



Lamoille County Planning Commission

Lamoille County
Planning Commission

Winter 2009

Welcome back to the Lamoille County Planning Commission News!

After a long hiatus, the Lamoille County Planning Commission Newsletter is back! Despite our quiet spell over the past few months, we've been quite busy at the Commission. We've said goodbye to some longtime employees and welcomed a new Executive Director and GIS Planner. Bonnie Waninger, former Assistant Director of Northwest Vermont Regional Planning Commission has taken the helm at LCPC. She brings 11 years of planning and public administration experience to LCPC. Bonnie will be the primary contact for Emergency Management planning in addition to her role directing the commission. LCPC was also fortunate to hire Adrienne Adamek as our new GIS Planner. Adrienne is a native Vermonter, returning home after a number of years leading GIS and marine research on the coast of Maine. Her education, experience, and positive attitude make her a great addition to the LCPC team. Dave Pelletier continues his work as the primary contact for

transportation issues and Bill Rossmassler continues his work implementing the Smugglers Notch Scenic Highway Project, leading LCPC's Brownfields Redevelopment program, and fielding various municipal planning requests. Feel free to call any of us with your questions.

VTrans Announces new round of Safe Routes to School Planning Grants

The Vermont Agency of Transportation's Safe Routes to School (SRTS) program is soliciting applications for planning and program development funding. The SRTS program is funded by 100% federal transportation funds and is intended to result in greater num-

bers of students who walk and bike to school. Funding is used for planning and program efforts such as pedestrian and bicycle safety education, contests and incentives to encourage walking and bicycling, engaging law enforcement, evaluation of student/parent attitudes and behavior, and assessing the existing condition of streets and sidewalks around schools. The 2009 SRTS application and guidance is available on the VTrans web site at <http://www.aot.state.vt.us/progdev/Sections/LTF/SRTS/VTSRTS.htm>. A pre-application workshop will be available at all Vermont Interactive Television locations on January 27 at 6pm and also February 3 at 10:15am. Attendance is not mandatory but is highly encouraged. Applications must be received by March 13th. Please contact the SRTS Coordinator, Aimee Pope, at aimee.pope@state.vt.us or 828-5799 for more information.

VT100 Green Mountain Byway Corridor Management Plan Completed

LCPC recently participated in the completion of a corridor management plan for the newly dubbed "Green Mountain Byway". Partners included Central Vermont Regional Planning Commission and the Towns of Stowe and Waterbury. The Byway corridor, for the purpose of this management plan, extends the for the length of the VT100 corridor within the two towns. This plan, drafted by consultant

David Raphael of LandWorks, and with assistance from Resource Systems Group, Inc., will serve as the main component of an application package submittal to the Vermont Scenery Preservation Council. Upon recommendation of the Scenery Preservation Council and formal designation by the Vermont Transportation Board, this document will become the Final Corridor Management Plan for the

Green Mountain Byway. The designation of this portion of VT100 will provide the opportunity for enhancement of the corridor and the preservation of important scenic and natural resources, while at the same time improving highway conditions for all modes of travel. Designation will provide the basis for collaborative planning obtain funding and support for
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Upcoming meetings:

- January 27, 2009 LCPC Board of Directors, 7pm at TEGU Building in Morrisville
- February 24, 2009 LCPC Board of Directors, 7pm at TEGU Building in Morrisville
- Lamoille County Transportation Advisory Committee, 12noon at TEGU, Building in Morrisville (next date TBD) for more information contact Dave @ 888-4548
- Legislative Breakfasts (see back page for full schedule)



Vermont Supreme Court: Zoning Bylaw Must Include Specific Standards to Ensure Property Owners' Due Process Rights

By Jim Barlow, VLCT Staff Attorney

In what may prove to be one of its more controversial decisions on municipal land use regulation, the Vermont Supreme Court has struck down two sections of a South Burlington zoning ordinance on the grounds that the sections were so vague and delegated such "standardless discretion" to the City's Development Review Board (DRB), that they violated property owners' due process rights. *In re Appeal of JAM Golf, LLC*, 2008 VT 110.

The case involved the Vermont National Country Club, a planned residential development (PRD) permitted for 296 residential units and an 18-hole golf course. Developer JAM Golf, LLC, sought to amend the PRD approval to allow ten more lots in a wooded area bounded by three fairways, another residential development, wetlands and open space. The DRB's decision was appealed to the Environmental Court, which denied the amendment. The Environmental Court held that JAM Golf's proposal did not satisfy section 26.151(g) of the City zoning ordinance requiring PRDs to "protect important natural resources including...scenic views" and "wildlife habitats." The Environmental Court also held that the proposal failed to satisfy section 26.151(l) of the zoning ordinance, requiring PRDs to conform to a City plan requirement that residential developments "protect" wildlife habitat.

In its subsequent appeal to the Supreme Court, JAM Golf challenged the Environmental Court's interpretation of sections 26.151(g) and 26.151(l). The Supreme Court never reached JAM Golf's arguments. Instead, it concluded that section 26.151(g) "provides no guidance as to what may be fairly expected

from landowners who own a parcel containing wildlife habitat or scenic views – both common situations in Vermont – and who wish to develop their property into a PRD. Such standardless discretion violates property owners' due process rights."

