

Land Use Planning in Vermont

An Overview

Commission on Act 250
October 25, 2017

Presented in Collaboration with:

VT Association of Planning & Development Agencies
VT Dept. of Housing & Community Development
VT League of Cities & Towns
VT Natural Resources Council
VT Planners Association

Abridged version presented February 13, 2020, by Peg Elmer Hough and Peter Gregory, to the Senate Natural Resources and Energy Committee

Village Improvement Societies

It Isn't Your Town--It's You!
By R. W. Glover

If you want to live in the kind of a town,
Like the kind of a town you like
You needn't slip your clothes in a grip
And start on a long, long hike.
You'll only find what you left behind,
For there's nothing that's really new.
It's a knock at yourself when you knock
your town.
It isn't your town—it's you!

Real towns are not made by men afraid,
Lest somebody else gets ahead.
When every one works and nobody shirks
You can raise a town from the dead.
And if, while you make your personal
stake,
Your neighbor can make one, too,
Your town will be what you want to see.
It isn't your town—it's you!

COMPLIMENTS OF
NEIGHBORHOOD CLUB
ARLINGTON, VT.



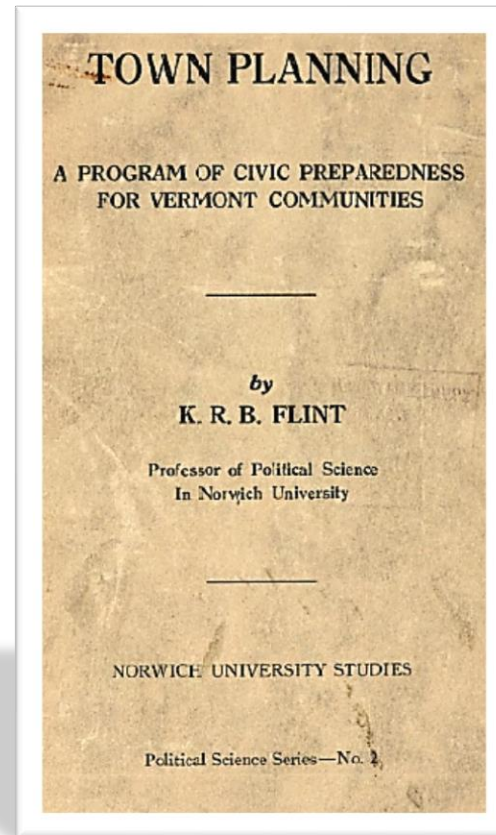
Source: *The Rural Awakening: The Village Improvement Movement in Early 20th Century Vermont*. Diane Shaw; Graham Foundation (2010)
<http://www.grahamfoundation.org/>

More “orderly development” 1921

...every city, village and cross-roads hamlet in Vermont has from one to a score or more of organizations and societies ... really eager to do something to promote the welfare of the community. But there is no team work on the part of these groups. Waste of energy and duplication of effort stand in the way of progress...

Much of this efficiency can be eliminated by a well-defined community plan...

--K.R.B. Flint



To prepare or acquire a plan for the future development of the city, town or incorporated village which shall be based primarily upon convenience, utility and public welfare.

No. 107.—AN ACT TO PROVIDE FOR PLANNING COMMISSIONS IN CITIES, TOWNS AND VILLAGES.

[H. 111]

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

SECTION 1. *Creation and membership.* Any city, town or incorporated village is hereby authorized to create a

94

PUBLIC ACTS

[No. 107

commission to be known as the municipal planning commission, by resolution of the voters at the annual city, town or village meeting or at a special meeting duly warned for the purpose.

When such a commission is created, it shall consist of five persons. The mayor, chairman of the board of selectmen, president of the village or chairman of the board of village trustees, as the case may be, shall be ex officio one of the members of the commission during his term of office. The other four commissioners shall be appointed in cities, by the mayor; in towns, by the board of selectmen; and in villages, by the village trustees. Said appointed commissioners shall be appointed for the term of four years, except that when the commission is created, one commissioner shall be appointed for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Any appointment to fill a vacancy shall be for the unexpired term.

SEC. 2. *Expenses; assistance; reports.* The body creating a municipal planning commission shall, by ordinance or resolution, provide what compensation, if any, each of such commissioners shall receive for his services. The commission shall have authority to employ such expert and clerical assistance as may be necessary to accomplish the purposes for which it was created, provided that the total cost for the same shall not exceed the appropriation that may be made by the city, town or incorporated village for the use of said commission. Each city town or incorporated village is hereby authorized to make such appropriations as it may see fit for such compensation and assistance, such appropriation to be made by those officers or bodies in such city, town or incorporated village having charge of the appropriation of the public funds.

The commission shall make an annual report to the body which created it.

SEC. 3. *Powers.* The commission shall have power ~~except as otherwise provided by law:~~

1. To prepare or acquire a comprehensive plan for the future development of the city, town or incorporated village which shall be based primarily upon convenience, utility and public welfare.

When said plan shall be adopted by the voters of a city, town or incorporated village at the annual city, town or village meeting or at a special meeting duly warned for the purpose, it shall be known and designated as the official municipal plan; and no highway, street, bridge, viaduct, park, playground, square, statue, monument, street fixture, park fixture, sewerage system, water system, public building, or any other public improvement proposed to be erected

No. 108]

PUBLIC ACTS

95

or constructed wholly or in part from public funds and not included in said plan as adopted by the municipality, shall be authorized to be erected or constructed within the municipality until the location of the same has been submitted to the planning commission for its approval or disapproval.

Said plan shall be deemed to be approved by the commission if reasons for disapproval are not transmitted to the city council, selectmen, or village trustees as the case may be, within thirty days after they are received by the commission. In case of disapproval, the commission shall transmit its reasons for disapproval in writing to the city council, selectmen or village trustees who may, by a majority vote, overrule such disapproval.

2. From time to time to prepare and recommend to the proper officers of the municipality such amendments to the official municipal plan as in its judgment shall be necessary or desirable.

3. To recommend to the governing authority of the municipality such ordinances, resolutions or bylaws for the division of the municipality into districts or zones based upon the height, ground area and use of buildings and structures as may be consistent with existing law.

SEC. 4. This act shall take effect from its passage.

Approved February 22, 1921.

Vermont Planning Act (1921)

Credit: VT DHCD

Discussion Conference

WHAT NEXT?

in State-wide and Local Programs

Vermont State Chamber of Commerce

WEDNESDAY, JUNE 29, 1938

RUTLAND, VERMONT

Afternoon Session: 3:00 P. M., D. S. T.

Knights of Columbus Hall, Merchants Row, Rutland

● KEEPING "UNSPOILED VERMONT" UNSPOILED

PROTECTING SCENIC AND PROPERTY VALUES THROUGH PLANNING AND ZONING

Introductory Remarks General Discussion by those present of Vermont experiences
and problems in connection with Planning and Zoning.

NORD W. DAVIS

Should Towns, Villages, Cities consider adopting Planning
and Zoning Enabling Acts, at next Town Meeting?

LESSENING STREAM AND LAKE POLLUTION

Introductory Remarks General Discussion of first practical steps to be taken in the
direction of lessening stream and lake pollution in Vermont
Towns, Villages, Cities.

