

Opinions

Office of the Vermont Secretary of State



Vol. 5, # 7/8 Summer Issue

July/August 2003



A Message from the Secretary

The Fourth of July is one of my favorite holidays. A time for picnics, parades, patriotic band music and fireworks. It is a time when we remember and celebrate our country's proud history.

In Vermont we also remember our state's rich history. We proudly remember the revolutionary

war battles of Hubbardton and Bennington; we recount the colorful stories of Vermont's Green Mountain Boys; and we commemorate the fort at Mount Independence. But this is not all. We are also proud that Vermont adopted the first constitution to outlaw slavery in 1777; we opened the first school for higher education of women, established by Emma Willard at Middlebury in 1814; and we were the first state to offer troops in the Civil War.

Careful preservation and conservation of Vermont's governmental records by this office – through our Archives division - and by town and city clerks and our state and local historical societies helps us know and appreciate Vermont's unique history.

This year the Archives has a new tool. Act 3, the first bill signed into law by Governor Douglas, brings Vermont's archival recordkeeping law into line with national standards. It recognizes that records of government are important not just as historical artifacts. They are important for keeping government accountable. They help us to manage risk by providing evidence to support government action, and they help to safeguard our rights as citizens. Act 3 will allow our office to identify those records of government that ought to be preserved and it gives us the ability to work with the agencies of state government to ensure that those records are protected for the future.

While we celebrate the new law, we must still look to the future. We must prepare for the record-keeping challenges of the digital era – when important government records might never touch paper. To this end, we have created a tool called the Trustworthy Information Systems Handbook. This handbook helps you put computer systems and policies in place to ensure that you preserve your digital records in a way that guarantees that they are accurate and reliable. You can view or download the Trustworthy Information Systems Handbook at <http://vermont-archives.org/records/vtis/vttrust.htm>

We look forward to working with you to continue to safeguard the public's right to know to ensure future generations will benefit from the history we make today.

Have safe and happy summer!

Deborah L. Markowitz, Secretary of State

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Archival Odds and Ends

By Gregory Sanford, State Archivist

Study Committee on Standards for Municipal Land Records

Section 49b of the Appropriation Act (Act No. 66) created a study committee on standards for municipal land records. The commission shall review existing practices of recording municipal land records 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 developing standards for the content and format of land records, developing standards for the indexing of land records, developing technology standards for the automation or computerization of land records, and recommending sustainable funding sources to support the modernization, automation and computerization of land records. The commission shall report to the general assembly before January 15, 2004. Bobbi Brimblecomb (Marshfield), John Cushing (Milton) and Pattie McCoy (Poultney) will represent municipal clerks on the commission.

Workshops at Fall 2003 New England Archivists Meeting

The New England Archivists fall meeting will be October 17-18 in Storrs, CT. On the 17th there will be full day workshops on planning an archival facility; care and preservation of maps; caring for historical records (a basic workshop taught by Polly Darnell of the Shelburne Museum); and preserving electronic records, put on by the Society of American Archivists. As the schedule is finalized check the New England Archivists' website at <http://nils.lib.tufts.edu/newengarch/>.

Making Smart IT Choices

The Center for Technology in Government recently (March 2003) updated its report, *Making Smart IT Choices: Understanding Value and Risk in Government IT Investments*. The report notes that failure rates for IT investments can run as high as 50 to 80 percent. Working with agencies ranging from federal government departments to town governments the Center developed a guide for making IT investments. The guide offers practical steps to identify and lessen risks and on how to develop a business case statement for making technology decisions. A copy of the report can be found at:

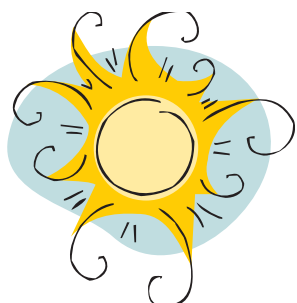
<http://www.ctg.albany.edu/themes/pubs?chapter=egov>.

The same site provides a link to another Center report, *Untangle the Web: Delivery Municipal Services through the Internet*. This guideline outlines steps for realizing the opportunities for municipal government presented by the Internet.



