

Land Records Commission

Background:

From the draft RECOMMENDATION FOR ACTION, dated 4/17/20, from the Vermont Secretary of State's Office, summarizes the situation:

For more than two decades, the State of Vermont, through different legislatively created committees and a state commission¹, have attempted to modernize the recording of real property documents with little or no success. While some of the challenges faced by each committee and the Vermont Municipal Land Records commission have diminished over time, others remain. The observation of the Secretary of State's Office, which has been a steadfast and active participant in all committees and the Municipal Land Records Commission, often providing its own staff and resources for administrative support, is that State of Vermont cannot continue with disparate recording practices, inconsistent infrastructure and systems, and varying philosophies among its town clerks if the state truly wants to move forward and modernize the recordation of land record.

Challenges at the local level can be overcome through the practical and rational adoption of statewide standards and the broader support of state government. For this reason, it is the recommendation of the Vermont Office of the Secretary of State that the Vermont General Assembly **take action to modernize and clarify the laws concerning real property ...** (emphasis supplied).

As far back as 1997, the Vermont Legislature, together with parties affected by, and involved with, Vermont's municipal land records, viz: the Vermont Secretary of State, the Vermont League of Cities and Towns, the Vermont Municipal Clerks & Treasurers Association, the State Archivist, the Vermont Bankers Association, the Vermont Bar Association, the Vermont Association of Realtors, surveyors, appraisers, title insurers, paralegals and other stakeholders, have known that "the system" is broken and in desperate need of reform.

Past Actions:

1997: Act 125, Sect 7 (Adj. Session) 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.

Finding:

Result: No action.

1998: Act 155, Sec. 66a instructed the Secretary of State to determine the condition of the municipal records. A detailed report dated January 15, 1999 was prepared.

Result – no action.

1999: Act 46, Sec. I, 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 record so those permits may be more easily, more reliably, and less extensively searched. The committee shall also investigate the use of technology to expand access...**"

Finding:

Result:

The committee submitted a detailed report dated January 15, 2000. Result – no action.

¹ The Commission was developed "in concept only".

May, 2002: “Best Practice Standards For Indexing Land Record Instruments” published

A Joint Publication of the Office of the Secretary of State and the Vermont Municipal Clerks and Treasurer’s Association. (Task Force)

Result - Never implemented; never enforced.

2003: Act 66, Section 49(b), created a Committee to, inter alia, develop guidance for maintenance of municipal land records in the state with the purpose of modernizing the management of Vermont’s municipal land records affecting title to real property and to consider: developing standards for content, format and indexing; developing technology standards for automation or computerization; recommending sustainable funding sources in order to modernize, automate and computerize the land records.

The committee submitted a detailed report on January 15, 2004 (the “2004 Report”).

Result – no action.

2004: Executive Order No. 27-1 (no. 04-05): Commission on the Marketability of Title.

Result – no action.

2004: Act 122 created VT Municipal Land Records Commission to “address the significant long-term and system material issues associated with [municipal land records]... \$30,0000
9 charges:

1. Proposes stds for formatting, filing, recording, and preserving municipal land records.
2. Propose a uniform system of indexing municipal land records
3. Propose continuing education requirements for municipal official corresponding compliance requirements for municipalities.
4. Proposes incentives for municipal officials and municipalities to improve all aspect s of managing and preserving municipal records.
5. Propose a system for financing all facets of municipal land records management on a sustainable basis.
6. Analyze the prerequisites for a municipality to digitize its land records and examine related administrative and public policy issues.
7. Analyze the need for future oversight of recommended uniform standards.
8. Analyze how to balance the conflicting public policy objectives of protecting personal privacy and providing public access to municipal land records.
9. Analyze any other administrative and public policy issues related to uniformity and modernization of municipal land records which the commission may address.

Result: filed report in 2006 and dissolved. Report said do this.

Update and adopt the Best Practices Standards for Indexing

Establish municipal records accreditation office

Establish a municipal grant program

Establish a parcel based indexing system

Result: Nothing

2013: A Strategic Plan for Vermont Land Records, Project Charter and Plan by Vermont Secretary of State.

Result – no action.

Goal:

To implement a concept first presented in the 2004 Report and create an autonomous Land Records Commission (LRC), or Board², to oversee all aspects of land and zoning records management. The Commission would be operated under Vermont Secretary of State or other appropriate agency.

Purpose:

To bring Vermont's municipal land records systems into the 21st Century by modernizing the system and by creating uniformity and consistency. As extensively detailed in Past Actions, the Vermont land records system is comprised of nearly 250 different business models, each operating independently and without oversight. Vermont's recording system may have made sense when it was established in the 1700's but it is presently dysfunctional.

Powers:

The LRC would have complete regulatory power to oversee all management of land records and zoning records including, but not limited to, the following: Rulemaking; Enforcement; Funding and Fee Structure; all other powers bestowed upon, and exercised by, similar Commissions or Boards.³ See attached exhibit for more clarification. Additional matters discussed in Exhibit A attached.

Initial funding: \$250,000,000.00.

Composition:

A three (3) member panel with staggered terms of five (5) years appointed by the Governor, based on recommendations outlined in statute.

Start Date:

Immediate.

Exhibit A

Rule making authority must be granted to the Commission in order to implement and oversee improvements and changes to Vermont's land records system. The Commission needs jurisdiction over municipal offices to create, implement and enforce minimum standards and educational requirements to ensure consistent a level of professionalism.

A permanent source of funding must be made available to the Commission.

A Commission is best poised to understand the issues facing the industry and to implement change in the most effective and expedient manner.

² For simplicity, hereafter "Commission".

To ensure the on-going improvement of Vermont's existing land records system, and to ensure that the system is able to keep pace with 21st Century technological changes which are constantly being introduced into the commercial marketplace, the Land Records Commission must be granted future oversight over not only the recommended uniform standards but over many other essential components of the land records system as well.

Without oversight, in the form of rule-making and other administrative authority, the Commission will not be able to: adopt existing uniform standards; introduce and adopt new standards or amend existing standards; address issues of non-compliance with the standards, including possible sanctions for violations; design and introduce a municipal officer education and certification program relating to the standards; introduce and/or enforce new initiatives into the land records system such as a cover sheet to accompany documents filed with municipal clerks; initiate and oversee pilot projects designed to test changes and improvements to the land records system.

The best and most efficient way to bring meaningful change to the system is to empower an appropriate panel with requisite oversight authority over not only the uniform standards but over many other aspects of the land records system as well. The Land Records Commission is the best vehicle for accepting that responsibility.