J. J. FRITZ

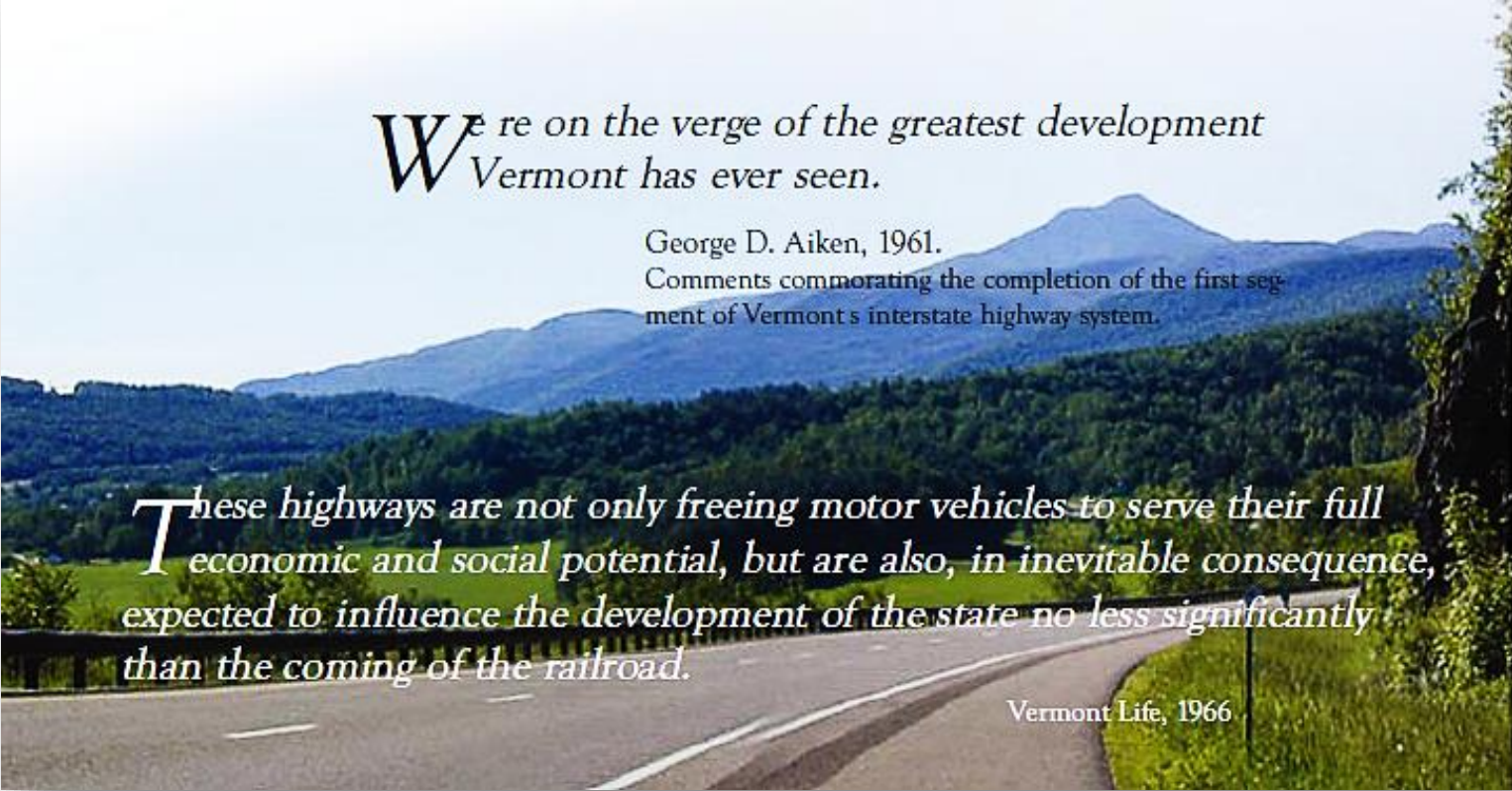
HIGHWAY SCENERY PROBLEMS — BILLBOARDS

Introductory Remarks General Discussion of methods and activities to solve the
Highway scenery problems.

HORACE BROWN

The 60's brought rapid change





*We re on the verge of the greatest development
Vermont has ever seen.*

George D. Aiken, 1961.

Comments commemorating the completion of the first segment of Vermont's interstate highway system.

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

Vermont Life, 1966

Source: *Vermont Interstate Interchange Planning and Development Guidelines*, VT DHCA (2004)

Central Planning Office (1965)

- **Context: HUD 701 Program** (federal planning \$)
- **Established by Governor Phil Hoff**
 - Orchestrate state, regional and local growth management
 - Technical planning assistance
 - Research, reports, legislation
- **Instituted as the “State Planning Office” (1970)**
 - State land use planning under Act 250
 - Coordinate state agency planning
 - Federal grant administration
- **Technical assistance duties assigned to ACCD (1972)**
- **Office of Policy Research and Coordination (1985)**
- **Eliminated under Dean Administration (1995)**



Planning & Development Act (1968)

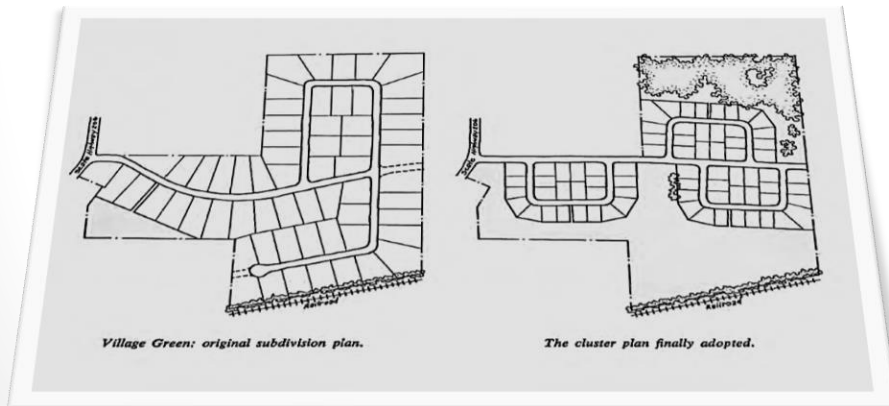
24 V.S.A. Chapter 117 aka “**Chapter 117**”

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

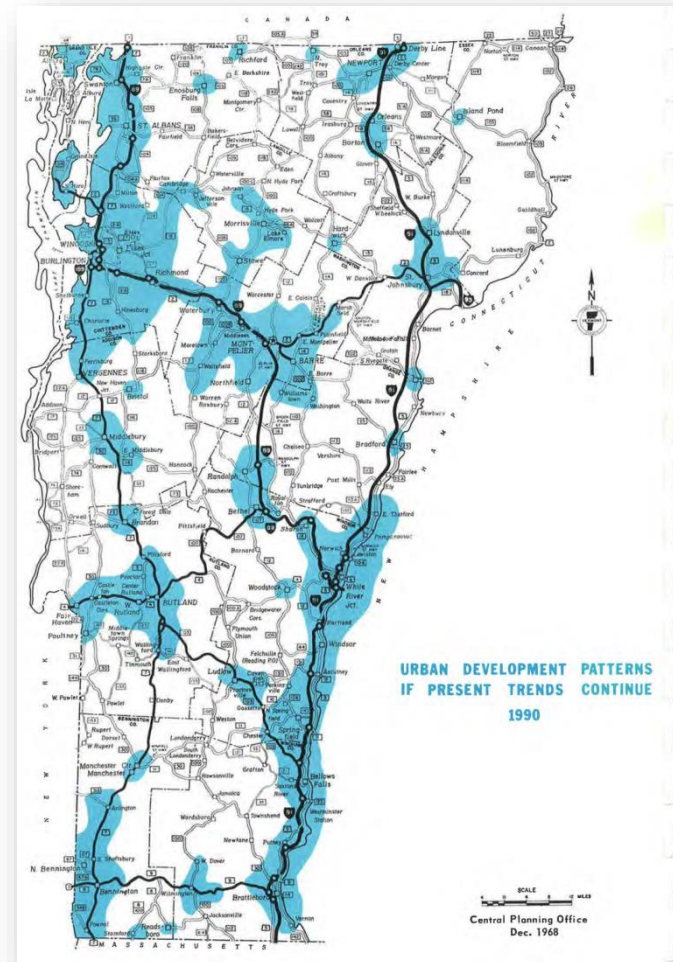
Vision and Choice (1968)

VT Planning Council:

- State planning goals
- Pattern of development —
"Options for the Future"
- Development guidelines

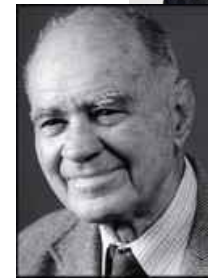


Clustering



Gibb Commission Report (1970)

If land development in the state is to be properly controlled, it is essential that there be a comprehensive state development plan...



