

ESSENTIALS OF LAND USE PLANNING AND REGULATION

1. Roles and Responsibilities
2. Planning for a Vibrant Sustainable Community
3. Implementing the Plan
4. Meetings, Hearings and Due Process

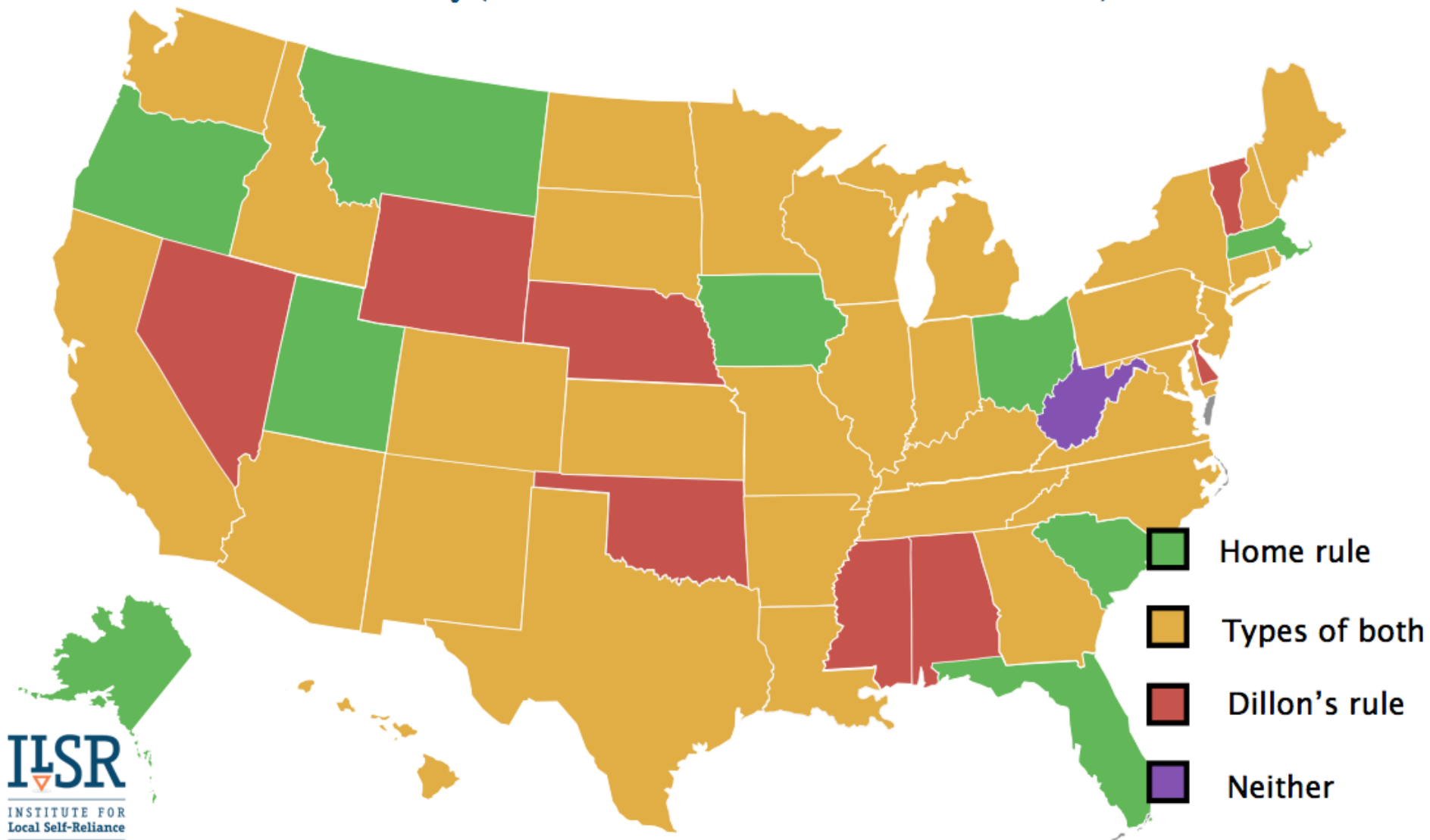
ROLES AND RESPONSIBILITIES

Section 1

Planning Starts with the State

- Vermont is a Dillon's Rule state. This means that a municipality's abilities to govern are strictly authorized by the Vermont Legislature.
- A municipality must obtain permission from the Legislature if it wants to exercise authorities beyond those granted by the State.
- In contrast, Home Rule states allow municipalities to govern themselves, provided they obey state and federal laws.

The Limits of Local Authority (Based on “Home Rule” and “Dillon’s Rule”)



