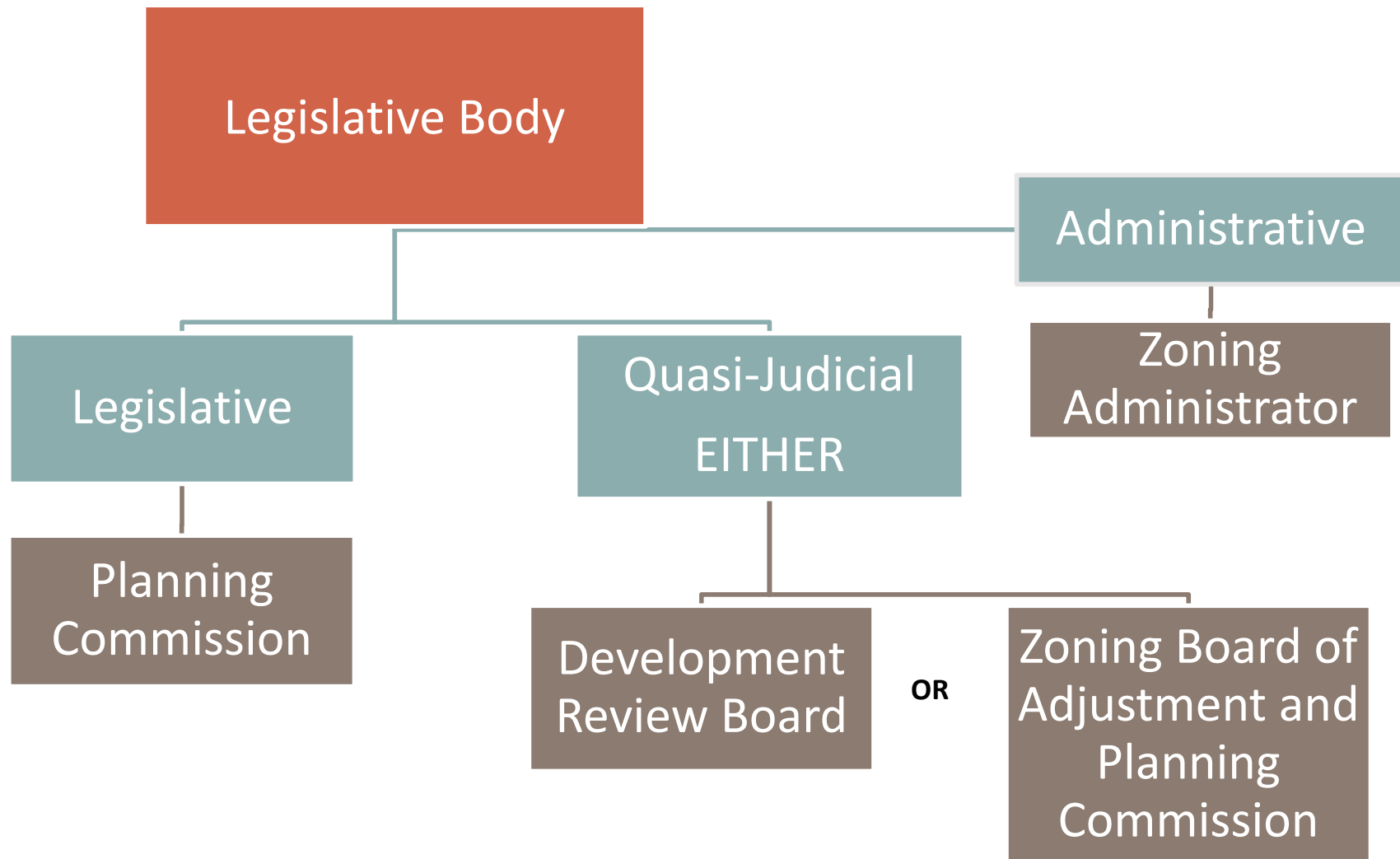


MEETINGS AND HEARINGS

Town of Hardwick, December 8, 2015

Local Roles and Responsibilities



Legislative Function

- Planning Commission

- Municipal Plan
- Zoning Bylaws/Development Regulations
- Capital Budget
- Other Studies

- Legislative Body

- Edits Municipal Plan and either adopts or sends to voters
- Edits Zoning Bylaws/Development Regulations and either adopts or sends to voters
- Edits and adopts Capital Budget

What is a meeting?

- “A gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.”





What it's not

- Written correspondence
- Electronic communication, such as discussing when to schedule a meeting, organizing an agenda, or distributing materials to be made available at a meeting
- ...unless it results in written or recorded information

Meetings vs. Hearings

What happens...

Who does it...