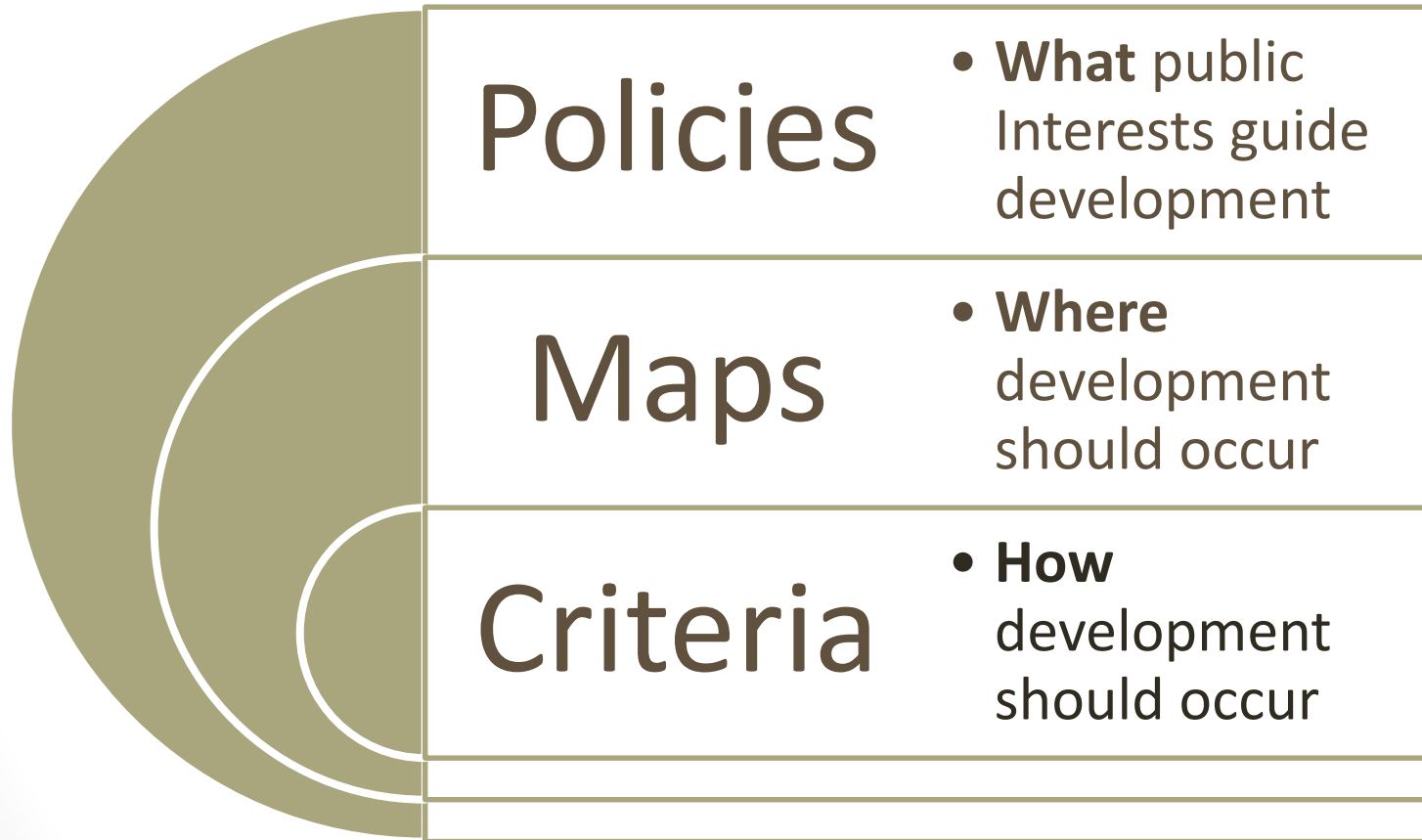
Recommendations:

- State Development Plan
- Statewide Development Regulations –
“within which local regulations can function”
 - Land subdivision, development
 - Statewide zoning: high elevations, flood plains
 - Environmental regulations

Act 250: State Land Use Act (1970)

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

State Land Use Act (Act 250)



Capability & Development Plan (1973)

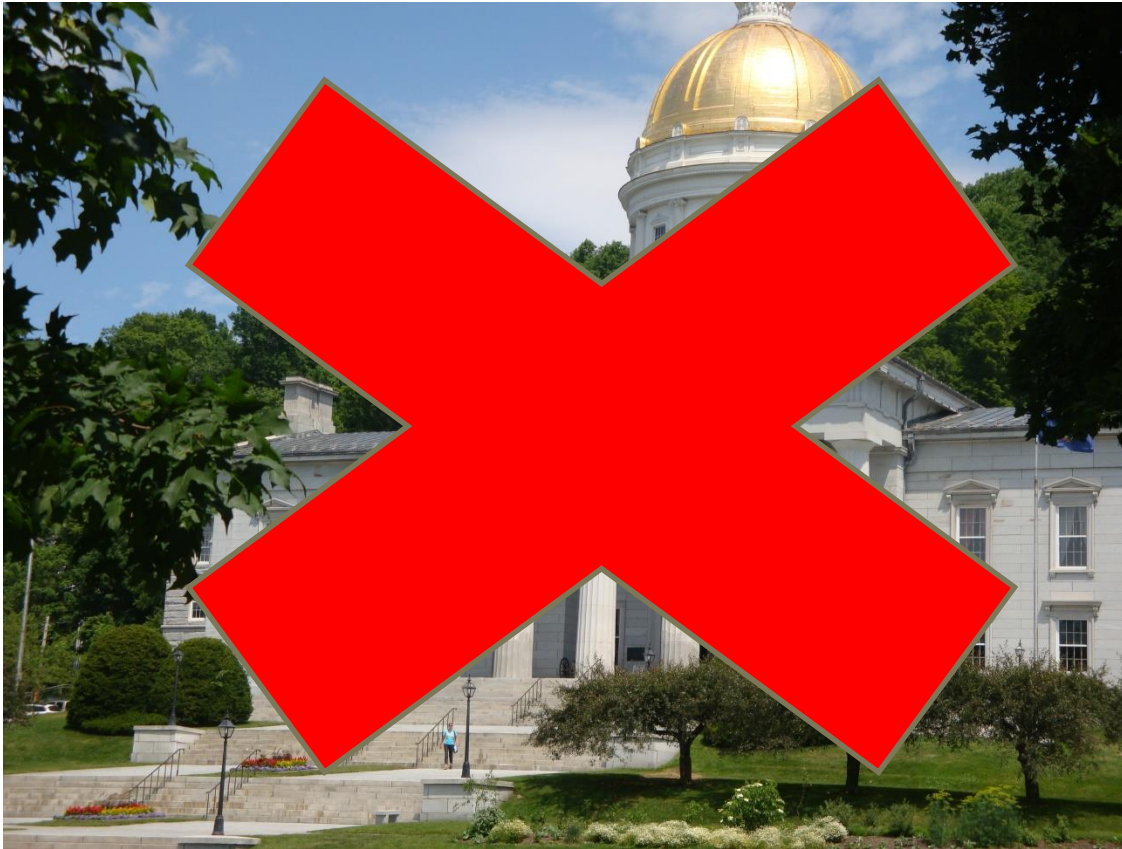
Statement of Legislative Intent and Findings (1973, No. 85 § 7):

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

Those “findings” are 19 policy statements:

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

“No” to State Land Use Plan



Abandoned 1976, Repealed 1984

Vermont's A250

Heroics of the first 25 years



Pyramid Mall, Williston
1977-82



Necessary Wildlife Habitat

Parker's Gore, Killington Ski Resort
'82-92



Southview 1986-
1992

Protecting Public Investments: Scenic Trails and Highways



SCORP Scenic Corridor



Long Trail

Ski Resorts: Master Planning and Secondary Impacts



Creative Solutions and Standards

Cabot
Creamery



Quechee ~1985

Rebuttable presumptions



Stowe Club, RIPPLE 1986

Chipping Away: The next 25 years

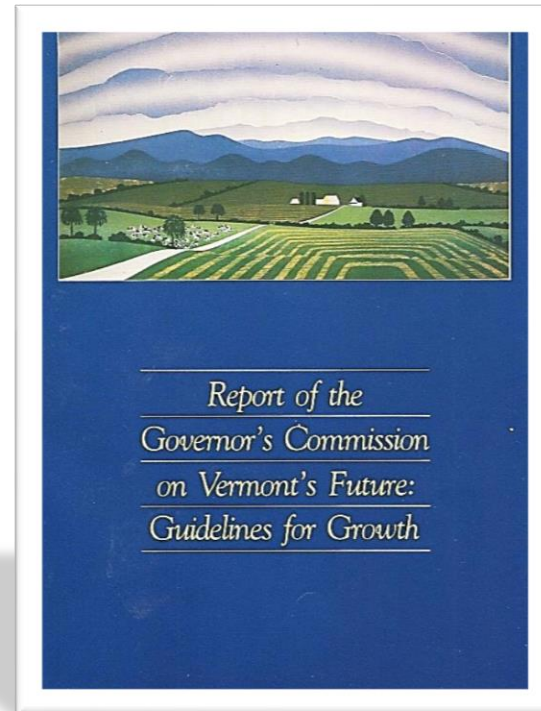


Guidelines for Growth (1988)



In order to maintain the essential character and ethic of Vermont's built environment, there should be a clear delineation between town and countryside through effective planning and supportive land development .