Planning Starts with the State

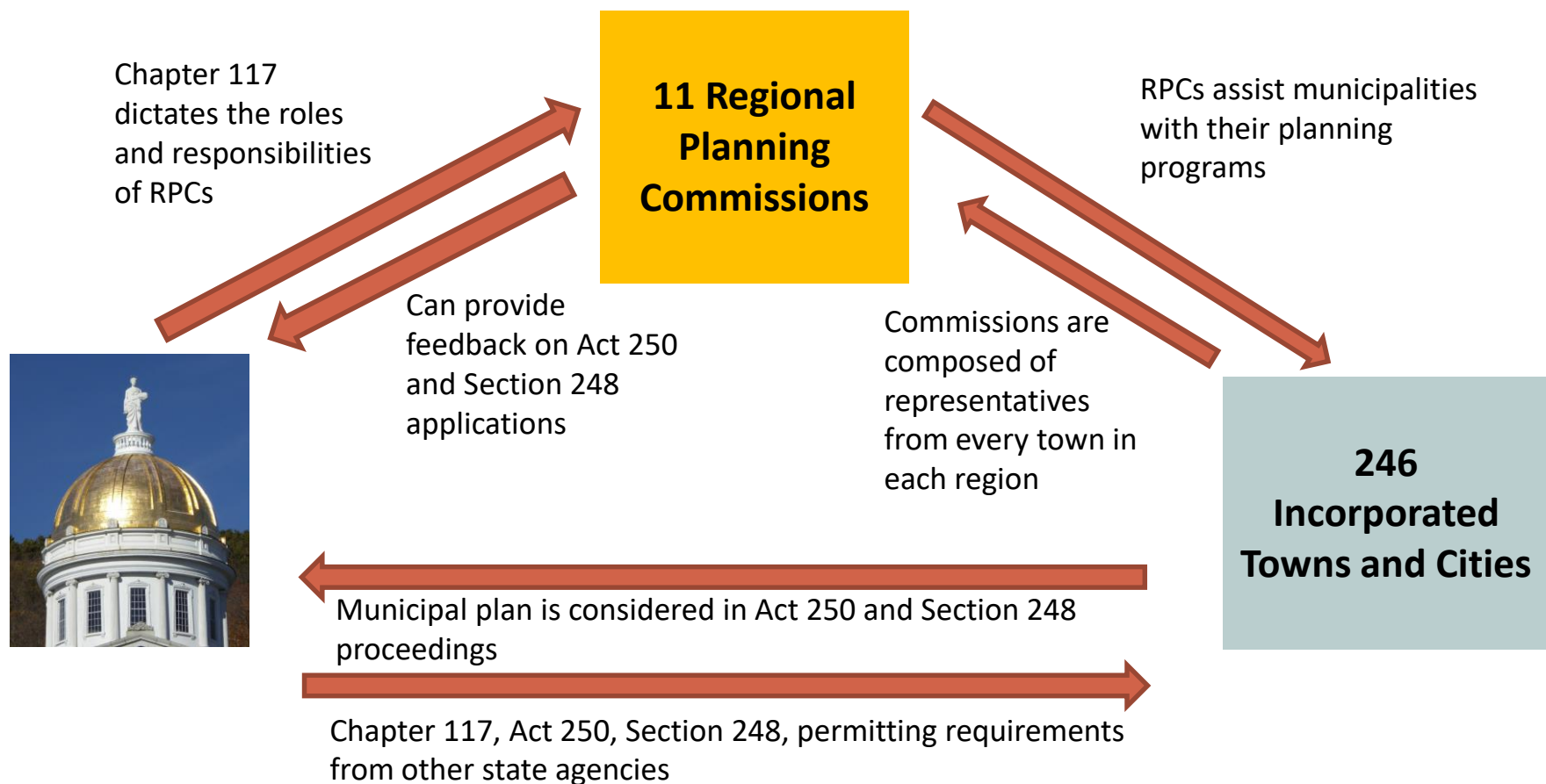
- Since Vermont is a Dillon's rule state, a municipality's ability to implement land use planning mechanisms expressly granted by the state.
- This is codified in 24 V.S.A. Chapter 117, other known as The Vermont Planning and Development Act (<https://legislature.vermont.gov/statutes/chapter/24/117>)
- Chapter 117 provides a framework for the development of municipal plans, zoning bylaws, the formation of planning commissions and appropriate municipal panels (i.e. DRB), and other topics relating to land use.

Planning Starts with the State

The State affects local land use in other ways...

- **Act 250** – Requires that certain categories of development obtain a state land use permit.
- **Section 248** – A form of state review and approval for work on electric transmission or generation facilities, telecommunication facilities, certain gas pipelines, and other utilities.
- **Air, Fish & Wildlife, Indirect Discharge / Underground Injection Control, Lakes and Ponds, Rivers, Salvage Yards, Solid Waste Management, Stormwater Management, Underground Tanks, Wastewater and Potable Water Systems, and Wetlands, and others.**

The Flow of Planning in Vermont



How Municipalities Can Regulate Land Use?

Creating a Municipal Plan allows a municipality to enact zoning, subdivision, and flood hazard bylaws. A municipality cannot adopt these bylaws without first having a Municipal Plan.

Select Board / City Council can also adopt ordinances that impact local land use. *“A municipality may adopt, amend, repeal, and enforce ordinances or rules for any purposes authorized by law”*

24 V.S.A. § 2291 specifies 29 different kinds of ordinances a municipality can enact (i.e. snow removal from sidewalks, licensing of itinerant vendors, regulations for dogs, solid waste regulation, public nuisances, alcohol in public places...)

