

3

The Municipal Planning Commission

None of us is as smart as all of us.
—Pogo

Most municipalities in Vermont have municipal planning commissions. The volunteer membership on these commissions changes frequently as terms expire or members resign. New members need information on the role of the commission, its powers and duties, its organization, available technical assistance, and finances. This chapter is designed to inform new members, existing members, the legislative body, and the general public about the municipal planning commission.

3.1.1 Membership

A planning commission, consisting of three to nine voting members, may be created at any time by the legislative body of the municipality. A majority of the members must be residents of the municipality. There are two ways that members may be selected. Usually, the legislative body (selectboard, city council, aldermen, or trustees) appoints all members and fills all vacancies on the planning commission. The 1990 amendments to Chapter 117 permit the voters in a municipality to choose to elect planning commission members. If the commissioners are elected, the legislative body may still fill a vacancy until the next municipal election, or a special election may be held. By unanimous vote, the legislative body may remove appointed commissioners, but it may not remove elected planning commission members. However members are selected, they should represent all geographic areas of the municipality, should express a variety of interests and bring a range of skills to the commission. The interests of any single group should not be favored. **24 V.S.A. §§4321, 4322 and 4323.**

3.1 Designation of the Planning Commission

3.1.2 Terms of Membership

Terms of the commission members are established by **24 V.S.A. §4323**. The terms of appointment in a municipal charter prevail over the provisions for appointment set forth in Chapter 117 provided that the charter specifies the precise terms for the planning commission members.

3.1.3 Ex-officio Members

The following persons shall be ex-officio and non-voting members of the planning commission:

- members of the selectboard of a rural town
- not more than two elected or appointed officials of an urban municipality chosen by the legislative body

A rural town is one with a population of less than 2,500 persons as of the date of the most recent U.S. Census. An urban municipality is a city, an incorporated village or a town that is not a rural town.

If a municipality has an energy coordinator designated under **subchapter 12 of chapter 33 of title 24**, he or she may be a non-voting, ex-officio member of the planning commission as well. **24 V.S.A. §4322**.

3.1.4 Joint Zoning Board of Adjustment and Planning Commission

According to **24 V.S.A. §4461**, the planning commission may serve as the zoning board of adjustment for a rural town or urban municipality. Municipalities that have small populations and little permit activity sometimes choose this option. However, this joint function is not recommended in most communities, because planning commissioners in communities with much development activity may find themselves overburdened if they also serve as the zoning board of adjustment. Hearing zoning appeals may leave little time for the planning commission to carry out its regulatory responsibilities, such as site plan review, and still perform its overall role of guiding the future growth of the community.

3.1.5 Joint Planning Commissions

If a town has one or more incorporated villages within its boundaries, the legislative body of each municipality may designate one planning commission to serve the town and village or villages.

The arrangement may be terminated at any time by the legislative body of any participating municipality. **24 V.S.A. §4327.**

3.1.6 Planning Department in Urban Municipality

In an urban municipality (a municipality with a population of 2,500 or more persons, according to the most recent U.S. Census data), the legislative body may create a planning department headed by a planning director instead of a planning commission. Communities that choose this approach will most likely hire professional planners to staff the department. The department may have the full powers of a planning commission. A planning commission also may be appointed by the legislative body or elected to advise the planning department. **24 V.S.A. §§4321 and 4323.**

3.1.7 Development Review Board

A development review board is a single board which can be created to perform all the regulatory review functions for the town. It replaces the zoning board of adjustment and takes over the subdivision and site plan review role of the planning commission. This permits the planning commission to focus on its planning function as a drafter of the town plan and land use regulations. **24 V.S.A. §4461.**

As leaders of the community on planning matters, the members of the planning commission have many important roles.

One significant role is to represent all members and interests of the community. In this capacity, the commission should seek the maximum feasible participation by other public officials, interest groups, civic groups, and citizens to discuss joint and competing interests. The commission must be willing to listen to ideas and to solicit comments. The commission must be cautious in weighing the comments of those who are active in the planning process with the interests of those who do not participate. Above all, members must put the general welfare of the community above any personal interests.

The planning commission is responsible for looking out for the general welfare of the community and for bringing a long-term perspective to short-term strategies and day-to-day decision-making. The planning commission must be careful not to devote

3.2 Role of the Planning Commission

all of its time to regulatory review when long-range planning and broader community interests also require its attention.

The planning commission also has a responsibility to educate the public about the purposes of planning and to publicize and seek comment on specific recommendations to address local planning issues. This educational process occurs through public hearings and informational meetings, through discussions with permit applicants, through coordination with other local officials, through written materials and newspaper articles, and through day-to-day contact with the public. To be effective, commissioners must be well informed about the community, the content of planning documents, and the rationale for plans, implementation strategies, and regulatory decisions.

In addition, the planning commission has a technical role in proposing courses of action, including the comprehensive plan. The commission also must review and recommend actions on specific proposals put forth by public interest groups and the private sector. To carry out this role effectively, commission members need to inform themselves about the planning process, organize themselves, take advantage of training programs offered to them, and seek technical advice to further their understanding.

Finally, the planning commission has a regulatory role in its quasi-judicial review of project applications. Chapter 117 delegates the responsibility of conducting site plan, design, and subdivision review to the planning commission, unless a development review board has been created by the municipality to carry out those regulatory functions. In carrying out this role, the planning commission must be very careful to follow the proper rules of procedure to maintain the integrity of the process and to avoid costly legal challenges. See Section 3.4 of this manual for a discussion of the organization and procedures of the planning commission.

