the creation, indexing, maintenance, or use of municipal records.

GOAL: Provide a common understanding among the primary custodians and users of municipal land and land use records about respective recordkeeping and research requirements. That common understanding can be used to identify needs and courses of actions that are practical within the environments the custodians and researchers must perform their duties.

Records custodians and users often have different perspectives which can lead to misunderstandings or to the ineffective preservation and use of records. To establish and sustain a dialogue among the related professions can reduce opportunities for misunderstandings, enhance better appreciation of the respective needs of each, and provide a forum for seeking cooperative solutions and mutual support. For example, better understanding of the recording, filing or researching of records could lead to a mutually supported indexing system to the records.

APPENDIX C

REPORT ON THE CONDITION OF
MUNICIPAL RECORDS

1/15/99

REPORT ON THE CONDITION OF MUNICIPAL RECORDS

1/15/99

MANDATE:

Act 155, Sec. 66a of the 1998 Acts and Resolves instructed the Secretary of State to determine the condition of municipal records and the effectiveness of \$1.00 preservation surcharge (32 V.S.A. §1671) as a means of ensuring that records are being adequately preserved and restored.

EXECUTIVE SUMMARY:

This study is primarily concerned with those municipal records required to be permanently accessible. These records include minutes of meetings, vital records, and the wide range of records generally referred to as land records.

The condition of municipal records varies not only from municipality to municipality but also within the different series held by each municipality. While most survey respondents characterized the majority of their records as currently being in adequate condition (not needing immediate conservation work), there is a clear need for long range preservation and conservation planning. There is strong support for continuing the preservation surcharge and keeping it dedicated to preservation. The condition of municipal records and the effectiveness of the surcharge should continue to be monitored by the Secretary of State in order to develop better baseline information. Sustained educational opportunities to provide common understandings of preservation and conservation needs should be supported. Both the potential of new information technologies for helping preserve records and the special needs for preserving electronic records must be explored.

This report should be reviewed in conjunction with the report of the Committee on the Computerization of Land Records, mandated by Act 125 of 1998, which covers many related topics.

ENVIRONMENT:

Chapter II, Sec. 62 of the Vermont Constitution requires all deeds and conveyances of land to be recorded in the municipal clerk's office in their respective towns.

Municipal clerks, by statute and rule, must preserve and keep accessible a wide range of records, including all those associated with the marketability of title through Act 125 (1997, Adj. Session), the minutes of municipal boards, grandlists and vital records. Land records and grandlists are essential to the municipalities ability to raise revenue to support services.

Municipal minutes provide institutional continuity, evidence of actions and agreements, and public accountability.

Seventy-nine municipal clerks reported receiving a total of 152,945 records requests annually, most requests requiring the retrieval, handling and copying of numerous individual documents.

In 1997 land records supported over \$1.5 billion in economic activity.

Aggregated survey responses indicate that one-third of the records in municipal clerks' offices are considered in good condition; 12% are considered fragile and the remainder show some signs of wear and tear.

Of the 119 municipal clerks who responded to a 1998 survey from the Secretary of State's Office, 91.6% kept their records in vaults (63.79% of which were at least four hour fire rated) and 5.04% kept their records in fire proof safes.

Of the responding clerks, almost 22% had temperature controls for their vault and almost 14% reported humidity controls.

Almost 44% of the respondents reported their vaults would be completely filled within ten years. Anecdotally, several clerks reported that space limits will be reached quicker than estimated because of additional records being filed under new marketability of title requirements.

In 1996 the General Assembly allowed municipalities who voted to do so to add a \$1.00 surcharge to their recording fees to "be used solely for the restoration, preservation and conservation of municipal records." (Act 109, 1995. Adj. Session).

Of the municipalities responding to the survey, just over 79% had adopted the \$1.00 preservation surcharge.

Just over 69% of the overall respondents wanted the surcharge to remain dedicated exclusively to preservation.

Seven percent felt the surcharge should be used for a combination of preservation and operations (including being put into the general fund).

Almost 53% felt that the \$1.00 was adequate to meet preservation needs, while 31% were not sure.

The annual amounts collected under the surcharge ranged from Burlington's \$20,693 to Waltham's \$59.