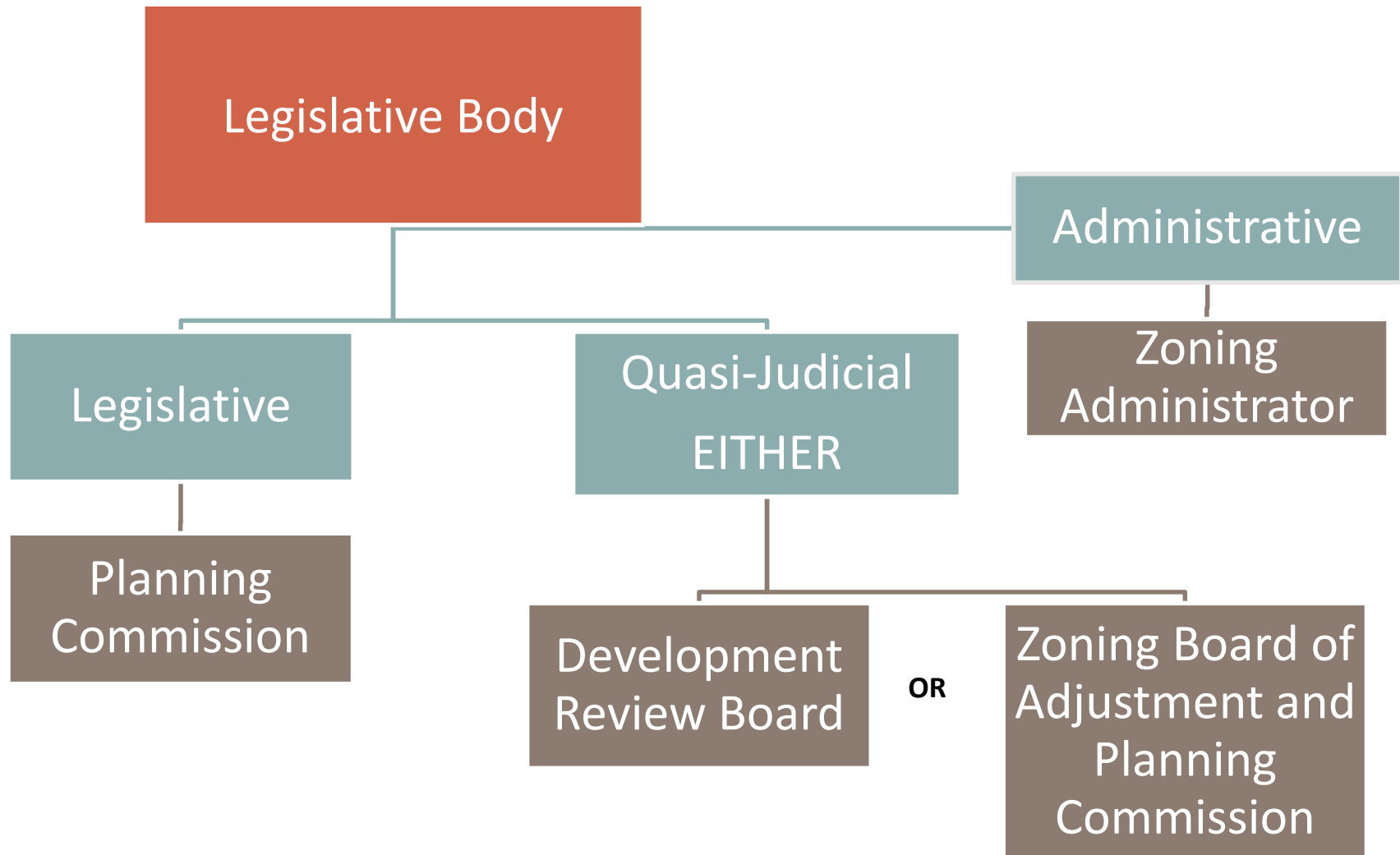
Municipal Land Use: Roles and Responsibilities

- Legislative Body – Select Board, City Council
- Planning Commission
- Zoning Administrator
- Appropriate Municipal Panel (AMP)- DRB or PC/Board of Adjustment
- Staff Planner

Other roles in municipal land use

- RPCs
- Consultants
- Citizens

Municipal Land Use: Roles and Responsibilities



Planning Commission

Structure

- A 3 to 9 member board with fixed terms typically appointed by the Select Board or City Council

Roles

- Prepares the Municipal Plan
- Prepares Zoning/Development Regulations
- Can prepare or edit Capital Budget and Program
- Prepares other studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development
- Participates in a regional planning program
- Retains staff and consultant assistance

Summary

- PC functions in a legislative capacity in that it can solicit public input, weigh options and make policy decisions.
- However, this work does not have force and effect of law until approval by Select Board or City Council.

Select Board or City Council

Roles

- Reviews and may edit Municipal Plan and either adopts or sends to voters
- Reviews and may edit Zoning Bylaws/Development Regulations and either adopts or sends to voters
- Prepares or edits and adopts Capital Budget and Program
- Creates and passes ordinances
- Appoints members of the PC and DRB, approves the hiring of a ZA
- Approves budget for committees and salaries for staff
- Makes many important land use decisions, including the location of infrastructure such as water supply and wastewater disposal
- Approves town attorney expenses

Zoning Administrator

- Required by State law to administer the bylaws literally and prohibited from permitting any land development that does not conform with the bylaws.
- Reviews applications that do not require action by the appropriate municipal panel and issues zoning permits.
- Conducts enforcement
- May staff the PC or AMP
- Fills a vital customer service role by providing the public with the necessary forms and applications, assisting applicants through review processes and answering general questions about land use.

Appropriate Municipal Panel

AMPs act in a *quasi-judicial* capacity, meaning they function like a court in applying the bylaws to development applications

Development Review Board

- Site plans
- Subdivisions
- Conditional uses
- Lots without frontage
- Variances
- Appeals of ZA decisions

OR

Planning Commission

- Site plans
- Subdivisions
- Lots without frontage

Zoning Board of Adjustment

- Conditional Uses
- Variances
- Appeals of ZA decisions

Staff Planner

- Supports and expands the capacity of the Planning Commission.
- Assists the Planning Commission by performing research, conducting analyses, initiating public engagement and drafting language for Town Plans and Zoning Bylaws.
- Performs grant writing and management
- Provide in-depth analysis of development applications, ensuring a consistent and efficient review process.

