

Status Report: 15 Years After Act 200

Introduction

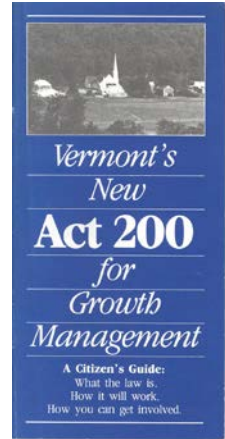
Act 200 was a landmark growth management law both in Vermont and in national planning history. It sought to fill the planning gap left in Act 250 – to encourage growth decisions to take place through public, community-wide consensus, ahead of the project-by-project permit process. Fifteen years after its passage, the notable gap is state agency coordination and planning – a piece of the law that faded away early in its implementation.

This Status Report began as an effort to document what happened to that state level of Act 200: the Council of Regional Commissions and state agency planning. Having been discontinued with little protest, an explanation of how those processes worked and reasons for their demise ought to be noted. The need for state land planning still exists and there is rising demand to address that gap. This report is based on a review of state planning and interviews of individuals representing varied planning roles and functions over time.

When the Vermont Council on Rural Development committed to calling a “summit” on planning in summer 2004, the interviews and collection of data were expanded to include a status report on regional and municipal planning, so that summit participants would have some common background for that discussion.

Regional and municipal planning are alive and well in Vermont, and have benefited from Act 200. Due both to the timing for this report, and a different level of need for examination, this report emphasizes the state

level of planning in Vermont. This report presents an overview of revisions Act 200 made to Vermont’s land use planning statute 15 years ago. The report then examines what happened to the Council of Regional Commissions and state agency planning. The changes to regional and municipal planning over the 15 year period are also examined. The report concludes with a summary of what has worked well, what has not, and the challenges that remain.



Act 200 Basics

In 1988, the Vermont Municipal and Regional Planning and Development Act (Chapter 117), first enacted in 1967, was amended by the Vermont State Legislature, along with similar statutes concerned with land use planning. Collectively known as the Growth Management Act, or Act 200, these changes were intended to improve the effectiveness, coordination, and comprehensive view of planning at the local, regional, and state level. The mechanisms were established to provide coordination both horizontally -- between state agencies, and vertically -- between local, regional and state levels. While the original (1967) purpose and guiding principles of Chapter 117 were left largely intact, a major achievement of Act 200 was to create a new framework of land use goals. The Act also sought broader public participation in the planning process, with a goal to press for land use decisions “to be made at the most local level possible commensurate with the impact of the decision.”

Act 200 further established mechanisms of “peer” review, through horizontal and vertical levels of governmental planning –

trying to equalize the authority in decision-making among those levels. The Council of Regional Commissions was created as an appeals and mediation panel, as well as to provide state level review of the state and regional plans. The Act sought a greater integration at all levels of the planning process and an active consideration of the spillover effects of land use decisions of one town or region on another. A major objective of Act 200's planning legislation was to ensure that decisions were made at the most local level possible (commensurate with their impact).

If requested, the determination of a municipal plan's consistency with Act 200's goals and with the plans of neighboring municipalities was delegated to the twelve Regional Planning Commissions (RPCs). The Act also established a system of "open planning" by which state agencies were to "prepare meaningful, public plans for all their actions that affect land use." Those plans were to be compatible with regionally-approved town plans, regional plans and consistent with the goals of Act 200.

Act 200 – Goals from Title 24, Vermont State Statutes, Chapter 117, section 4302

In its original form, Act 200 contained four Process Goals and 32 Planning Goals. In response to major anti-Act 200 furor in the legislature, the 32 original Planning Goals were consolidated to twelve in 1990. The goals represent a common set of planning guidelines for all levels of planning. In 2003, economic development legislation included the addition of a goal concerned with child care provision, the first social equity goal, so that the goals now number thirteen. It should be noted here that while planning in accordance with these guidelines is required by statute at the state and regional (RPC) level, planning at the local level, while encouraged, is not mandated.