The cost for restoring a single land record volume can range from \$1,000 to \$3,000.

Less than 11% of the clerks reported having long range preservation plans.

Just under 24% of the municipalities reported having long range conservation plans.

Forty percent of the respondents reported having on-going conservation programs.

Just over 51% keep computerized records.

Survey responses are aggregated and attached as part of this report.

THE CONDITION OF MUNICIPAL RECORDS: GENERAL COMMENTS

Determining the condition of municipal records is a bit like trying to nail jelly to the wall. Handling and copying, environmental conditions within the storage and office areas, and technological changes in record formats and media are constantly changing the condition of records. Natural disasters, such as floods, or other catastrophic events (fire, insect infestations, mold, etc) can rapidly and permanently alter the condition of records.

This report addresses two concepts: preservation and conservation. Preservation is all those steps, taken by the municipal office, that protect records and slow their deterioration. Conservation is the actual restoration of records and is usually performed by a conservation service. Preservation is most cost effective because it can avoid, or at least reduce, the need for expensive, item level restoration (restoring a single land record volume can run from \$1,000 to \$3,000).

Though this is not a preservation report, a sense of preservation concerns can be gained by looking at just two key factors: storage environments and use.

Storage environments are crucial to preservation. The rate of paper deterioration can be accelerated by a multiple of three simply by storing records at 78 degrees rather than 68 degrees.

High humidity causes the biological deterioration of records and encourages the growth of mold; low humidity reduces the flexibility of paper; light, including ultraviolet light, can result in fading, darkening, or actual structural breakdown of materials; dust and air borne pollutants cause physical and chemical damage to record material. Computer tapes and disks are even more dependent on good storage environments.

Records stored in volumes, as most land and vital records are, deteriorate faster than those stored in archival boxes and folders. Special storage devices, such as hanging map files, can help prolong the life of a record. Ink quality and the printing method effect longevity (ink jet printer manufacturers usually will not guarantee the longevity of the print beyond thirty years).

Even with ideal storage conditions, physical handling, photocopying (often of oversized records), and other factors associated with use, accelerate deterioration. Municipal records are in constant use.

Consider that in 1997 there were 35,362 property transfers in Vermont, each requiring use of existing municipal records and the recording of additional instruments. Lawyers and surveyors who work with land records estimate they may handle forty or more individual documents per title search or up to two hundred documents for boundary and survey research. The seventy-nine clerks who provided useable data on annual use reported 152,945 records requests, usually entailing more than one document per request. In other words, municipal records are handled, statewide, millions of times a year.

To cite an example of how rapidly use can change, consider what happens when a long held family farm or a paper corporation's forest land are developed. Surveys and deeds which may have not been touched for decades, suddenly receive constant use and copying as the land is sold, sub-divided, and re-sold.

Consequently the preservation and conservation of records are long term investments. There is a need for long range planning for records care, for sustained and progressive education to help inform local preservation and conservation decisions, and for sustained funding not only to support planning and education but also to recognize the constantly changing condition of records.

A municipality's permanent records should be viewed like any other capital expense, though unlike a road grader or office building, they usually cannot be replaced. The preservation surcharge is a step toward linking mandates to permanently maintain certain records with the need to fund that responsibility.

FINDINGS:

1. Most municipal records, according to self-assessments done for the survey, are in adequate condition.

The majority of municipal records were described by survey respondents as adequate (53% of the paper records were considered adequate; 61% of the maps; and 52% "other"). Adequate was defined on the survey as "showing some wear and tear, weakened but intact bindings, no need for immediate conservation." Only 35% of the paper records and 30% of the maps were described as good ("no rips, good binding, stable medium such as mylar or alkaline--`acid free'--paper, no fading of ink, etc.").

These responses, plus conversations with Vermont vendors providing conservation services, suggest that clerks are attempting to keep up with conservation backlogs within the available resources (now complemented by the surcharge). What is missing are municipal preservation and conservation plans; plans that could be implemented with surcharge funds.