Other Roles

Regional Planning Commissions

- If requested, review and approve municipal plans
- Can assist with municipal plan and bylaw development

Consultants

- Often hired by Planning Commissions to draft municipal plans and zoning bylaws, or deal with unique planning issues.

Citizens

- Anyone can submit proposed revisions to bylaws to the Planning Commission for consideration.
- If 5% of or more of a municipality's voters sign a petition in support of proposed revisions drafted by citizens, the Planning Commission must hold a public hearing on the revisions.

QUESTIONS?



PLANNING FOR A VIBRANT SUSTAINABLE COMMUNITY

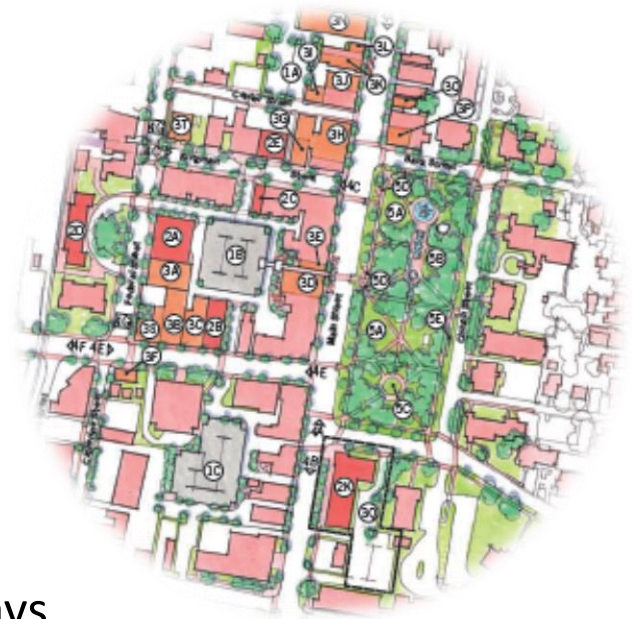
Section 2

What is a Municipal Plan? Why have one?

What: A guide for accomplishing community aspirations and intentions through public investments, land use regulations and actions the town can take to achieve its vision.

Why:

- Inclusive process develops community-wide vision
- Empowers communities to respond to change in ways that reflect their own goals, needs, priorities and values.
- Allows communities to designate areas to maintain as is, evolve over time or to transform more quickly into a better place.



With a current plan you can...

- Adopt Zoning, Subdivision and Flood Hazard Regulations
- Act 250 Applications must conform to your Town Plan
- Your Municipal Plan will be considered in Section 248 Certificate of Public Good Applications
- More competitive grant applications



How is a Plan Structured?

Remember Dillon's rule! The State has laid out guidelines on how to create a plan:

1. Four Planning Process Goals
2. Fourteen Planning Goals
3. Twelve Required Elements

How is a Plan Structured?

Planning Process Goals (§4302, §4381-§4387)

1. Coordinated comprehensive process to guide decision
2. Citizen participation at all levels
3. Consider use of resources and consequences of growth and development locally and beyond
4. Work with neighboring municipalities and region to implement plans

The process is often more important than the product!

How is a Plan Structured?

Planning Goals (§ 4 3 0 2)

1. Compact Centers
2. Strong Diverse Economy
3. Education and Vocational Training
4. Available Child Care
5. Efficient Public Facilities and Services
6. Recreational Opportunities
7. Quality Housing Available
8. Efficient Energy Use and Renewable Resources
9. Agricultural and Forest Industries
10. Flood Resiliency
11. Use Natural Resources Efficiently
12. Preserve Natural Resources
13. Air, Water and Wildlife Quality
14. Safe Convenient Transportation

How is a Plan Structured?

Required Elements (§4382)

1. Objectives, Policies and Programs
2. Land Use (Map and Statement), including any state designation
3. Transportation (Map and Statement)
4. Utilities and Facilities (Map and Statement)
5. Education (Map and Statement)
6. Energy (Option for Enhanced Energy Plan)
7. Economic Development
8. Housing
9. Flood Resilience
10. Policies on Preserving Rare Natural Areas
11. Compatibility with Adjacent Municipalities and Region
12. Implementation Program

Municipal Plan Adoption Process

➤ **Plans expire every 8 years**

- Revise or rewrite the plan before expiration – at a minimum, make necessary edits to data and implementation program

➤ **Adoption process can take several months**

- Planning Commission hearing with notice to adjacent communities
- Selectboard hearing (1 in rural municipalities and 2 in urban)
- Decision on adoption shall be made by Legislative Body, unless the Legislative Body or voters have elected to decide by Australian Ballot
- Plans go into effect upon adoption

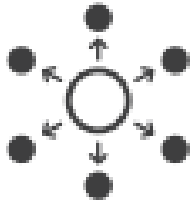
Creating or Amending a Municipal Plan

“When it comes to planning, if you’re not doing it with people – they think you are doing it to them.”

Roger Millar, AICP
National Complete Streets Coalition



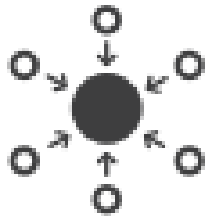
Types of Citizen Participation



INFORM

Commit to keeping citizens informed about planning. Help the public understand problems and solutions.

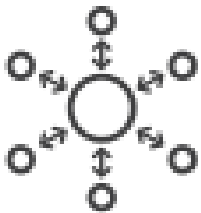
- ★ Fact Sheets
- ★ Newsletters
- ★ Websites



CONSULT

Provide opportunities for input on existing ideas – listen, acknowledge concerns and answer questions.