Costle Commission



Guidelines for Growth

A Process to Guide Vermont into the Future...

Key Finding:

A coordinated, comprehensive planning process and policy framework must be established to guide decisions by local governments, regional planning commissions and state agencies.

Growth Management Act (Act 200)

Framework for coordinated planning:

- State planning goals (32)
 - State agency “Act 200” plans (17)
 - Regional review/approval of municipal plans
 - Regional confirmation of municipal planning
 - Council of Regional Commissions—state, regional plans
 - Municipal and Regional Planning Fund
- *State, regional, approved municipal plans must be “consistent” with state planning goals, and “compatible” with other plans.*

State Planning Goals (24 V.S.A. § 4302)

32 Goals, Policy Statements (later “reduced” to 12, and then, even later, 2 more added)

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

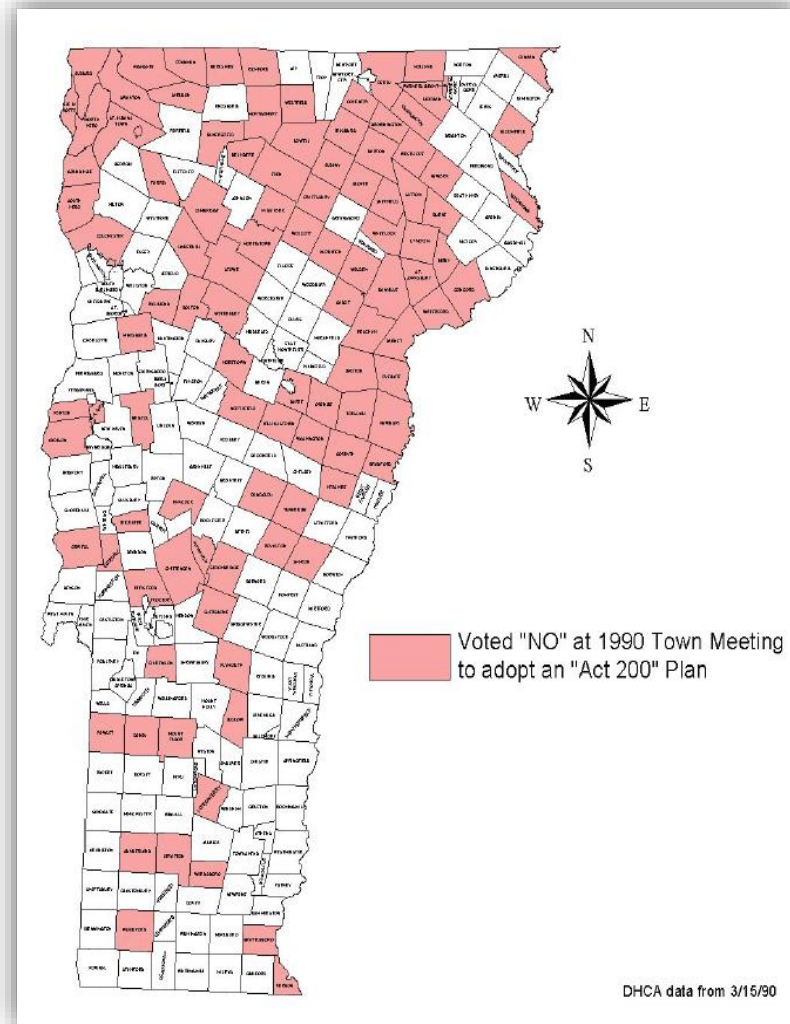
...

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

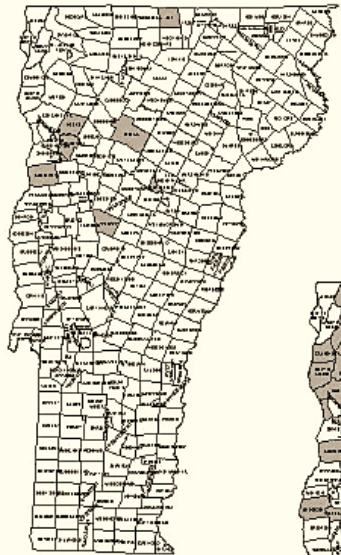
(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development **according to the principles set forth in 10 V.S.A. § 6086(a).**

“No” to Act 200 Plans...

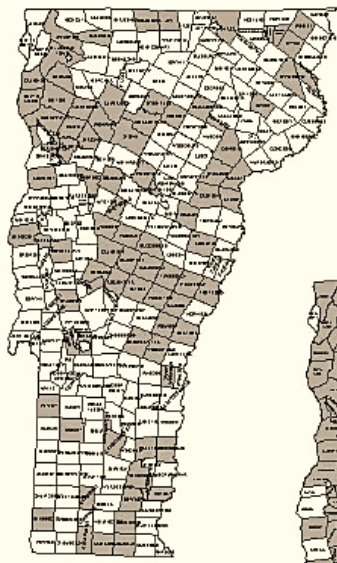
Towns voting “no”
to Act 200 planning
in 1990...



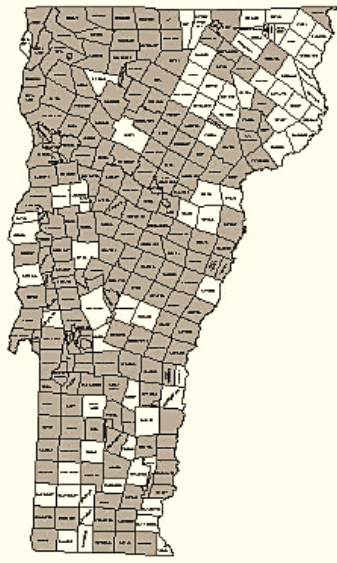
Approved Municipal Plans



1991



1997



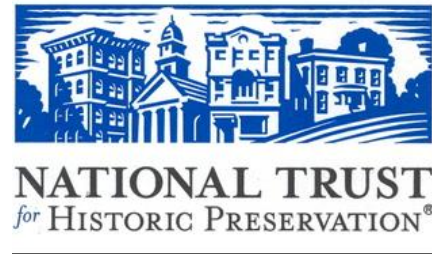
2003

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

Endangered Vermont (1993)

Threats:

- Commercial strip development
- Leapfrog housing development
- Big box development

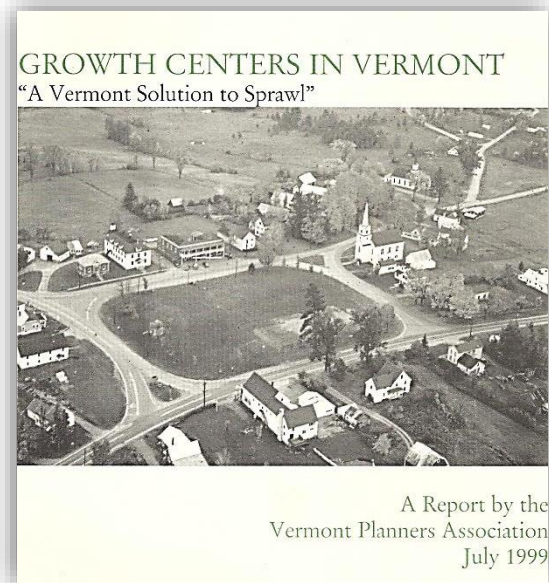


Smart Growth Vermont

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



Gov. Howard Dean, MD



Downtowns, Village Centers

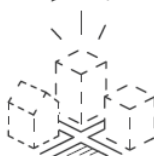
Core Designations



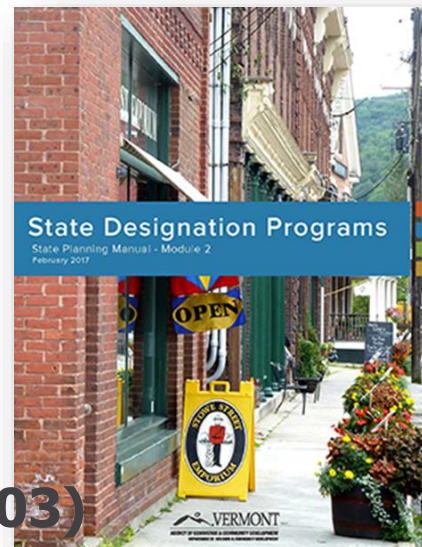
Village Centers (2003)