As noted above, the survey results should not be considered hard data because there is no common understanding of preservation needs, nor tools for doing effective self-assessments. Lack of long range preservation plans means that records currently assessed as "adequate" and even "good" may soon need conserving. Finally, increasing

use, inadequate storage environments, and the other factors mentioned above make preservation and conservation on going processes.

2. There is broad support for the preservation surcharge.

Almost 80% of the survey respondents had adopted the surcharge and 69.49% wanted it to remain dedicated to preservation. An additional 7.62% wanted it to be used for preservation in combination with some other purpose.

The respondents who did not support the surcharge, or did not want it reserved for preservation, most often argued that they received adequate preservation funding through the municipal budget or that the keeping of a separate account for the preservation surcharge was too burdensome.

3. The voluntary nature of the surcharge creates administrative problems for non-surcharge municipalities.

Numerous state and private entities must record documents with municipalities around the state. There is no guide to which municipalities have adopted the surcharge so these entities simply include the preservation surcharge with the recording fee. Since the surcharge can only be applied if formally adopted by the municipality, and by statute must only be applied to preservation purposes, non-surcharge municipalities must return the dollar. The handling and postage associated with refunding the extra dollar wastes time and money.

4. It is too soon to determine the effectiveness of the surcharge.

The relative newness of the surcharge, the different dates it was enacted by municipalities, the limited baseline data on how much individual municipalities will raise annually, the disparity in amounts collected, and the lack of commonly understood preservation needs and strategies make it difficult to determine the effectiveness of the surcharge.

One sign of this is that almost a third of the survey respondents did not know if the dollar surcharge was adequate. They simply did not yet have enough experience. Similarly, less than half the municipalities collecting the surcharge have yet expended it on preservation purposes. In some cases this is because they have not raised enough to fund projects; in others it may reflect the lack of a plan to guide preservation or conservation expenditures.

As noted, despite the lack of experience, support for the surcharge remains high and there are numerous anecdotal accounts of how the surcharge has aided individual municipalities.

Measuring effectiveness was hampered by two other factors:

----lack of guidelines on what qualifies as restoration, conservation, and preservation under 32 V.S.A. §1671(c)(1). Types of questions we received ranged from whether the money could be spent to built vaults, provide shelving, or be applied to computerization (creating an index database to land records to cut down on the handling of index cards).

----the greatest problems, however are the lack of a common understanding of preservation practices and the lack of long range preservation and conservation plans. This is discussed below.

5. There is a need for sustained and progressive education on preservation and conservation

Long range preservation and conservation planning is essential not only to the continued accessibility of municipal archives, but also to the most effective use of funds generated by the surcharge and other sources. Currently, however, there are not sufficient tools for municipal clerks to create effective plans.

Survey responses, on-site visits to clerks' offices, and conversations with clerks underscore the need for sustained educational opportunities on preservation, conservation, and planning. The survey indicates, for example, that while less than a quarter of the municipalities have conservation plans, 40% are routinely spending money on on-going conservation efforts. What criteria are used in determining what to conserve, when? What criteria are used for determining which conservation steps to apply to individual items? Of equal concern, only 11% of the survey respondents had long range preservation plans.

The lack of a uniform standard for assessing record conditions was made clear by survey responses. Onsite visits to some municipal offices suggest that survey characterizations of conditions were more idiosyncratic than systematic. Even awareness of whether an office was on a flood plain varied. For example, among those who responded that their office was not on a flood plain was one office that is within a few dozen feet of a river and another which actually suffered some flood damage during 1998.

Without regular training sessions on preservation and conservation practices, it is unclear how municipalities can create plans which best meet their specific needs. During 1997-98 the Vermont Historical Records Advisory Board (VHRAB) provided small on-site survey grants through which municipalities could work with a professional archivist to develop preservation plans. VHRAB's program, though currently without funding, may be a useful model for providing direct, in-office support for improving records conditions, in addition to the traditional workshops and seminars (for more on the VHRAB program contact the State Archives).

RECOMMENDATIONS:

1. The preservation surcharge should be maintained.

Given the wide support for the surcharge among municipal clerks and the need for preservation and conservation funding, the surcharge should be maintained.

The General Assembly may wish to take testimony from clerks, and state and private entities which routinely have instruments recorded in municipal offices, on whether the preservation surcharge should be made uniform to end current confusion and the costs of returning one dollar overpayments.