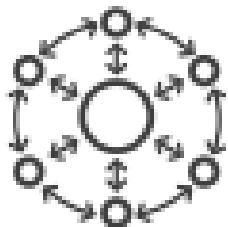
- ★ Surveys
- ★ Public Meetings



INVOLVE

Provide opportunities for dialogue and interaction. Obtain advice from the public and generate new ideas.

- ★ Workshops
- ★ Focus Groups



COLLABORATE

Partner with the public in decision-making, including the development of alternatives and identification of the preferred solution.

- ★ Citizen Advisory Committees
- ★ Participatory Decision Making (Charrettes)

Engaging People in Planning

Talk to people



**Food, fun and
celebration**



**Meet people
where they are**



**A culture of
communication**



Regional Plan Approval & Confirmation

- **Municipalities may request Regional Planning Commission approval of the municipal plan.**
- **The RPC will first approve the municipal plan**
- **The RPC will then confirm the municipal planning process**
- **RPC confirmation allows municipalities to:**
 - Apply for state designation of downtowns, village centers, new town centers, neighborhood development areas and growth centers.
 - Apply for Municipal Planning Grants
 - Levy impact fees
 - Have plan considered by state agencies in their planning

Vermont Planning Manual –

<https://accd.vermont.gov/community-development/town-future/municipal-planning-manual>



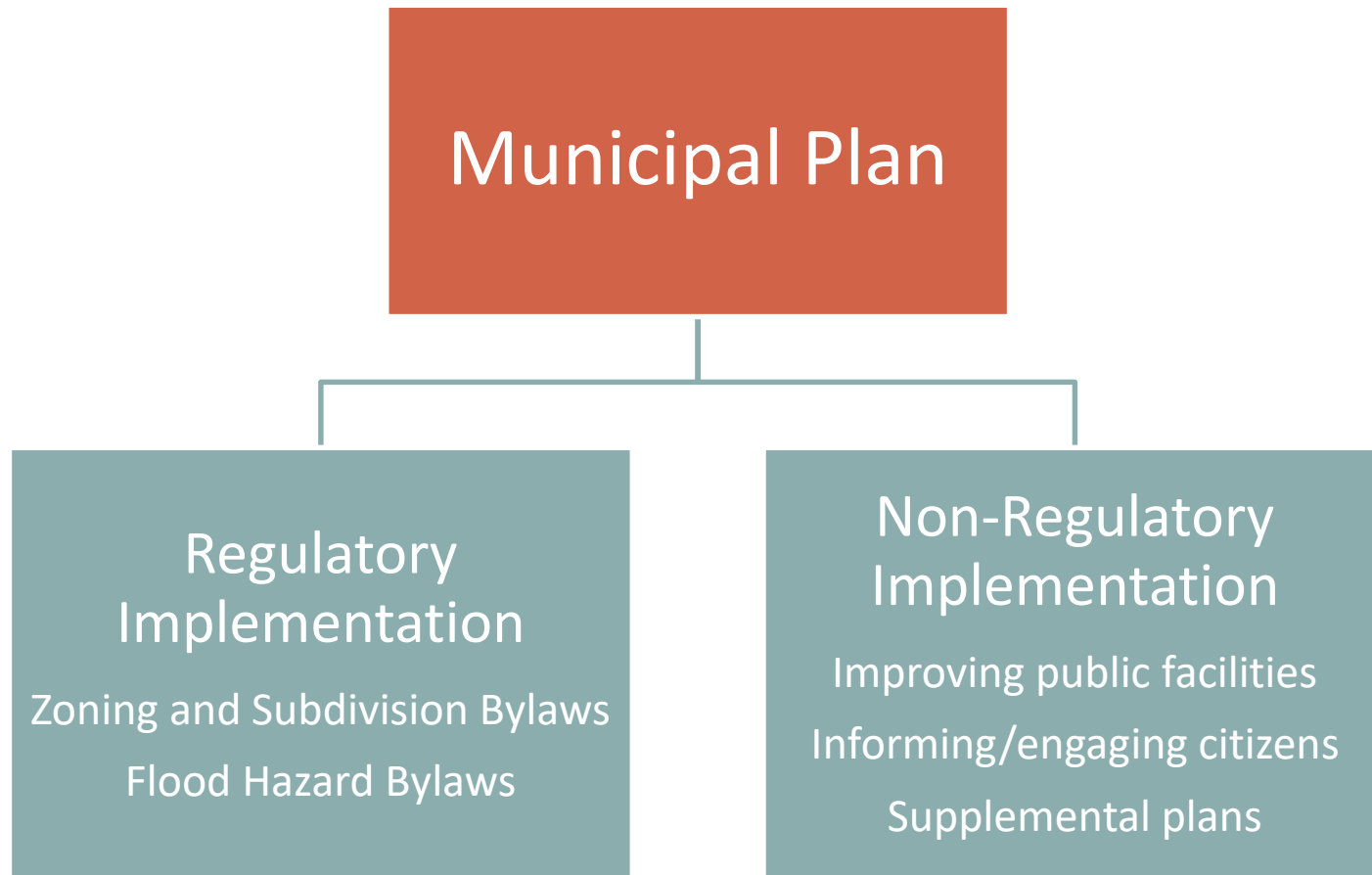
QUESTIONS?



IMPLEMENTING THE MUNICIPAL PLAN

Section 3

Implementing the Plan



Zoning and Subdivision Bylaws

- **§ 4411. Zoning bylaws**

(a) A municipality may regulate land development in conformance with its adopted municipal plan and [...] to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to ***public health, safety, or welfare***. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development...