Downtowns (1998)



New Town Centers (2003)



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



Neighborhood Development Areas (2013)



Growth Centers (2006)

Settlement Patterns



Act 250 still doing heavy lifting on tough land use decisions

Permit Reform (2003)

Chapter 117 Update: Plan Implementation

- Regulatory tools
- Nonregulatory tools

Codify “Consistency Doctrine” in statute:

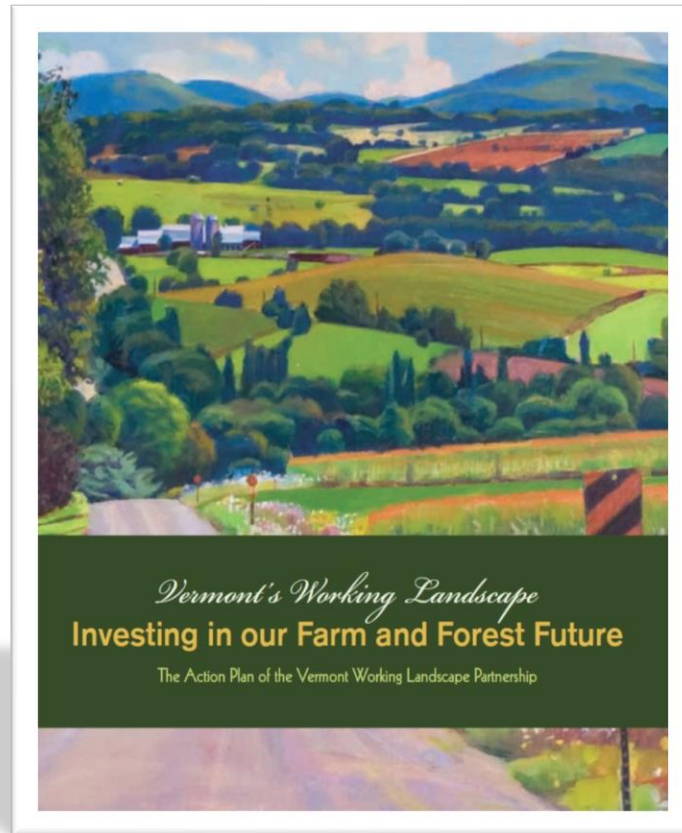
All regulatory and nonregulatory tools adopted to implement a plan “shall be in conformance with the plan...” [§ 4401]

➤ *As “conformance with the plan” is defined in statute...*

Working Landscape

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

VT Working Landscape Partnership (2011)



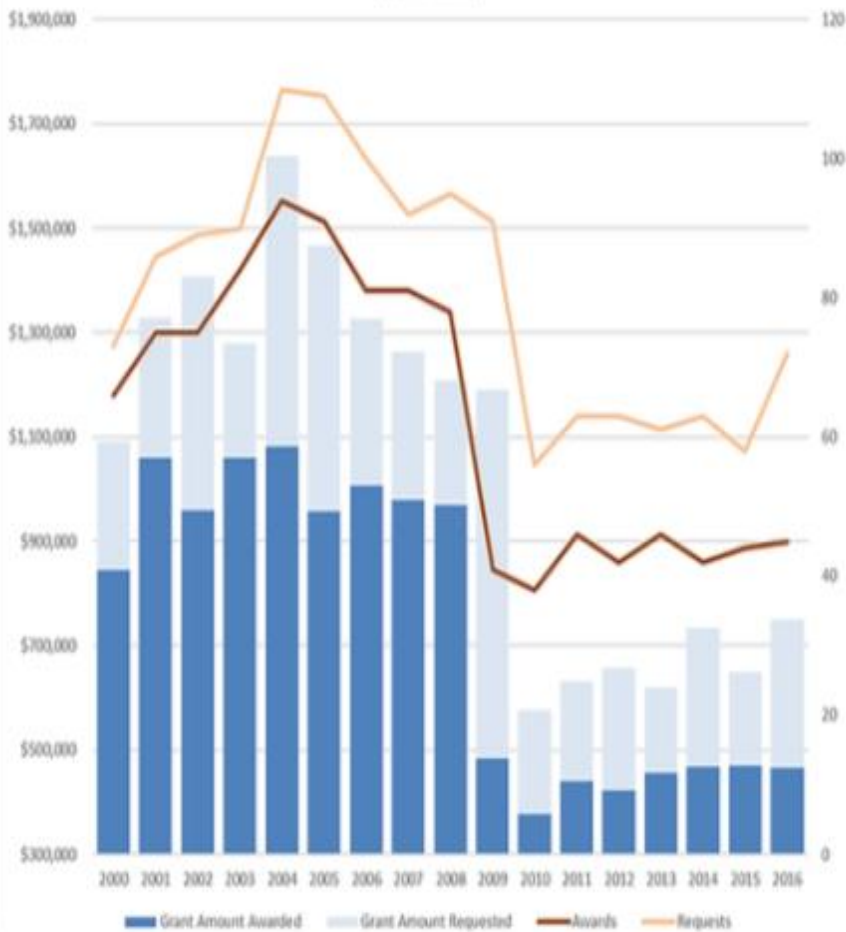


Chittenden County RPC

PLANNING TODAY

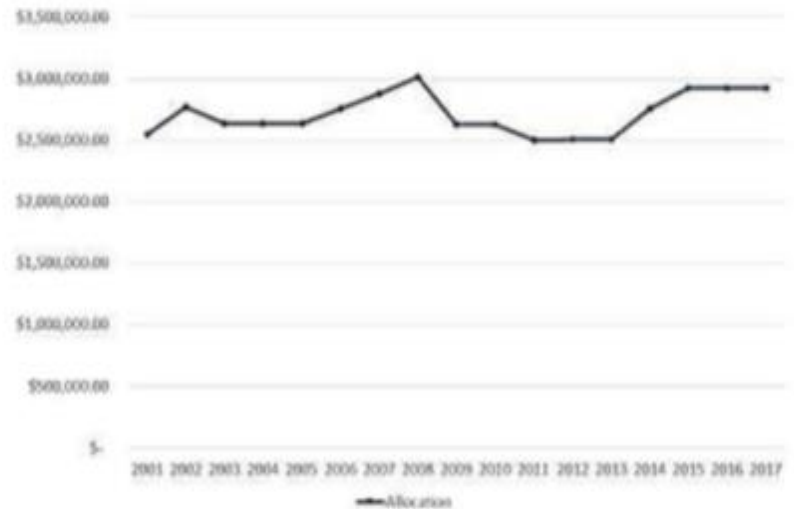
Municipal & Regional Planning Fund

Municipal Planning Grants FY2000-FY2016
(2014 Dollars)



Notwithstanding...

Regional Planning Commissions (RPCs)



Planning Info, Data Sources

- State Data Center, Data Collaborative – UVM Center for Rural Studies
 - Vermont Center for Geographic Information—ACCD
 - Planning manual, guides, program information—DHCD
 - Population data, vital statistics—VDH
 - School Data – Education
 - Housing Data—VHFA
 - Tax, income data—Tax Department
 - Natural Resource Atlas, Biofinder, databases, guides—ANR
 - Transportation system information, maps, data—VTrans
 - Economic data, profiles—VDL, Ag Agency, VT Food Atlas
 - VT Planning Information Center (website)
 - Vermont Insights—Building Bright Futures
 - Community Energy Dashboard—Energy Action Network, VSJF
- ***No central warehouse; no consistent/adopted population, housing, employment projections for use in local, regional state planning***

State Planning

- **State Planning Office**—still on the books, does not exist (3 V.S.A. § 2104)
- **State Agency Planning** (3 V.S.A. Ch. 67) – plans must be consistent with state planning goals, compatible with regional, approved municipal plans (still on the books, no longer in effect?)
- **Agency, Department Plans** – as required under federal programs, state statutes, or by current administration