2. The Secretary of State should continue to monitor the implementation of the surcharge in order to develop baseline information for determining its effectiveness.

As the findings indicate, it is still too soon to determine the effectiveness of the surcharge, while the current lack of common understandings, long range plans, etc skew survey results. Further information gathering and training is needed.

One area that needs to be monitored is the relative amounts raised for preservation among the municipalities. If municipalities with low recording rates, but a high need for preservation and conservation, are not adequately helped by the surcharge, other methods of assistance should be discussed.

3. The State Archives and the Public Records Division of Buildings and General Services should work with the Vermont Municipal Clerks' and Treasurers' Association to define what is allowable under the requirement that the surcharge be applied to "restoration, conservation and preservation".

4. The State Archives and the Public Records Division of Buildings and General Services should work with the Vermont Municipal Clerks' and Treasurers' Association to identify ways to provide sustained and progressive educational opportunities on preservation, conservation, and long range planning.

Possible partners in this effort include the Vermont Historical Records Advisory Board, the Extension Service, the Vermont League of Cities and Towns, and the Vermont Museum and Gallery Alliance's collections care program. Funding sources should be explored as well as whether preservation workshops can be self-supporting and linked to the clerks' educational accreditation program. The State Archives currently has some funding for workshops and can seek additional funding through matches with organizations such as the National Historical Publications and Records Commission.

5. If the Vermont Municipal Clerks' and Treasurers' Association adopts a certification program for record keeping in municipal offices, preservation and conservation should be included as part of the certification.

The Study Committee on the Computerization of Land Records recommended creation, and funding, of a commission to modernize the management of Vermont's land records. In addition it recommended that the proposed commission provide tools through which the Vermont Municipal Clerks' and Treasurers' Association could certify the record keeping of municipal offices. If this recommendation is adopted it makes sense to include preservation and conservation as part of the certification process. This is particularly important given the need to apply preservation decisions to electronic records at the time systems are being designed and implemented.

6. New information technologies, which can reduce the handling of physical records, should be explored as a way to conserve records.

Since use is a major cause of record deterioration, new information technologies, such as scanning, should be explored as a way to conserve the paper records (as well as enhance access). Such explorations, however, should proceed cautiously until there is a better understanding of the long term costs, risk management, and accessibility considerations of preserving electronic records mandated for permanent retention. Connecticut and other states provide models for use of scanning while preserving hard copies (paper or microfilm) until sufficient baseline information on long terms costs and risks can be developed.

Since municipalities are increasingly using computers to index records, compile minutes and grandlists and for other record keeping purposes, it is important that preservation and conservation programs and planning address the special needs of preserving electronic records.

APPENDIX D

DRAFT LEGISLATION TO CREATE VERMONT
MUNICIPAL LAND RECORDS COMMISSION

Introduced by

Referred to Committee on

Date:

Subject: Municipal and county government; municipal land records
commission

Statement of purpose: This bill proposes to establish the Vermont municipal land records commission to be attached to the office of the secretary of state for administrative purposes. The commission would consist of the secretary of state, the commissioner of buildings and general services, and the commissioner of information and innovation or their designees; three town clerks; one licensed land surveyor; two licensed attorneys; one paralegal; one municipal zoning administrator; one municipal legislator or chief municipal administrative officer; one mortgage banker; and one licensed real estate broker. The commission would be directed to submit to the general assembly by January 15, 2006 a report addressing long-term managerial issues related to the uniformity and modernization of municipal land records, including the accessing, filing, formatting, indexing, and preserving of the records, and financing the related costs. The commission's statutory existence would expire on August 31, 2010.

AN ACT RELATING TO THE ESTABLISHMENT OF THE VERMONT MUNICIPAL LAND RECORDS
COMMISSION

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 24 V.S.A. chapter 135 is added to read:

CHAPTER 135. VERMONT MUNICIPAL
LAND RECORDS COMMISSION

§ 5401. STATEMENT OF PURPOSE

Municipal land records are of vital importance to the economy and history of Vermont. This chapter establishes a municipal land records commission to address the significant long-term and systemic managerial issues associated with these documents.