Why Have Local Land Use Regulations?

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



Promote compact, walkable development



Protect important natural resources



Minimize fragmentation of farmland



Incentivize affordable housing



Encourage efficient use of infrastructure



Ensure compatibility with historic character



Establish safe vehicular and pedestrian circulation



Make communities more flood resilient

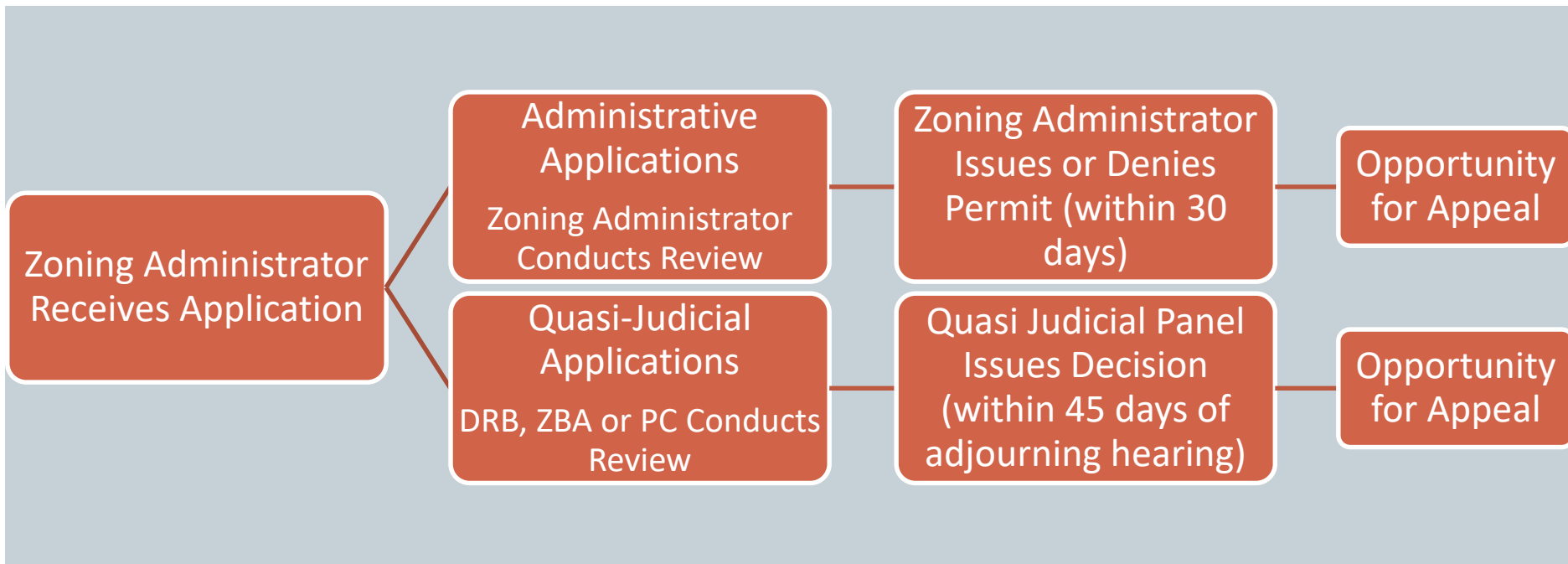
Why have flood hazard bylaws?

- The Federal Emergency Management Agency (FEMA) requires a town to have municipal flood hazard regulations before insuring properties located in flood hazard areas (flood insurance is needed for a mortgage).
- Nearly ninety percent of communities in Vermont participate in the NFIP.
- Participation in the NFIP and having a Local Hazard Mitigation Plan allows the community to apply for FEMA Hazard Mitigation Grants to address community flood problems including elevating or removing buildings in dangerous locations.
- Participation in the NFIP is one of the basic mitigation steps that qualify communities for extra financial support after a disaster.

Limits of Local Regulation

- Land use regulations tell people what they can and cannot do with their land, but they cannot deprive landowners of all reasonable use of their property (5th and 14th Amendments)
- Land use regulations can only regulate what is enabled in Vermont Statute (Dillon's Rule)
- Required Provision and Prohibited Effects (§4412 and §4413):

Zoning Permit Application



Local Regulation: Types of Review

Land Development:

- *Division of a parcel into 2 or more parcels*
- *Construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure*
- *Or of any mining, excavation, or landfill*
- *Any change in the use of any building or other structure, or land, or extension of use of land*

Type of Review	Function of Review
Zoning	
Permitted Use	Handled administratively, established by right
Conditional Use	Considers impacts and compatibility
Site Plan Review	Ensures good site design
Variances	Relaxation of standards in very specific cases
Waivers	Relaxation of standards via defined process
Planned Unit Developments	Allows for flexible design
Subdivision	Controls the pattern of future development

AMP Decisions

Decisions are established by majority, and must:

- Be in writing and contain:
 - ✓ Findings of fact on which each decision is based, and
 - ✓ Conclusions of law on how the bylaw applies
- Be based on review standards in bylaw
- Minutes may suffice for decisions issue in public deliberations