In Memorium:

It is with fondness we remember Signa Carbee, of Newbury Vermont who passed away in June. Signa was incredibly public service minded. She served the town for well over 20 years. Signa is one of the unsung heroes of Vermont. Her devotion to the people of Newbury helped make the town and our state a special place.



A big thank you and good luck goes out to
Nancy Bradford
as she leaves her post as Underhill town clerk.
We wish her the best of luck in the future and we
welcome Underhill's new town clerk, Sherri Morin.

FY04 Municipal Planning Grant Program Applications Now Available!

The FY04 Municipal Planning Grant Program applications have been mailed to all Vermont towns. The application deadline is September 30, 2003.

The Municipal Planning Grant Program funds are targeted to assist town planning efforts, the implementation of plans and ordinances, building the capacity of local boards and educating citizens about land use issues, as well as other planning projects. This year approximately \$800,000 will be available statewide through a competitive application process.




Municipalities may apply for up to \$15,000 for single applications or up to \$25,000 for multi-town projects. Call 828-5249 to receive a copy of the application or for assistance. Applications can also be downloaded from our website: www.dhca.state.vt.us/planning



Opinions of *Opinions*

- 1. Information about time and place of regular meeting must be publicly available.** The time and place for regular meetings of any public body may be designated by charter, regulation, ordinance, bylaw, or resolution and this information must be made available to the public upon request. 1 V.S.A. §31(c)(1). Many selectboards and schoolboards establish their regular meeting schedule by a resolution at the first organizational meeting after election at Town Meeting. Once established, the board does not have to “warn” each regular meeting, although the board must make the agenda available to the news media or any person upon request prior to the meeting. Many towns have a practice of posting the agenda and distributing it to the media on a regular basis.
- 2. A board may change its regular meeting time and place as it wishes.** A board can change its regular meeting schedule by adopting a new resolution at any time. The law does not limit the designation to the organizational meeting. However, when a board has changed the schedule in this way it should make some effort to let the public know so that the people who regularly come to these meetings are not caught off-guard.
- 3. Special meetings must be publicly announced within 24 hours of the meeting.** If a public body needs to hold a special meeting between its regularly scheduled meetings, the time, place, and purpose of the special meeting must be publicly announced at least 24 hours before the meeting. 1 V.S.A. §312(c)(2). A notice containing the time, place and purpose of the meeting must be posted in or near the municipal clerk’s office, and in at least two other public places in the municipality at least 24 hours before the meeting. Notice must also be given either orally or in writing to each member of the public body at least 24 hours before the meeting; however, a member can waive notice. Committees appointed by public bodies must also comply with the open meeting law including this warning of special meetings.
- 4. Public bodies cannot conduct a public meeting “online”.** Someday online public meetings might be common. At this time it would be hard for most, if not all of our towns to meet the requirements of the open meeting law using web conferencing. The open meeting law requires meetings to be accessible to the public so that members of the public can see and hear what is going on, and be heard by the board. In order for web conferencing to work the town would have to have enough terminals at the town office for member/s of the public to use so that they can observe and participate in the meeting. Note that it is conceivably possible right now for board members to participate in a meeting through web-conferencing – so long as the board member can hear what is going on and can be heard by all present. This is not so different than the current practice of allowing board members to participate in a meeting by a speakerphone. 1 V.S.A. §312