Meetings

- Discuss business or take action
- Generally legislative

- ALL boards

Legislative Hearings

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

- The Planning Commission
- Selectboard

Quasi-judicial Hearings

- Hear arguments from parties seeking board approval

- Any board that reviews proposed development

Public Notice

Meetings*

- For regular, special, and emergency meetings: 1 VSA §§310-314

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**
- 3 or more public places
- Mailed to applicants and adjoiners
- Posting within view of nearest public ROW

Meetings

Regular meetings

- Have at least 1 organizational meeting a year
- Minutes can serve as subsequent notice
- Info available on request

Special Meetings

- Publicly announced at least 24 hours
 - Notice in the town clerk's office
 - 2 other places
 - Notice to each member

Emergency Meetings

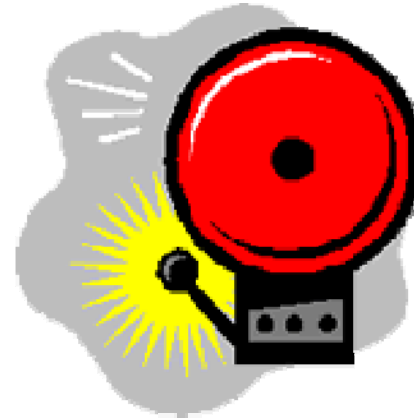
- No public announcement
- No 24-hour notice to members
- ...but some public notice ASAP

Special Meetings

- Not the regularly scheduled times
 - Holiday schedule
 - Working on a deadline (i.e. plan or bylaw draft that requires additional meetings before the hearing)

Emergency Meetings

- Only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention...
 - Public safety interest
 - Natural disasters
 - Not because you forgot to notice



Publicly announced

- “Notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, *and to any person who has requested....to be notified of special meetings.*”
- TIP: Keep a sign-in sheet with email and/or phone for people who come to your meetings!

Phoning in

- Any vote is taken by roll call
- Each member in absentia identifies himself or herself when the meeting convenes
- Must be able to hear the meeting and be heard!
- If a quorum is phoning in...
 - Public announcement and posting of an EMERGENCY meeting at least 24 hours in advance...or as soon as “practicable”
 - Have at least ONE physical location where the public can attend and have at least ONE member or designee there

Vermont's Open Meeting Law

(1 V.S.A. §§310-314)

- Post advance notice
- **Make the agenda available before the meeting**
 - At the municipality
 - 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/



Minutes

- All members of the body present
- All other active participants
- All motions, proposals, and resolutions made, offered, considered
- The result of any votes

Striking the balance in meetings

- “...the public shall be given a *reasonable* opportunity to express opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to *reasonable rules* established by the chairperson.”



The balancing act

- Adopt your own rules (don't just reference Robert's Rules)
- Make a great agenda with TIMEFRAMES for discussion
 - Read and review the agenda at the start of the meeting
 - Amend agenda if necessary
AS THE 1st ORDER OF BUSINESS
 - Use it as a timekeeping tool
- Don't shut the door
- Food, as appropriate
(no, seriously)



The balancing act

- Secretary acknowledge people when they enter and leave early – eye contact!
- Sign-in sheet
- The Chair is the MODERATOR – don't advocate when you're making the rules
 - The Chair still votes
- Make extra copies of all documents being discussed
 - (Watermark DRAFT, if necessary)



Legislative Hearings

- To receive public comment on proposed plans, bylaw, and policies.
- Public notice is mandatory:
 - Plans: 24 VSA §§4384-4385
 - Bylaws: 24 VSA §§4441-4442
- At least two public hearings
- Make summary of plan/bylaw available in notice

Executive Session: Examples

- Contracts and labor relations
- Arbitration or mediation
- Non-tax grievances
- Pending (or probable) litigation
- Confidential client-attorney communication
- Real estate purchase or negotiations
- Appointment or evaluation of public officer or employee
 - FINAL DECISION HAS TO BE PUBLIC
- Disciplinary action
- Public safety issue

Quasi-Judicial Hearings (24 V.S.A. §4464)