The Supreme Court then struck section 26.151(g) from the zoning ordinance. The Supreme Court also struck section 26.151(l) from the ordinance. It held that while municipalities may require development to conform to a municipal plan, municipal officials may not deny permission for a project where there is not a specific policy set forth in the plan stated in "clear and unqualified" language that "creates no ambiguity." According to the Supreme Court, South Burlington's city plan requirement for "protection" of wildlife habitat and scenic views was too ambiguous to be enforceable without more specific standards for how protection could be accomplished. Since any development by necessity must reduce wildlife habitat and scenic views, applicants and courts could not know how much less than total preservation of these resources might qualify as sufficient "protection" under the ordinance.

Examples of standards that might overcome this problem include minimum habitat protection percentages, habitat restoration requirements, limits on tree and vegetation removal, and habitat buffer requirements, all of which could provide performance-measuring benchmarks. At the same time, a developer could be allowed flexibility and the opportunity to utilize design layouts to attain protection goals, as long as these performance standards are met. Another approach may be the use of required set-asides for the provision of open space,

especially if the zoning or subdivision ordinance includes criteria stating a preference for particular natural areas or habitats that occur on a development site. Standards for protection of scenic views could include building size, bulk, location and height restrictions, sign and fencing regulations, as well as standards for on-site landscaping. VLCT does not anticipate widespread invalidation of local zoning bylaws and plans by Vermont courts as a result of the *JAM Golf* decision. However, planning commission members and others involved in drafting municipal plans and zoning ordinances should give the decision careful consideration. Plans and bylaws should contain goals for protecting a community's important resources and characteristics against thoughtless development. But these goals may be unenforceable if specific standards addressing how to achieve these goals are not provided in the bylaw or plan. As the Supreme Court stated, a bylaw must specify sufficient standards and safeguards to guide applicants and decision makers in the development review process. A copy of the case can be obtained at

<http://info.libraries.vermont.gov/supct/current/op2006-307.html>.

Please note that a motion for re-argument has been filed on the *JAM Golf* case and until the motion is resolved, the decision is not in effect. Please contact LCPC or VLCT if you have any questions on the *JAM Golf* case and how your municipality should respond.



Historic Resources such as the Vermont Ski Museum contribute to the rich cultural and historic heritage of the Green Mountain Byway.

Green Mountain Byway cont.

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implementing them through the National Scenic Byway Program. These funds can support the implementation of the byway in the form of the development of byway promotional initiatives, construction of physical amenities, and support for projects that protect or preserve byway resources. Such funds can also be targeted for byway related trans-

portation projects such as traffic safety improvements and facilities for pedestrians and bicycles. The designation of the Green Mountain Byway will provide economic development opportunities and benefit local businesses and attractions through the coordination of marketing and media. Specific Green Mountain Byway objectives developed through the public involvement process include preserving scenic resources

and community character, promoting awareness of and protection of access to recreational resources, preservation of historic & cultural resources, take advantage of new techniques and technologies to expand knowledge of the byway's intrinsic resources while providing economic opportunities for local area residents and businesses. For more information, contact Dave Pelletier at 888-4548.



Getting Ready for Act 115 Changes Effective September 1, 2011

Chapter 117 was created in 1968 and is the section of Title 24 Vermont law that enables communities to regulate land use and development, and grants the authority to establish a planning commission, a zoning administrator, and advisory committees. Act 115 (the permit reform bill) was signed into law in May of 2004 and was the most comprehensive revision of the Chapter 117 provisions dealing with local permitting since its creation. Before Act 115, the chapter had been revised in small ways and had become confusing, disconnected, and significantly outdated. The revision made Chapter 117 clearly organized, user-friendly, and confirmed current zoning practices. It included changes in response to issues that have been the subject of constant litigation and provided clarity that should lessen appeals. The changes allow significant options to communities, and a general guiding framework for local regulations. Last, but not least, the changes include some important pieces to help provide housing. The bill outlined a specific timeline for when the revisions would apply to com-

munities. Local bylaws had to comply with certain provisions of those changes by September 1, 2005 or statute overruled those particular sections of local bylaws. The remaining provisions will become fully effective as of September 1, 2011, which is now about 2 1/2 years away. The 2011 provisions included are listed at the right of this page.

This information is important to you because your community will be responsible for conforming to the changes in law by September of 2011. If you are unsure where your local regulations stand in relation to the 2011 changes, staff at LCPC can assist you by completing a review of your bylaws. Depending on the local process, whether it be through the legislative body (trustees or Selectboard) or the voters (through Australian Ballot), each community will need to vote to adopt the required changes. Regardless of the adoption process, its important for property owners/voters to understand these comprehensive changes.