State Plans

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

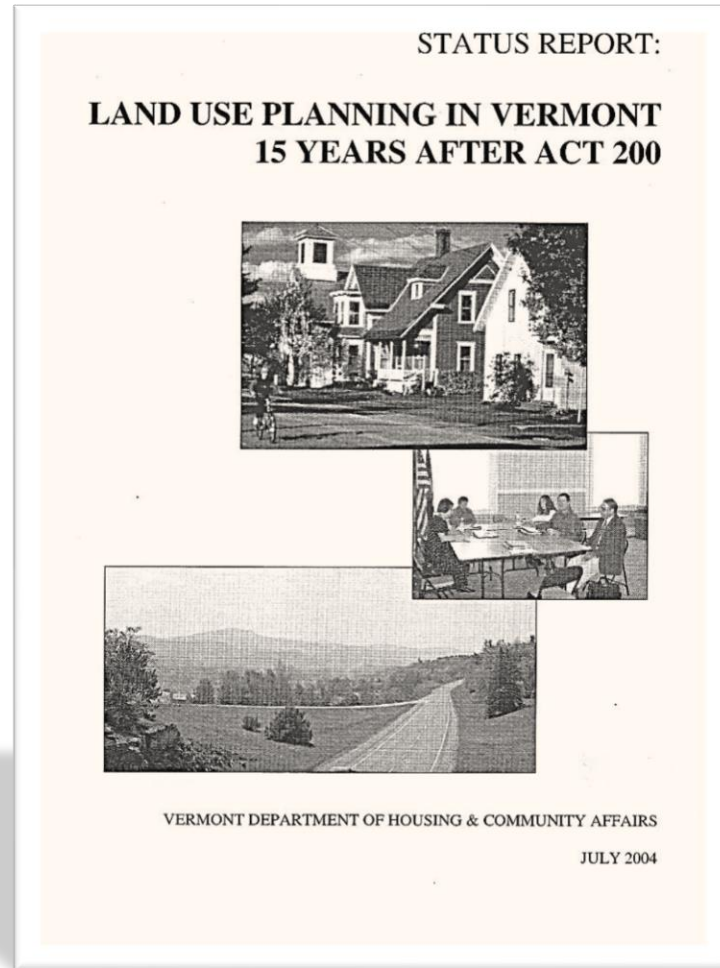
Act 200 Assessment (2004)

Good:

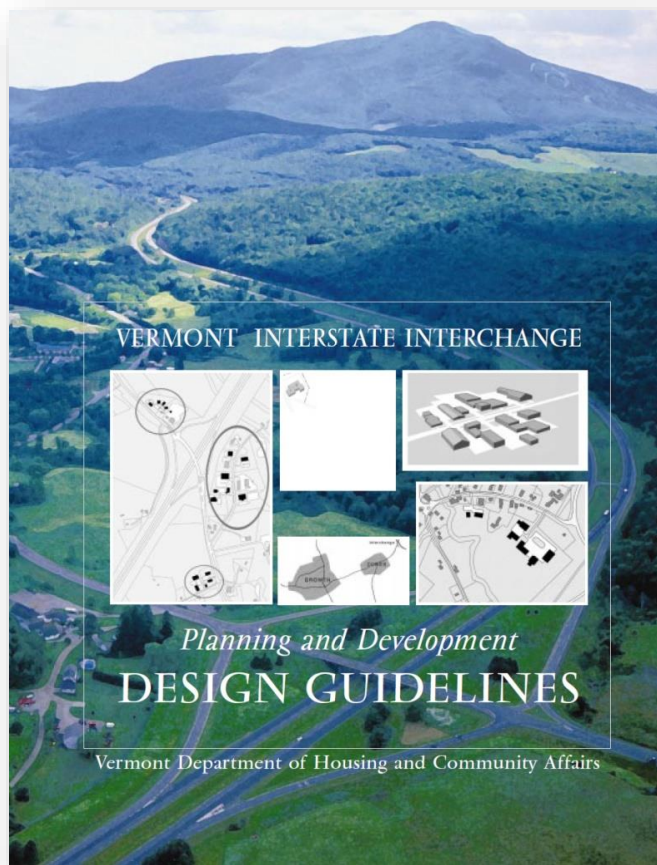
- Goals – framework
- State planning \$
- GIS mapping
- Improved municipal, regional plans

Not so good:

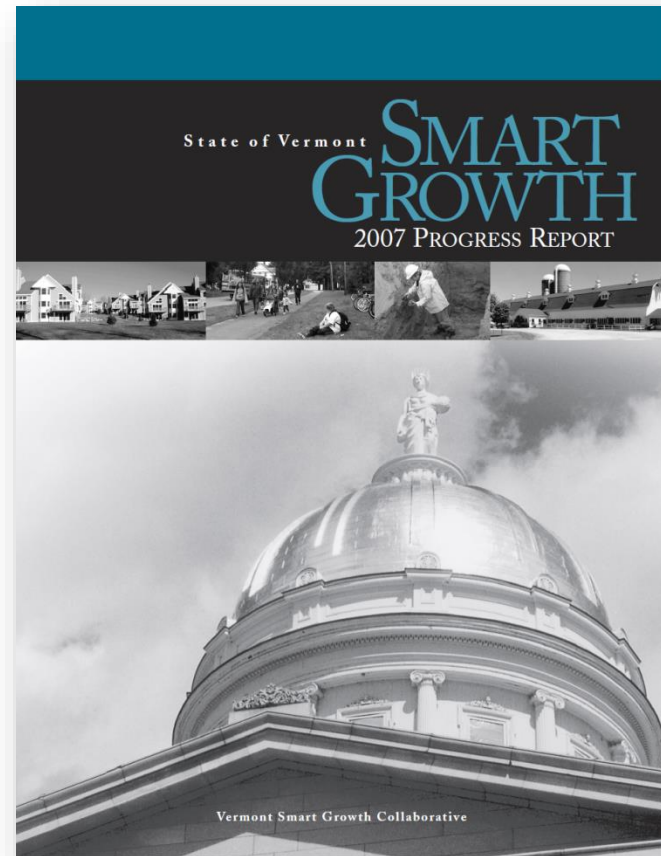
- No coordination
- CORC (repealed 2009)
- State agency plans (consistency w/goals)



State Policies, Programs

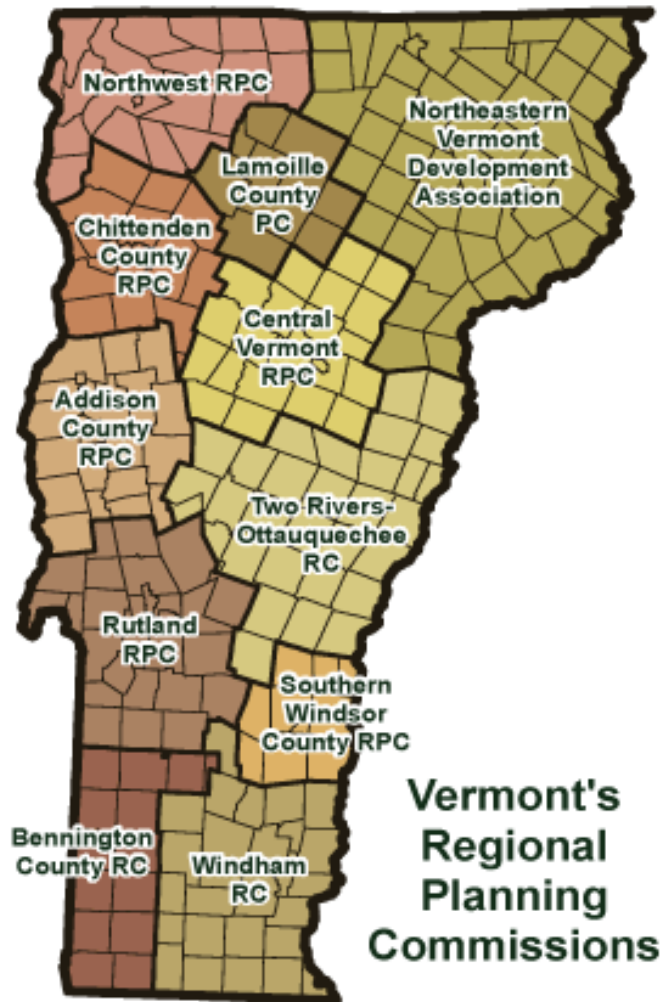


VT DHCA (2004)



VT Smart Growth Collaborative (2007)