Process Goals

- (1) To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions, and state agencies.**
- (2) To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact.**
- (3) To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place.**
- (4) To encourage and assist municipalities to work creatively together to develop and implement plans.**

Planning Goals

- 1.) To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.**

(A) Intensive residential development should be encouraged primarily in areas related to community centers, and strip development along highways should be discouraged.

(B) Economic growth should be encouraged in locally designated growth areas, or employed to revitalize existing village and urban centers, or both.

(C) Public investments, including the construction or expansion of infrastructure, should reinforce the general character and planned growth patterns of the area.

- 2. To provide a strong and diverse economy that provides satisfying and rewarding job opportunities and that maintains high environmental standards, and to expand economic opportunities in areas with high unemployment or low per capita incomes.**

3. To broaden access to educational and vocational training opportunities sufficient to ensure the full realization of the abilities of all Vermonters.

4. To provide for safe, convenient, economic and energy efficient transportation systems that respect the integrity of the natural environment, including public transit options and paths for pedestrians and bicyclers.

(A) Highways, air, rail and other means of transportation should be mutually supportive, balanced and integrated.

5. To identify, protect and preserve important natural and historic features of the Vermont landscape, including:

(A) significant natural and fragile areas;

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands and wetlands;

(C) significant scenic roads, waterways and views;

(D) important historic structures, sites, or districts, archaeological sites and archaeologically sensitive areas.

6. To maintain and improve the quality of air, water, wildlife and land resources.

(A) Vermont's air, water, wildlife, mineral and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).

7. To encourage the efficient use of energy and the development of renewable energy resources.

8. To maintain and enhance recreational opportunities for Vermont residents and visitors.

(A) Growth should not significantly diminish the value and availability of outdoor recreational activities.

(B) Public access to noncommercial outdoor recreational opportunities, such as lakes and hiking trails, should be identified, provided, and protected wherever appropriate.

9. To encourage and strengthen agricultural and forest industries.

(A) Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintainin low overall density.

(B) The manufacture and marketing of value-added agricultural and forest products should be encouraged.

(C) The use of locally-grown food products should be encouraged.

(D) Sound forest and agricultural management practices should be encouraged.

(E) Public investment should be planned so as to minimize development pressure on agricultural and forest land.

10. To provide for the wise and efficient use of Vermont's natural resources and to facilitate the appropriate extraction of earth resources and the proper restoration and preservation of the aesthetic qualities of the area.

11. To ensure the availability of safe and affordable housing for all Vermonters.

(A) Housing should be encouraged to meet the needs of a diversity of social and income groups in each Vermont community, particularly for those citizens of low and moderate income.

(B) New and rehabilitated housing should be safe, sanitary, located conveniently to employment and commercial centers, and coordinated with the provision of necessary public facilities and utilities.

(C) Sites for multi-family and manufactured housing should be readily available in locations similar to those generally used for single-family conventional dwellings.

(D) Accessory apartments within or attached to single family residences which provide affordable housing in close proximity to cost-effective care and supervision for relatives or disabled or elderly persons should be allowed.

12. To plan for, finance and provide an efficient system of public facilities and services to meet future needs.

(A) Public facilities and services should include fire and police protection, emergency medical services, schools, water supply and sewage and solid waste disposal.

(B) The rate of growth should not exceed the ability of the community and the area to provide facilities and services.

13. To ensure the availability of safe and affordable child care and to integrate child care issues into the planning process, including child care financing, infrastructure, business assistance for child care providers, and child care work force development.

State Agency Planning and the Council of Regional Commissions

Act 200 required all state agencies whose activities affect land use to prepare state agency plans. Executive Order No. 68, issued by Governor Kunin in 1988, identified seventeen such agencies and departments and initiated the first round of planning to be completed by January 1, 1991. From then on, the Executive Order required agencies to adopt new plans every two years.