- 5. Delinquent tax penalty applies only to final due date.** In towns that collect taxes by installment, unless a town has a charter provision that provides otherwise, the delinquent tax collector cannot add the 8% penalty to installment payments, but only to the final payment of the year. 32 V.S.A. §1674(b). Several Chittenden county towns have charters that allow the Town to collect the 8% penalty in addition to interest on each installment. Towns without more generous charter provisions can only assess interest on a late installment payment.
- 6. The 8% penalty for a delinquent tax payment can only be charged or assessed once on the full amount that is delinquent.** A delinquent tax collector can choose to accept partial payment of taxes – or not. If the collector accepts partial payments the best practice is not take a proportionate share of the payment as penalty, interest and principal. In this way the 8% penalty will be taken only once on the principal owed, and interest will continue to accrue on the overdue principal amounts. But in every case the collection fee is only ever 8% on the initial tax due and it is collected only once.
- 7. Only the delinquent tax collector can waive all or part of the penalty on delinquent taxes.** When a town has an elected delinquent tax collector only the collector can decide to charge less than the 8% penalty. The selectboard or the voters cannot vote to charge delinquent taxpayers less than this amount. 32 V.S.A. §1674(2) provides “on all taxes collected after the expiration of the time established in the notice required by [law] the collector shall be allowed to charge and collect from the taxpayer a commission of eight per cent on the amount of the tax.” Because the collector is an independently elected official the selectboard cannot control his or her exercise of discretion in this matter.
- 8. Listers should make appointments for visiting property.** It is a best practice for Listers to call property owners to set appointments to look at property to complete listers cards for reappraisals. If listers show up unannounced it is reasonable for the property owner to say that it is not a convenient time and set an appointment for a mutually convenient future date. If the property owner refuses entry to the property at any time, then the listers must do their best appraisal without entering the property. However, if a property owner subsequently files an appeal of his listed value, the appeal must be considered withdrawn by the property owner if the property owner refuses to allow the BCA to inspect the property to determine its fair market value. 32 V.S.A. §4404(c).
- 
- 9. NEW LAW: New Voter registrations must be to the clerk by the second Monday before an election.** After July 1, 2003, applications to the checklist (Voter Registration applications) must be received by the Town Clerk where the applicant has his or her legal address on or before Noon on the second MONDAY before an election. 17 V.S.A. §2144(a) and (b). If you are assisting in a voter registration drive, please make certain that all applications are in the offices of the Town Clerks before the deadline.
- 10. NEW LAW: Clerks can add names to the checklist without BCA approval.** After July 1, 2003, the Town or City Clerk may add names to the checklist without a meeting of the Board of Civil Authority. 17 V.S.A. §2144(b). This change was made in Vermont law in order to implement the federal Help America Vote Act that requires that names be added to the checklist on an expedited basis in order to maintain a statewide voter checklist. If a town clerk does not believe that an applicant meets the eligibility requirements, the clerk must promptly forward the application to the board of civil authority for action. The board of civil authority will continue to participate in purging the checklist.

- 11. Meeting minutes can be brief.** Minutes of a meeting of a public body should not attempt to be a transcript of the meeting or a complete restatement of all public discussion at the meeting. 1 V.S.A. §312. The law requires only that minutes include the names of everyone who participates, the subjects discussed, motions made and actions taken. It is good practice to keep the minutes short and sweet so that the public can tell what action was taken at the meeting. Too much detail can cause citizens and/or board members to spend more time at meetings debating the accuracy of the “transcriptions” and dialogue recorded in minutes of past meetings, than on the new action items.



- 12. A town may vote to increase board membership from three to five, and in some cases vote to fill those positions at the same meeting.** When a town votes its officers on the floor it may conduct a vote to increase the number of board members from three to five, and then take nominations from the floor and vote to fill those positions. However, when a town votes its officers by Australian Ballot it must conduct two elections. The first vote would be to increase the size of the board. The second election would be held to elect to fill the newly created vacancies. The motion to increase the size of the board could include language that specifies that the new positions will not become effective until the next town meeting. 17 V.S.A. § 2650.
- 13. Listers meetings must be open to the public – but listers can work outside of board meetings.** When listers meet it must be at a publicly noticed special or regular meeting of the board. However, the law permits listers to perform site visits and clerical work outside of board meetings. The law also provides that “routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.” 1 V.S.A. § 312(g).
- 14. There is no recall or revote of elected officials.** There is no Vermont law that permits the voters to recall an elected official or have a revote of an election of an official. In one town a board member was elected to office but never came to a meeting. The other board members could request his resignation – but they had no power to force him to resign.
- 15. Election can be contested in Superior Court.** The only way to challenge or contest an election of an officer is by filing a petition with the appropriate Superior Court within 15 days following the election. 17 V.S.A. §2603. This requires the petitioner to allege either errors sufficient to change the outcome of the election, fraud in the process sufficient to change the result, or that for any other reason, the election is not valid.
- 16. Election officials must ensure that no campaign materials are in the voting booths.** It is the up to the officials running the election to ensure that the voter takes all campaign materials out of the voting booth. 17 V.S.A. § 2508 (a)(1). A failure to do this in every case will not be enough to have the election overturned. However, if you have evidence that the names were in the booths for many hours - that might convince a court to act.
- 17. A Lister/JP may not hear tax appeals.** When a lister is also a Justice of the Peace for a town the lister may participate in tax appeals as a lister – but may never sit as a member of the board of civil authority(BCA). This is because the BCA judges the work of the listers as it makes its decision on tax appeal. The law prohibits a person to act as a judge in a quasi-judicial matter where he or she has a real or financial interest in the outcome. 12 V.S.A. § 61.