Regional Planning



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

Regional Programs

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

Municipal Planning

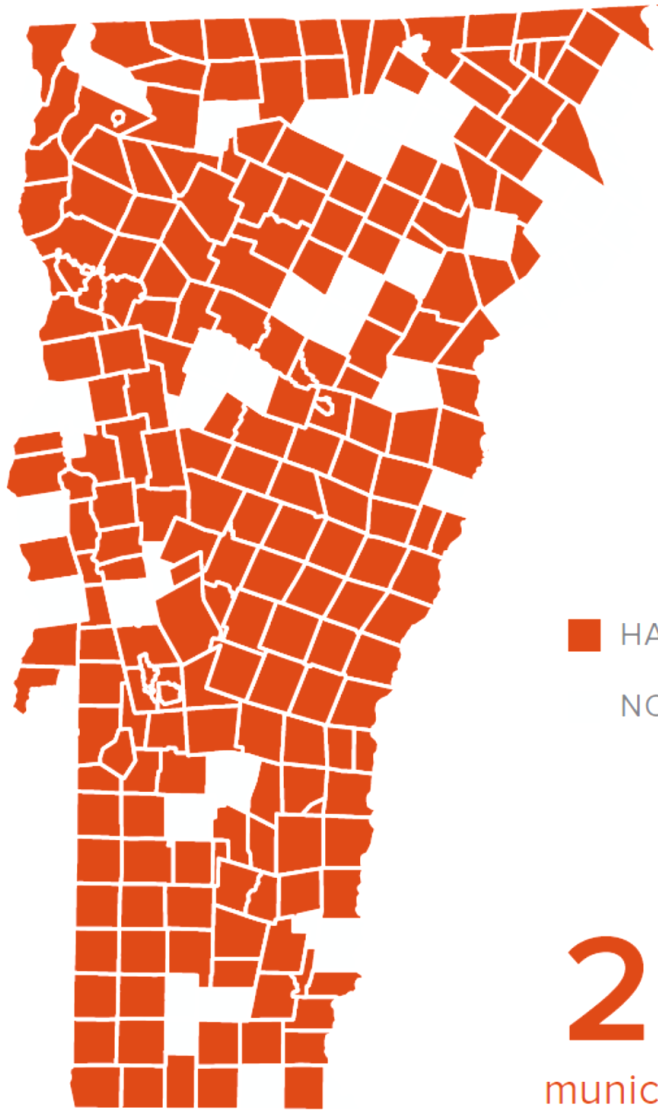
Voluntary – communities are not required to plan

- Planning commission—appointed or elected volunteers
- Commission – prepares plans, bylaws, improvement programs
- Plan—updated/readopted every 8 years

Must have a plan in effect to:

- Adopt/update zoning, subdivision regulations
- Apply for state designations, planning grants
- Be considered in Act 250 (Criterion 10), Section 248
- Conduct “Local Act 250” reviews

➤ ***Local planning capacity, staff, resources vary greatly***



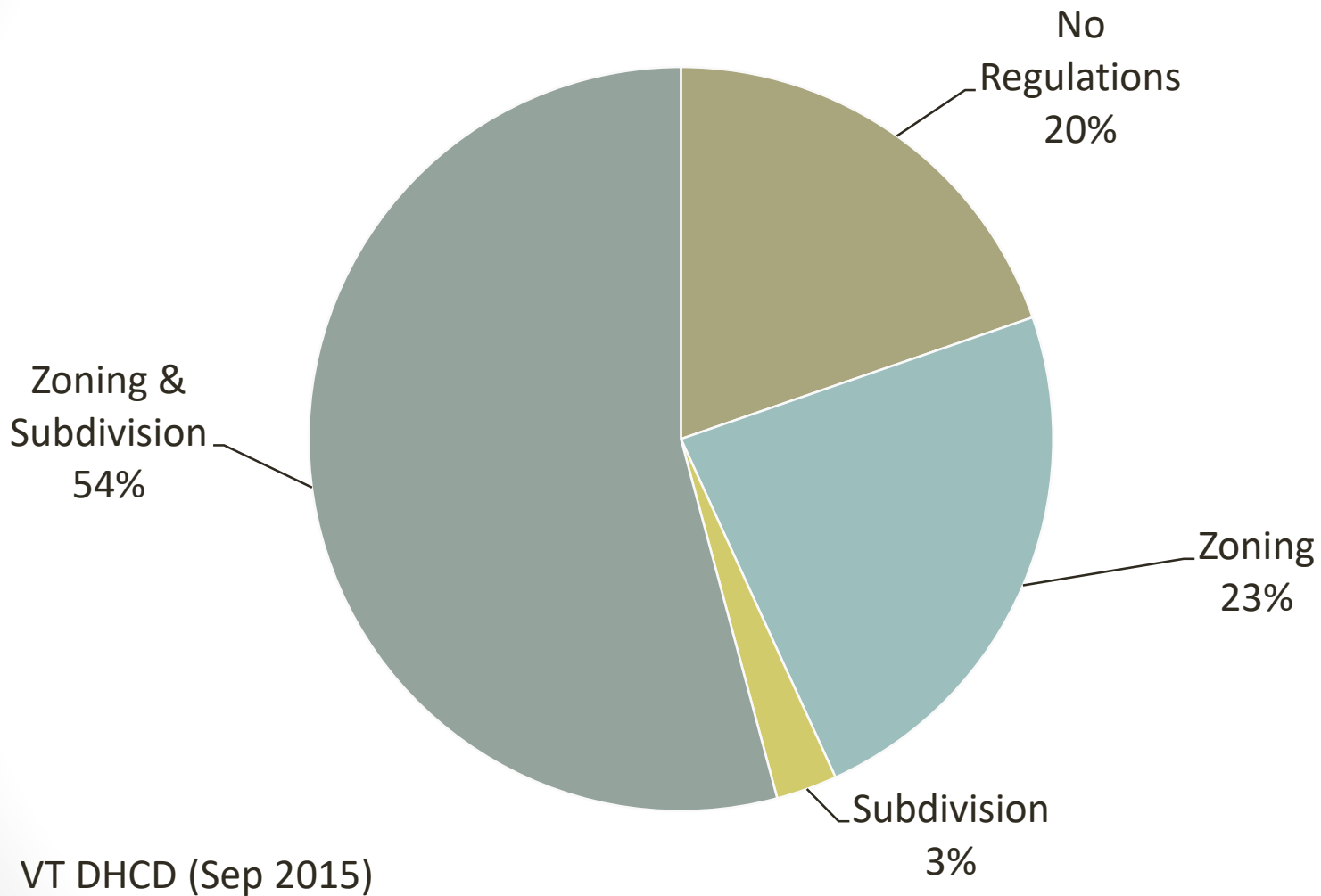
Municipal Plans

VT DHCD (Jan 2017)