§ 5402. DEFINITIONS

As used in this chapter:

(1) "Commission" means the Vermont municipal land records commission created in section 5403 of this title.

(2) "Municipal" means a city, town, unorganized town, incorporated village, or gore.

(3) "Municipal land record" means a document required to establish marketable title and which is filed or recorded in the records of a municipality, including all documents filed or recorded pursuant to section 1154 of this title.

§ 5403. MUNICIPAL LAND RECORDS COMMISSION; CREATION AND
COMPOSITION

(a) There is created the municipal land records commission which shall be attached to the office of the secretary of state for administrative purposes and whose appointed members shall serve for three-year terms, except for initial terms as provided for in subsection (b) of this section.

(b) The commission shall consist of the secretary of state, the commissioner of buildings and general services, and the commissioner of innovation and technology, or their designees. In addition, the governor shall appoint, with the advice and consent of the senate, three municipal clerks, to be recommended by the Vermont Municipal Clerks' and Treasurers' Association, one representing municipalities with a population of greater than 10,000 residents for an initial term of two years, one representing municipalities with a population of greater than 3,000 residents but less than 10,000 residents for an initial term of three years, and one representing municipalities with a population of less than 3,000 residents for an initial term of four years; one licensed land surveyor to be recommended by the Vermont Society of Land Surveyors for an initial term of three years; two licensed attorneys to be recommended by the Vermont Bar Association, one of whom shall be familiar with real estate title practices for an initial term of two years and one of whom shall be a representative of the title insurance industry for an initial term of four years; one paralegal to be recommended by the Vermont Paralegal Organization for an initial term of three years; one municipal zoning administrator to be recommended by the Vermont League of Cities and Towns for an initial term of three years; one municipal legislator or chief municipal administrative officer to be recommended by the Vermont League of Cities and Towns for a term of two years; one banker to be recommended by the Vermont Mortgage Bankers Association for an initial term of four years; and one licensed real estate broker to be recommended by the Vermont Association of Realtors for a term of two years.

(c) The designated organizations shall submit their recommendations for commission members to the governor on or before July 31, 2004, and the governor shall appoint the members of the commission by September 15, 2004.

In appointing individuals to this commission, the governor shall seek geographic diversity.

(d) The commission shall convene its first meeting no later than November 1, 2004, at which meeting it shall designate a chair and vice chair.

(e) The members of the commission who are not employees of the state of Vermont shall be entitled to per diem compensation as provided in section 1010 of Title 32.

Sec. 2. 32 V.S.A. § 1010(a) is amended to read:

§ 1010. MEMBERS OF CERTAIN BOARDS

(a) Except for those members serving ex officio or otherwise regularly employed by the state, the compensation of the members of the following boards shall be \$50.00 per diem:

* * *

(30) Firefighters' survivors benefit review board

(31) Municipal land records commission.

Sec. 3. COMMISSION REPORT

On or before January 15, 2006, the commission shall submit a report to the general assembly that proposes:

(1) A plan for uniformity and modernization of municipal land records.

(2) A uniform system of indexing municipal land records which may include the use of numerical identifiers.

(3) Standards for formatting, particularly documents for filing and recording, and preserving municipal land records.

(4) Municipal land records continuing education requirements for municipal officials and corresponding compliance requirements for municipalities.

(5) A system for financing all facets of municipal land records management on a sustainable basis.

(6) The future administrative authority of the commission.

Sec. 4. AVAILABILITY OF FUNDS

Any amount remaining at the end of fiscal year 2004 in the appropriation made to the study committee on municipal records in Sec. 49b(e) of No. 66 of the Acts of 2003 shall be made available for the use of the commission on municipal land records during fiscal years 2005 and 2006.

Sec. 5. APPROPRIATION

There is appropriated to the office of the secretary of state the sum of \$30,000.00 to provide administrative and research services to the commission, including the hiring of staff or consultants. Any funds remaining at the end of fiscal year 2005 shall carry forward into fiscal year 2006.

Sec. 6. REPEAL

Secs. 1 and 2 of this act shall be repealed as of August 31, 2010.