- 18. Lister should not discuss grievance with landowner until grievance hearing.** The listers act as a quasi-judicial board when they meet to hear grievances. 32 V.S.A. § 4222. For that reason, they must be careful to follow all ethical rules including the prohibition against hearing grievances of relatives or close friends or, discussing individual cases with the landowner or others outside of the grievance process, and prior to the determination. 12 V.S.A. § 61.
- 19. On premise signs limited by state law.** 10 V.S.A. § 493 provides that “owners or occupants of real property may erect and maintain on the property, on-premise signs advertising the sale or lease of the property or activities being conducted on the property.” That being said, those signs cannot have a total area of more than one hundred fifty square feet, and must advertise activities being conducted on the same premises. A sign advertising the sale or lease of real estate by the owner or an agent may not have an area of more than six square feet. The law also provides that an on-premise sign may not be located more than fifteen hundred feet from a main entrance from the highway to the activity or premises advertised.
- 20. Local sign ordinance may provide stricter rules than state law.** Vermont’s state sign law specifically provides that the state law will not supersede the provisions of any local ordinances whose requirements are more strict than those of the state law, so long as the provisions are not inconsistent. 10 V.S.A. § 505.
- 21. Political signs are permitted in the state highway right of way for up to two weeks.** The state prohibits the placement of most signs in the state highway right of way. However, an exemption to the law applies to signs that announce “an auction, or a campaign, drive or event of a civic, philanthropic or religious organization.” These signs may be maintained for not more than two weeks. 10 V.S.A. § 494(9), 495(e).
- 22. Selectboard member can serve on the zoning board.** There is no legal conflict of interest between the office of selectboard and that of zoning board. Indeed, it is not unusual for selectboard members to serve on the zoning board as well. Selectboard members who are members of the zoning board should not participate in any discussion of compensation for the zoning board. In addition, if there is a quorum of the selectboard serving on any other board, including the zoning board, they must refrain from discussing issues that are outside the subject of the zoning board – selectboard matters must only be discussed in a public meeting of the selectboard (or an executive session of that board.)
- 23. Cemetery Commission may not limit who may conduct burials.** State law does not give the cemetery commission the authority to limit who can do burials in the town cemetery so long as the business complies with the rules of the cemetery. The commission may make reasonable rules for the use, care and management of the cemetery. This power probably would not permit the commission to identify what funeral homes or crematoria are permitted to bury people in the cemetery. However, the commission can establish rules that require all funeral homes and crematoria who conduct burials to be licensed by the state, and the commission can require these businesses to follow the particular rules of the cemetery. If they fail to do so, then the commission could reasonably prevent them from conducting burials at the cemetery. 18 V.S.A. § 5305.
- 24. Selectboard can request fence viewer to examine fences and divide costs between landowners.** Upon request of the selectboard, the fence viewers shall examine fences within the town and must determine who is responsible for maintaining the fence dividing two parcels. 24 V.S.A. § 3810. When the land is being pastured without a division fence by both adjoining property owners then the fence viewer can be asked to decide how many animals each can put on the land. 24 V.S.A. § 3804. The fence viewer can also determine where a fence should be placed if the fence cannot be placed along the property line because of water or other impediments, and the owners can not agree on where it should be built. The fence viewer may not decide a boundary line or decide on ownership of land. 24 V.S.A. § 3802. See *Camp v. Camp*, 59 Vt. 667 (1887); *Shaw v. Gilfillan*, 22 Vt. 565 (1850).