The planning commission's regulatory role includes party status in the Act 250 process as well, and as such may testify on projects under review and may appeal decisions. **10 V.S.A §§6084(a) and 6085.**

3.3 Powers and Duties of the Planning Commission

The powers and duties of the planning commission are set forth in **24 V.S.A. §4325**. These powers include major responsibilities such as of preparing and implementing the municipal plan, as well as the authority necessary to carry out activities related to these responsibilities, including undertaking studies, entering upon land,

and hiring technical assistance. The planning commission is specifically authorized to do the following:

- prepare, maintain, and amend the municipal plan and bylaws
- administer the subdivision regulations
- undertake reviews under the zoning regulations, including site plan review, planned unit and planned residential development plans, design review, and approval of rights-of-way for parcels not having frontage on public roads
- participate in the review of applications under Act 250
- prepare and annually update a capital budget and program
- review adjacent municipal plans, the regional plan, and state agency plans for compatibility with their own municipal plan
- conduct studies and make recommendations on land development, urban renewal, transportation, community development, beautification, design, historic and scenic preservation, conservation of energy, and development of renewable energy resources
- participate in regional planning programs
- retain staff and consultant assistance
- recommend codes and standards, including building, plumbing, fire, electrical and housing codes, and specifications for streets and related public improvements
- recommend fees to the legislative body
- hold public meetings
- enter upon land to make site inspections

3.4.1 Officers

The planning commission is required to elect a chairperson and a clerk. The chairperson is responsible for the overall organization and conduct of the commission. The clerk is typically responsible for minutes of meetings, filing of public notices, notification of applicants, and distribution of proposed documents in accordance with the provisions of Chapter 117. **24 V.S.A. §4323(b)**.

3.4.2 Rules

The planning commission is required to adopt rules for the performance of its function. These rules are to be adopted at the commission's organizational meeting by a majority vote of the members present. If a commission does not have a set of rules, it

3.4 Organization and Procedures of the Planning Commission

should adopt them as soon as possible. They are necessary to insure the smooth operation of the commission. Model rules are available from the Secretary of State, but each municipality should carefully adapt them to suit local needs. **24 V.S.A. §4323(b)**.

Planning commission rules should cover the following:

- powers and duties of the planning commission
- responsibilities of the officers
- procedures for scheduling and conducting regular commission meetings
- procedures for scheduling and conducting public hearings
- public notice for commission meetings and public hearings
- preparation of findings of fact for permit applications
- notification of applicants
- conflicts of interest
- minutes of meetings
- record-keeping
- handling of expenses
- annual reports
- voting procedures

Except for the vote required for adopting rules, planning commissions must follow **1 V.S.A. §172**, which states that a majority of all of the commissioners—rather than a majority of those present—must approve any action.

3.4.3 Meetings

All meetings of the planning commission are open to the public. The commission must inform the public when and where the meetings will occur. A schedule of regular planning commission meetings must be posted in a public place. Any changes to this schedule, or notice of special meetings other than public hearings, require posting in a public place of the time, date, and place of the meeting at least 24 hours in advance. All public hearings must follow the notice requirements of **24 V.S.A. §4447**.

Planning commissions are subject to Vermont's Open Meeting Law, **1 V.S.A. §310-314**. Every planning commission should be familiar with these provisions. It is especially important for a planning commission to understand that it may hold an executive session only to consider specific issues that are set out in **1 V.S.A. §313**. Planning commission members should read that section carefully each time they consider holding an executive session.

Planning commission meetings, like all public meetings, must comply with the *Americans with Disabilities Act* (ADA), as required by both state and federal law. Meetings, as well as written materials, must be accessible upon demand to all persons with disabilities. This means that a handicapped person must be able to enter the building and the meeting room, and have the use of a rest room. On request, people with hearing, speech and visual impairments, as well as mobility difficulties, must not be denied participation in a planning commission meeting or hearing. See Appendix D for a list of guides that are available to help provide for barrier-free meetings.

3.4.4 Records

The planning commission must keep a record of its business, including all meetings, transactions, and decisions. The records must be on file and available to the public. Most municipalities retain these records in the clerk's office or in the office of the planning department. **24 V.S.A. §§4323 and 4326.**

As a quasi-judicial body that approves and disapproves applications, the planning commission must keep accurate records of evidence presented at hearings, resolutions of the commission, and findings of fact on which the decisions are based. The record must also include any conditions that are required in a decision.

3.4.5 Annual Report

Every planning commission must make an annual report to the municipality. This report should summarize the commission's activities for the year, including current issues, trends, and needs for future action. These reports are often circulated to the residents through the town, village, or city annual report. The commission should produce a complete and informative statement. **24 V.S.A. §4326.**

Because a municipal planning commission usually is composed of lay people, preparation of a plan and implementation of the bylaws often requires the assistance of others: professional staff, regional planning commission staff, or private consultants who work under the commission's direction. Assistance may also be obtained from federal, state, county, and regional organizations and from educational institutions. Chapter 4 of this manual describes the sources for technical assistance in preparing the plan.

3.5 Technical Assistance

3.6 Expenses

A planning commission may incur costs for the "necessary and reasonable" expenses of its members, for professional assistance, and for meeting notices and mailings. To cover these costs, the municipality is authorized to appropriate funds for the planning commission. Many municipalities use permit application fees to cover costs for processing applications. The planning commission also may accept funds from federal or state governments and from private sources. **24 V.S.A. §§4322 and 4326.**

See Section 6.4 of this manual for information on funding sources.