Municipal Wastewater and Water Supply Mapping

The Regional Planning Commissions have been requested by Section 21 of Act 176 of the 2008 Legislature to: "inventory and map locations within [their] region[s] that are served by municipal wastewater and water supply services and that are otherwise suitable for development and redevelopment, giving due regard to the location of important natural resources and primary agricultural soils. The inventory and map shall be provided, by January 30, 2009, to the committees of the general assembly with jurisdiction over housing, natural resources, and agriculture." This information will not only prove useful to the designated committees of the general assembly but also to a number of state agencies and to the Smart Growth committee appointed by the Governor in the summer of 2008.

Lamoille County Planning Commission will complete an inventory and mapping for the designated downtowns and villages that have both public / governmental water and sewer systems. Consideration will be given to lands within those areas that are open or substantially open and have a reasonable expectation of possibly being used for housing. It is important to remember this is simply a first-level analysis of what *potential* exists for development. It in no way constitutes a *plan* for development, though it may lay groundwork for future conversations. For more information contact Adrienne Adamek, GIS Planner, at 888-4548.

Act 115 Changes in Brief

§ 4410 Regulatory Implementation of the Municipal Plan. Bylaws must conform to and implement the municipal plan.

§ 4414 Conditional Use Review and Waivers. To administer conditional use review, 5 specific standards must be included in the bylaw (per 4414(3)(1)). To administer review of character of the area, zoning districts must have a purpose statement defining it. The municipal plan may also include specific policies and standards that define character of the area. A bylaw may allow a municipality to grant waivers to reduce dimensional requirements, but if so such bylaw must specify a review and appeal process.

§ 4416 Site Plan Review. Bylaws may require site plan review, which may impose appropriate safeguards and conditions (parking; traffic access and circulation for pedestrians and vehicles; landscaping and screening; the protection of the utilization of renewable energy resources; exterior lighting; the size, location and design of signs; and other matters specified in bylaws). Bylaws shall specify the maps, data, and other information to be presented with site plan applications.

§ 4417 Planned Unit Development. Bylaws should provide for PUDs. If bylaws provide for PUDs, then they shall include a purpose, review process, application requirements, and standards for review (location and physical characteristics of PUD; location design, type and use of lots and structures; amount, location and use of open space; standards requiring related public / non-public improvements and payment of impact fees; and provisions for phasing (in accord w/capital budget).

§ 4418 Subdivision Bylaws. Subdivision bylaws shall establish standard and procedures for approval, modification, or disapproval of plats and shall contain procedures and requirements for the design, submission, and processing of plats; standards for the design and layout of streets, sidewalks, curbs, gutters, streetlights, fire hydrants, landscaping, water, sewage and stormwater management facilities, public and private utilities, etc.; standards for the design and configuration of parcel boundaries; and standards for the protection of natural resources and cultural facilities and the preservation of open space as appropriate.

§ 4424 Shorelands; Flood Hazard Areas. Any municipality may adopt bylaws to regulate development and use along shorelands and bylaws to regulate development and use in flood or other hazard areas. Flood hazard bylaws require state notification.

Visit us on the web at www.lcpcvt.org. You'll find many useful resources including links to town and county data and demographic information.



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Safe Winter Driving

Vermont Agency of Transportation has issued its annual Safe Winter Driving advisory. Suggested strategies for navigating tricky winter driving conditions include the following:

Speed

Slow down and drive according to the road conditions.

Distance

Leave more room than usual between vehicles. You'll need the extra time to brake safely. Signal early, merge slowly and carefully.

Brake

Brake early and slowly to prevent skidding. Never slam on the brakes on winter roads.

Control

Do not use cruise control during a storm, don't overestimate the ability of four-wheel drive, and look out for black ice for what appears to be bare pavement.

Focus

Stay off the cell phone and minimize other distractions. You'll need added reaction time in case something happens.

Vision

Look ahead. The actions of other vehicles will alert you to what is happening ahead so

“Slow down and drive according to the road conditions. Driving too fast is the leading cause of winter crashes.”

Lamoille County Legislative Breakfast Series

Please join us in 2009 for the Lamoille County Legislative Breakfast series. Dates and topics include:

January 12 at 8:00 am at River Arts in Morrisville

Presentation of our 2009 legislative priorities, updates from the House and Senate, question and answer session. Catered with local Vermont product. Ken Squier will moderate.

February 9 (location TBD)

General updates from the House and Senate, Health and Business, with a panel lead by top health care leaders from our region.

March (date TBD, location Stowe)

General updates from the House and Senate, Tourism & Business on taxation, economic development, etc.

April 6 @ Johnson State College

General updates from the House and Senate, Education and Business - bridging the two. There will be no charge for the breakfast at Johnson State College; instead, we will be collecting donations for a local charity or scholarship fund.

New this year, the breakfast series cost \$10 each date. The fee includes breakfast. To receive \$3.00 off, bring non-perishable food items to donate. Food items and all after-cost profits will be donated to a Lamoille food program. To RSVP, contact the Lamoille Valley Chamber of Commerce at cindy@lamoillevalleychamber.com or 888-7607.

The Legislative Breakfast series is sponsored by the Lamoille County Planning Commission, Lamoille Economic Development Corporation, Lamoille Valley Chamber of Commerce, and Stowe Area Association.



Visit us at the Creamery at Jersey Heights on the La-Porte Road (VT100)