- 25. Fence viewer cannot require landowner or occupant to pay for fence if he/she keeps no livestock.** In 1989 the Vermont Supreme Court found 24 V.S.A. § 3802 unconstitutional. Section 3802 requires abutting landowners to pay a portion of the costs to maintain a fence that separates his or her property from the neighboring parcel. *Choquette v. Perrault*, 153 Vt. 45 (1989). The court reasoned that the change in land use patterns in Vermont means that the fence law more and more often applies to landowners without livestock. The court concluded that in such situations the fence law is burdensome, arbitrary and confiscatory, and is thus, unconstitutional. For this reason, the fence viewer can only require the landowner or occupant who owns livestock to pay the cost of maintaining the fence.
- 26. Appeals from decisions of fence viewers must be made within two hours of the decision.** It is a little known fact that the shortest period for bringing appeal is from decisions of the fence viewer. Vermont law permits fence viewer decisions to be appealed to the district or superior court – but only if the appeal is taken within two hours of the rendition of the decision. 24 V.S.A. § 3810.

In our monthly Opinions we provide what we believe the law requires based upon our legal judgment, years of observing Vermont's local government practices, and Vermont Court decisions. This information is intended as a reference guide only and should not replace the advice of legal counsel.

Volunteers Wanted!

We are planning for the 2004 Vermont Public Service Awards and we need your help!



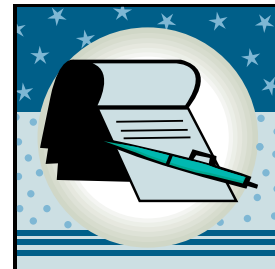
The Secretary of State's Office will be honoring long serving appointed and elected local officials of all fourteen counties for the 2004 Vermont Public Service Awards (VPSA). The purpose of the VPSA program is twofold -it gives our dedicated local officials the recognition they deserve - and, by highlighting the vital role our public servants play in our towns, it will hopefully encourage others to serve.

If you are interested in volunteering please email Sarah Alberghini at salberghini@sec.state.vt.us or call 802-828-2148 to get involved!

Making Corrections to the Grand List

By Mary Jane Grace, Dept of Taxes

A lot of folks have questions about how to make corrections to the grand list this time of year. I thought it might be helpful to review the procedures. The following is from the Listers Handbook.



VIII. ERRORS AND LIABILITIES

Some day, you may make a mistake. The most common type of mistake is that committed honestly, without malice or prejudice. There are remedies available to correct most of these.

If you find listing errors, these can be corrected, but the procedures vary according to the type of error and the timing. From the time that the listers first compile and lodge the list with the town clerk for public inspection until the date it is lodged with the town clerk a second and final time, it is called the “abstract of individual lists,” or just the “abstract.” You may also hear it called the preliminary grand list. After grievances are closed, the book is turned over to the town clerk and it becomes the “grand list.”

The statutes direct different procedures for correcting different types of errors. Errors in your appraisal or your listing are very often discovered during grievance hearings. These may be corrected according to the provisions for amending an abstract, and notices must be sent to the taxpayers. 32 V.S.A. section 4224.

If you discover an error or omission in the listing of property before the grand list has become final, you can correct it without asking for approval from the selectboard. 32 V.S.A. Section 4111(f). You must send written notice to any affected taxpayers allowing them to grieve.

If you discover a procedural error affecting the validity of the abstract of individual lists (such as missing a deadline, or a defective notice), you can correct this on or before February 1 of the following year according to the procedures in 32 V.S.A. section 4112 et seq.

If you discover an error or omission in the listing of property after the grand list has become final, having been turned over the town clerk, the approval of the selectboard is needed to make a correction. Such errors or omissions of individual property listings may be corrected until December 30 (before December 31). 32 V.S.A. section 4261

If you discover that you have made a procedural error affecting the validity of the entire grand list, you can correct this error on or before February 15. 32 V.S.A. section 4262 et seq.

If taxpayers feel that you have made some other type of error and decide to sue, they can sue the town. Provided there was no malice involved, the town will cover the costs of the trial and of any damages. 24 V.S.A. section 901.

Vermont law does provide for penalties in some instances. If you fail to or neglect to perform a duty imposed on you by law, you can be fined \$100. 24 V.S.A. section 902. Mistakes made with bad faith or malice which deprive a person of any of their civil rights are punishable under the federal Civil Rights Act. For mistakes involving misuse of office, such as accepting bribes or commissions, you can be punished under state law. 13 V.S.A. Chapter 21.