- HAVE A PLAN
- NO PLAN

209
municipal plans

Municipal Bylaws



State Designations: 159



Village Centers: 123



Downtowns: 23



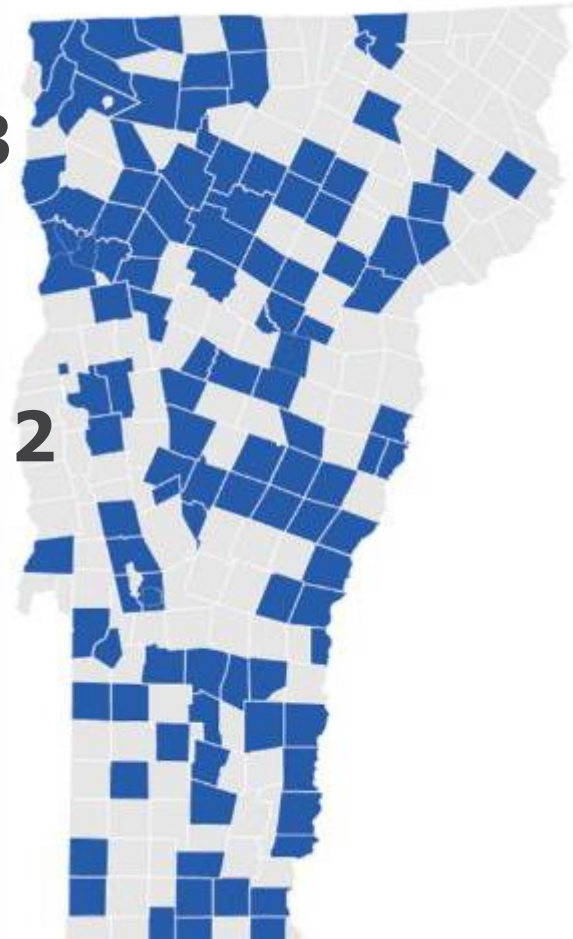
New Town Centers: 2



Neighborhoods: 6

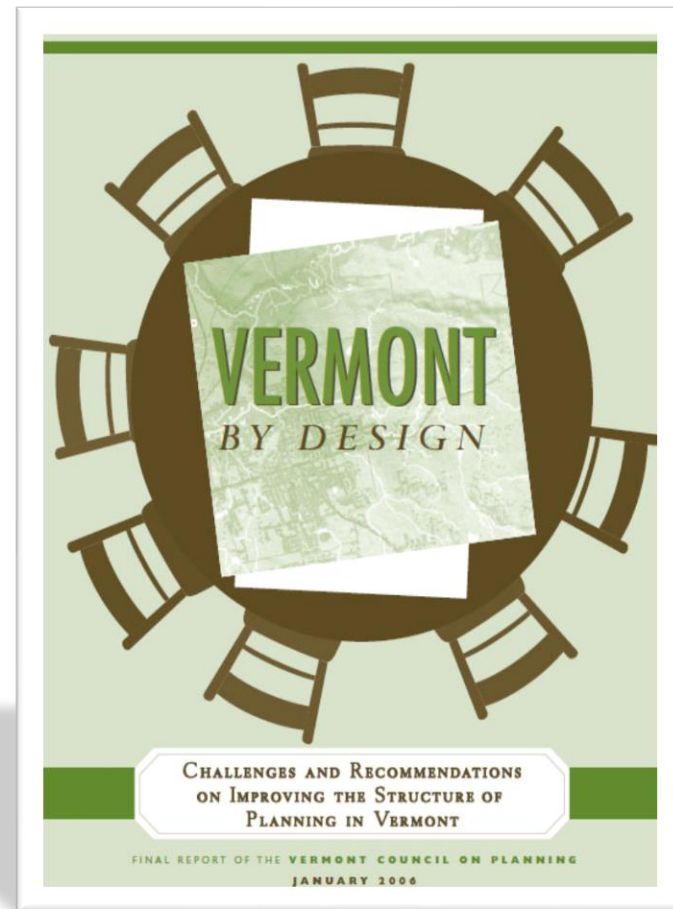


Growth Centers: 6



Vermont by Design (2006)


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



Regional Planning Assessments

VAPDA

Vermont Association
of Planning and
Development Agencies
2011 Statewide Strategic Assessment



Prepared by the
National Association of Development Organizations
June 2011



**REGIONAL
SERVICES REPORT**
January 15, 2011

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

Municipal Planning Surveys



2016 Municipal Planning Grant Survey

Vermont Department of Housing and Community Development
June 1, 2016

 **VERMONT**
AGENCY OF COMMERCE & COMMUNITY DEVELOPMENT
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

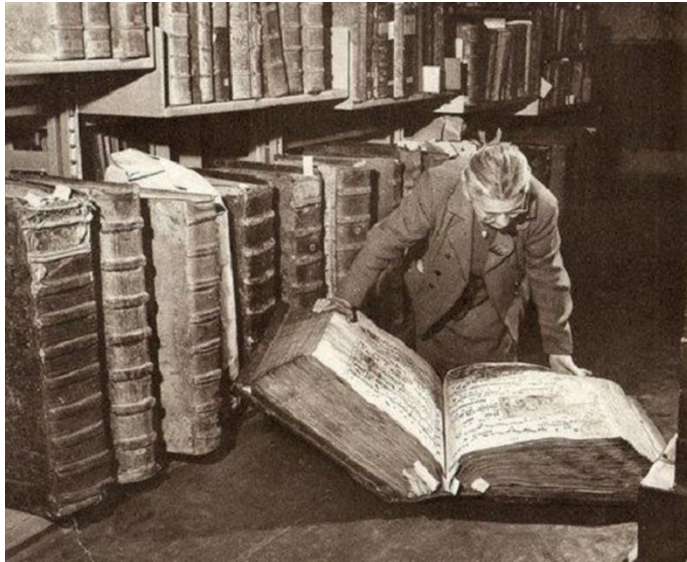
In Sum

Planning today is...

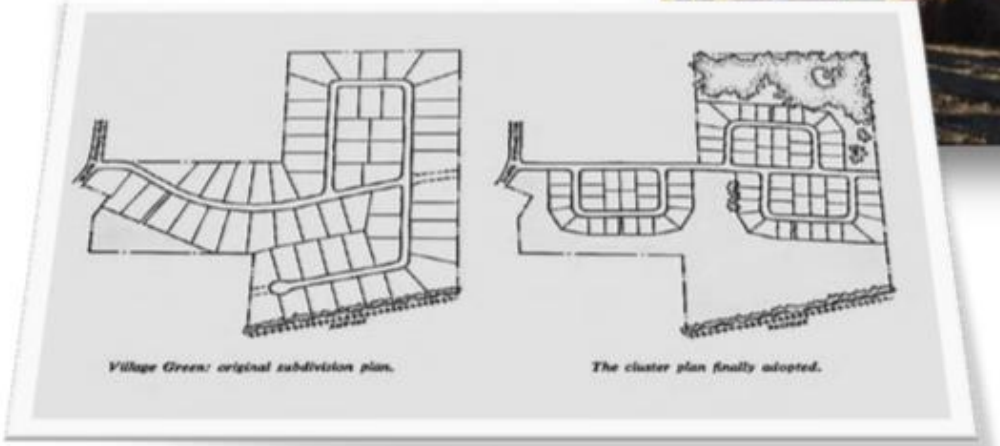
- More comprehensive
- More technical, sophisticated
- More complicated
- More legally driven

Related challenges...

- No state coordination
- Planning capacity—volunteers, staff, resources, training
- Lack of information, accepted forecasts
- Technology, social media
- Community engagement



VT DHCD



PLANNING AND ACT 250

117 ➡ Act 250: Party Status

“Parties by Right” under Act 250 include:

- Municipality (legislative body)
- Municipal planning commission
- Regional planning commission

➤ ***Each may address or appeal any or all of the ten Act 250 criteria***

117 ➡ Act 250: RPC Duties

§ 4345a. Duties of regional planning commissions

A regional planning commission... *shall*:

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

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

117 ➡ Act 250: Jurisdiction

Act 250 jurisdiction varies for:

- **“10-Acre Towns” – zoning and subdivision (or unified) regulations**
 - Commercial, industrial on > 10 acres
 - Subdivisions creating 10+ lots of any size
- **“1-Acre Towns” – only zoning or subdivision, or no regulations**
 - Commercial, industrial on > than 1 acre
 - Subdivisions creating 6+ lots of any size
- **State Designated Centers**
 - Ex: priority housing projects

117 ➡ Act 250: Criteria

- **Party status under all 10 criteria** – plan policies, maps may inform each
- **Criterion 10:**
 - Conform to local, regional plans, improvement program
 - If municipal plan is ambiguous, shall consider bylaws that implement, are consistent with plan
- **Other criteria often considered in relation to plans:**
 - 5 – Traffic
 - 6 – Educational services
 - 7 – Municipal, governmental services
 - 8 – Aesthetics (Quechee Test), Wildlife
 - 9A (Growth impacts), 9B (ag soils), 9H (scattered development), 9K (public investments), 9L (settlement patterns)

117 ➡ Act 250: Local/State Review

Conditional Use Review (24 V.S.A. § 4414)

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

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

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

117 ➡ Act 250: Regional v. Municipal

In Act 250 proceedings, when the provisions of a regional or municipal plan are relevant to the determination of any issue:

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

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

Quechee Highlands: Exit 1



Source: VT Agency of Natural Resources

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

VT Supreme Court , *In re B&M Realty* (2016)

117 ➡ Act 250: Plan Language

- 1979 ...Plans are not written like zoning bylaws...but this does not mean that they are legally meaningless
- 1996... a “specific” plan policy:
 - Pertains to the area
 - Guides or proscribes conduct or land use within the area
 - Is sufficiently clear to guide the conduct of an average person, using common sense and understanding
- 2005... **Despite fact that plans are abstract and advisory, Commissioners are obliged to give them regulatory effect.**
Two questions are asked:
 - Are the plan’s provisions specific or ambiguous?
 - Is the language in the plan “**mandatory**” or merely “guidance”? [Ex: “should” vs. “shall”]