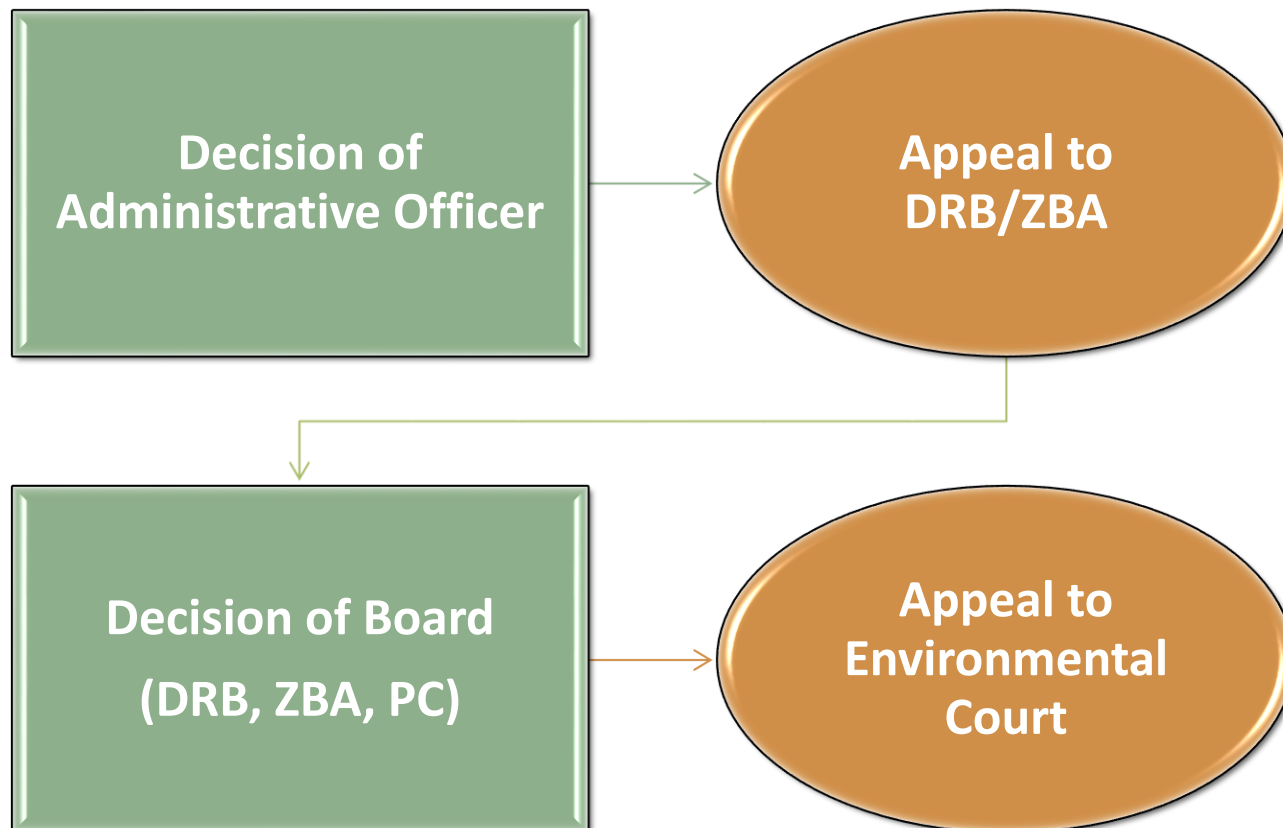
Timeline:

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

It is a great **responsibility to prepare** written decisions, especially if done by volunteer board members. It is ideal when there is staff to prepare written decisions for review by the board. Sometimes, the ZA can play this role.

Appeals

Appeals may be at either local or state levels.



Interested Persons in AMP decisions may Appeal

Pursuant to 24 V.S.A. § 4465(b)

- The applicant
- The municipality and any adjoining municipality
- Property owners in the immediate neighborhood of the subject proposal
- Any petition of ten persons (combination of voters or property owners)
- Any department or administrative subdivision of the state owning property or any interest
- ACCD

Only interested persons who have participated may appeal!

Board can choose not to make interested person determinations and leave it to the Environmental Court!

Non-Regulatory Implementation

Complements regulatory implementation

Chapter 117 authorizes:

- Capital Budget and Program
- Tax Stabilization Contracts
- Purchase/Acceptance of Development Rights
- Supporting Plans
- Advisory Commissions
- Other projects and studies (whatever your plan recommends)

QUESTIONS?



MEETINGS, HEARINGS AND DUE PROCESS

Section 4

Meetings vs. Hearings

What happens...

Meetings

- Discuss business or take action
- Generally legislative

Legislative Hearings

- Receive public comment on a course of action (e.g. a plan or bylaw update)

Quasi-judicial Hearings

- Hear from parties seeking board approval

Who does it...

- All Public Bodies

- The Planning Commission
- Selectboard

- The Appropriate Municipal Panel (DRB / PC & ZBA)

Vermont's Open Meeting Law

(1 V.S.A. §§310-314)

- Post advance notice
- **Make the agenda available before the meeting**
 - At the municipal office
 - 2 other designated places
 - A Web site, if your town has one
- Let the public participate
- **Make the minutes available within five days**
- Address complaints of violations

www.vlct.org/vermont-local-government/vermont-open-meeting-law/

Public Notice

Meetings

- For regular meetings: 1 VSA §§310-314
- At least 48 hours*
- At town and 2 other places