Listers who knowingly make or return an incorrect abstract can be fined up to \$500. 32 V.S.A. section 4182. We assume that those of you who read this handbook are not intent on finding out more about these types of mistakes.

Zoning Administrator Training

Introducing the New Zoning Administrator's Handbook

**Featuring: Deborah Markowitz, Secretary of State
Andy Flagg, Department of Housing and Community Affairs
and others...**

We are pleased to offer a seminar for Vermont's Zoning Administrators to introduce the Zoning Administrator's Handbook. The authors of the handbook will walk through its provisions and answer questions from participants.

The **Zoning Administrator's Training** will provide an overview of the zoning administrator's roles and responsibilities. Speakers will discuss the duties of the zoning administrator, including the authority to issue development permits, the limits on that authority, and enforcement of bylaws. Presenters will cover special issues such as pre-existing small lots, lots with multiple structures and mobile homes.

**Wednesday, September 10th
9:00 – 1:30 p.m.
Suzanna's Restaurant, LaGue's Inn
Berlin, Vermont**

Zoning Administrator's Workshop Registration Form

\$40 Registration Fee (coffee break, lunch and materials):

Amount enclosed: \$_____ (Please make check out to Vermont Secretary of State.)

Zoning Administrator or Respondent: _____

Town: _____

Address: _____

Telephone: _____

Email: _____

Please copy and return this form with payment to:

Sarah Alberghini
Secretary of State's Office
26 Terrace Street
Montpelier, VT 05609-1101

For additional information, please contact Sarah Alberghini at (802) 828-2148 or e-mail salberghini@sec.state.vt.us.

July 2003

July 1: Last day for Town Clerk to submit name of Town Treasurer to State Treasurer. 24:1166

July 4: Independence Day. 1:371

July 15: Last day for School, Fire District and Village Clerks to deliver to Town Clerk statement of taxes assessed during year ending June 30th. 32:3461

July 15: Last day for Town Clerk and Appraiser in unorganized towns and gores to file statement of taxes assessed with the Director of Property Valuation and Review. 32:3462

July 25: State Withholding Tax Return is due (actual date by which return must be postmarked is shown on the printed form) if reporting less than \$2500 per quarter; more than \$2500 requires monthly report. 32:5842

July 30: Last day for Town Clerk in municipality with fiscal year ending June 30 to publicly disclose fees kept as compensation for that fiscal year. 24:1179

July 31: Last day to file Form 941 (Quarterly Withholding Return) with Internal Revenue Service.

August 2003

August 15: Last day to transmit electronic abstract (form 411) and electronic grand list to the Director of Property Valuation and Review. 32 VSA section 5404(b).

August 16: Bennington Battle Day. 1:371

September 2003

September 1: Labor Day. 1:371

September 15: Last day for Town Clerk to remit to State Treasurer an accounting of dog and wolf-hybrid licenses sold and remit the license fee surcharge for an animal and rabies control program. 20:3581(f)

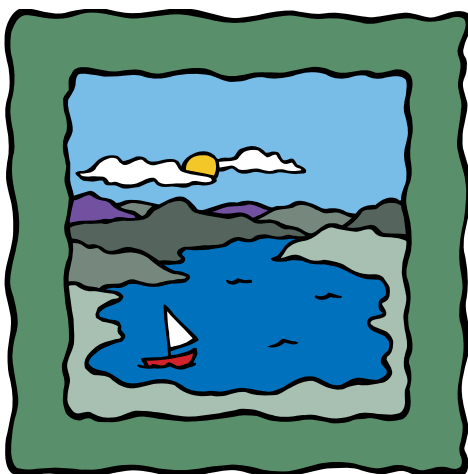
September 15: Last day for Board of Civil Authority to review most recent checklist to determine whether those listed are still qualified to vote. 17:2150(c)

September 20: Last day for Board of Civil Authority to certify to Secretary of State purging of the checklist has been completed. 17:2150(d)(7)(E)



Summer *Opinions* Issue

July/August



Wishing You a Wonderful Summer!
The next issue will be published in September.

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July/August 2003

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