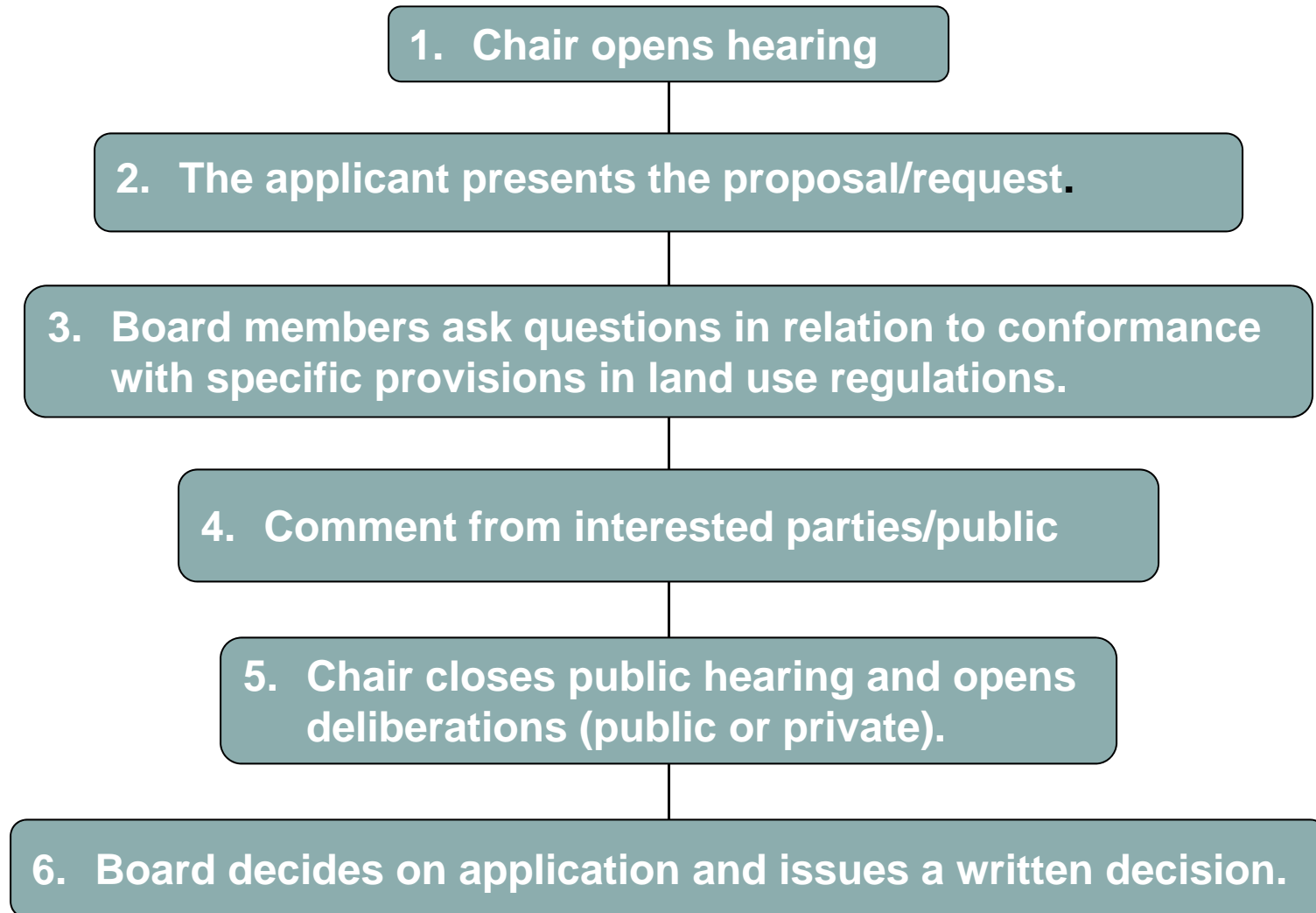
Conditional
Use Review,
Subdivision
Review,
Appeals

- 15 days' notice in the newspaper
- 3 or more public places
- Mailed to applicants and adjoining
- Posting within view of nearest ROW

Site Plan
Review

- Seven days' notice
- 3 or more public places
- Mailed to applicants and adjoining
- Posting within view of nearest ROW

Flow of Quasi-Judicial Public Hearing



Opening a Quasi-Judicial Hearing

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**

Interested Persons 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!

Board Member Role at Quasi-Judicial Hearing

In order to determine a project's conformance with your regulations and protect due process:

- Listen to Testimony and Evidence;
- Ask Questions;
- Refer to your regulations;
- Avoid conflicts of interest;
- Must not prejudge a matter or publicly express opinions on a pending case.



Deliberative Session

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



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.



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

Regulatory Decisions

Decisions 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

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!**

Who is responsible for preparing decisions?

Writing Decisions

Evidence

- Frank measured the height of the addition to be 40 ft.
- Blueprints show the height to be 38 ft.

Findings of Fact

- The height of the addition is 40 ft.

Conclusions of Law

- The addition violates the bylaws' 39 ft. height limitation for additions.



Writing Decisions

- Fact: WHAT do we know?
 - Evidence: HOW do we know it?
 - Law: WHAT do we conclude about it?
-
- Evidence is not a finding of fact, but it can support the finding.



In Summary: Protecting Due Process

- Proper public notice
- People are given an opportunity to be heard
- A fair hearing presenting all sides of the issue
- Impartial standards for decision making
- Accurate and accessible public records
- Decision makers acts without bias
- MUST adopt rules of procedure and ethics if you are doing development review (24 V.S.A. §4461)

QUESTIONS?



Tools and Resources Available:

- Essentials of Local Land Use Planning and Regulation Manual (online at VPIC.info).
- Purple Book – Title 24, Chapter 117 V.S.A. and other land use relevant statute as amended through 2012 (online at VPIC.info).
- Title 24, Chapter 117, V.S.A, current and up to date: www.leg.state.vt.us/statutes
- Land Use Planning Implementation Manual (online at VPIC.info).
- Your local Regional Planning Commission: www.vapda.com
- www.vpic.info – Vermont Planning Information Center (VPIC)
- www.vlct.org – Vermont League of Cities and Towns (VLCT)
- www.accd.vermont.gov/strong_communities – Department of Housing and Community Development