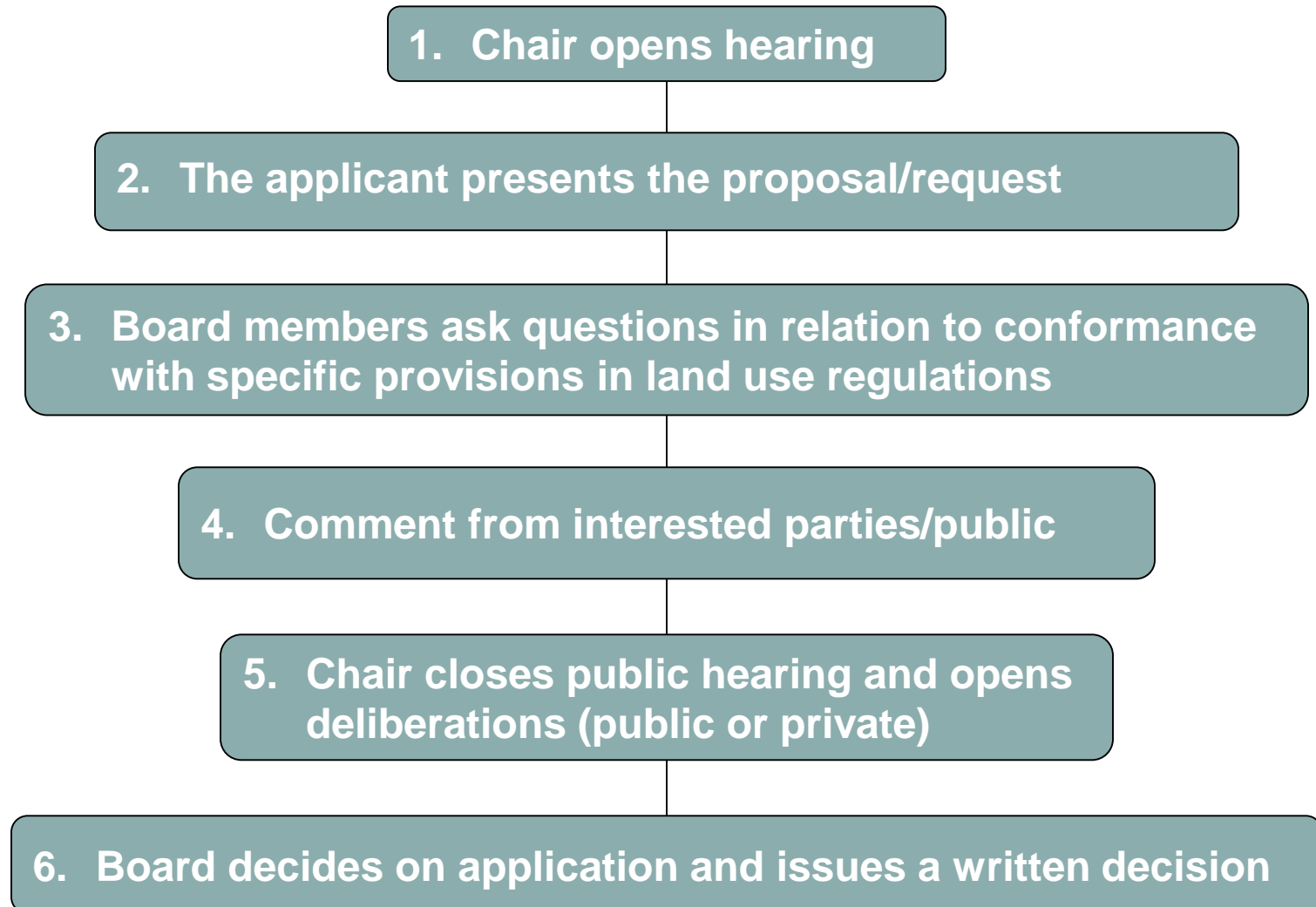
Legislative Hearings

- For plans and bylaw amendments
- 15 days
- Newspaper of record
- Certified Mailings

Quasi-Judicial Hearings

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

Quasi-Judicial Public Hearing: Flow



Quasi-Judicial Public Hearing: Roles & Responsibilities

The Chair administers the agenda, keeps board members focused on the issue at hand, and ensures the Board finishes on time.

The entire Board:

- Listens to testimony and evidence;
- Asks questions;
- Refers to regulations;
- Avoids conflicts of interest;
- Bases decision on evidence presented
- Must not prejudge a matter or publicly express opinions on a pending case.

Quasi-Judicial Public Hearing: Opening

1. Review order of events
2. Remind of the importance of order
3. Make copies of the **rules of procedure and ethics policies** available.
4. Review definition of **interested persons** and ensure documentation of participants. Administer oath.
5. Request disclosure of **conflicts of interests or ex parte communications**

Quasi-Judicial Public Hearing: Deliberative Session

- Exempt from Open Meeting Law
- No requirement for notice or minutes
- Public or private
- Don't have to reveal how board members voted
- 45 days to issue a decision or deemed approved



Quasi-Judicial Public Hearing: Conflicts of Interest

- Financial interest (direct or indirect)
- Personal interest (direct or indirect)
- Known bias or prejudice
- Ex parte communication

It takes years to build trust with the public, but just one misstep to destroy it.



Quasi-Judicial Public Hearing: Managing Conflicts of Interest

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

In Summary: Protecting Due Process

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

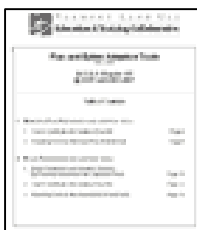
Tools and Resources Available:

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

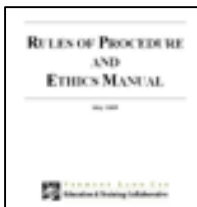
Learn more: www.vpic.info



Essentials of Local Land Use Planning and Regulation



Plan and Bylaw Adoption Tools



Rules of Procedure and Ethics Manual

And more resources at www.vpic.info

QUESTIONS?



Evaluation Link: <https://www.surveymonkey.com/r/2VT7CBV>