The new review body, the Council of Regional Commissions (CRC), was made up of one representative from each of the twelve Regional Planning Commissions and five more who were appointed by the governor. Evaluation of the state agency plans to ensure that they were consistent with Act 200 goals and compatible with regional and municipal plans and other state agency plans was a primary responsibility of the CRC. The CRC was assisted in its duties by one full-time Executive Officer, an attorney, in the Department of Housing and Community Affairs. The CRC submitted written evaluations of the adopted plans to the Governor, the Speaker of the House and the President of the Senate. However, its reviews of state agency plans were only advisory.



Governor Kunin and Housing & Community Affairs Commissioner Steve Holmes

State Agencies Required to Participate in the Act 200 State Agency Planning Process:

Agriculture
Development & Community Affairs
Education
Human Services
Labor & Industry
Liquor Control
Military
Natural Resources
Public Safety
Public Service
State Buildings
State Colleges
Transportation
VT Housing & Conservation Board
VT Housing Finance Agency
VT Industrial Development Authority
VT State Housing Authority

Implementation

Two full rounds of state agency planning took place culminating in adopted plans on January 1, 1991 and January 1, 1993.¹ The Council of Regional Commissions (CRC) reviewed these plans both before and after adoption and issued formal evaluations (May 22, 1991 and Oct 1, 1993). Public hearings were scheduled after the draft plans were issued, before their adoption. The planning effort was overseen by the State Agency Planning Implementation Committee (Agency Secretaries and Commissioners selected by the Governor) and carried out by a working group with representatives from each of the agencies required to write plans.

As Greg Brown, then at the Windham Regional Commission, describes that time:

Towns and regions were used to planning, they'd been doing it for a long time. It was a new process for state agencies.

¹ A scaled back third round was attempted but never completed.

After the first round of plans the CRC stated “most of the agencies are still in a stage of ‘planning how to plan.’ They have yet to demonstrate how they are going to coordinate with each other, with regional planning commissions, and with towns.”² As Rose Paul, who was coordinating the Agency of Natural Resources (ANR) Act 200 Plan, noted:

We just didn’t have a clear enough vision of what we were getting into until we were out the other end of it. We had this state agency planning group that met to manage the process and keep everyone on track and in step. George Hamilton was chairing that, he worked out of the Governor’s Office. As we sort of worked through the process we came up with a format that every state agency would use and the upshot is that the ANR plan was probably an inch thick... so very, very wordy. I remember Jonathan Lash and Mollie Beattie [then Secretary and Deputy Secretary of ANR] looking at each other and going “this isn’t what I pictured it would be,” and the other one going “no, it’s not at all.” ...It was quick dismay, signals of dismay between them.

Twelve of the seventeen plans were determined to be consistent with the goals of Act 200; the remaining five were not.

The Council was not able to determine compatibility of the state agency plans with regional or town plans in 1991 for a number of reasons. The first round of regional plans under Act 200 was not submitted to the CRC until 1992, and none of the towns with approved plans sought a compatibility review. Additionally, the CRC’s review of compatibility was hampered by what they called the “lack of detailed land-use information in the state agency plans.”³ As Rose Paul remembers it,

Everyone was always scrambling to show how they were in compliance and rather than just look at ways where you might

have the potential to not support good growth. We never really had a very robust discussion about ‘how can we work with towns on the sewer and water funding to promote smart growth.’

From Fred Dunnington’s perspective as Middlebury Town Planner and the Chair of the Council of Regional Commissions:

I heard across many state agencies how important the process had been within their agency. The intentions were really good. Expectations were high – the Governor’s Office and the Executive Order set the bar really quite high.

But, on the other hand, Fred noted:

The state agencies deftly managed to produce policy plans that were amorphous and avoided specifics. The first example was the Agency of Transportation’s “Policy Plan”. VAOT conspicuously avoided specifics, though clearly they had projects having local and regional land use impacts.

The CRC found that many plans insufficiently addressed the processes the agencies would employ for planning, policy decision-making and dispute resolution. In particular, the Council pointed out that although most plans included identical language stating that, in cases of overriding statewide interest, state agency plans would prevail over local or regional plans, there was often no explanation of how such determinations would be made.⁴ That statement “overriding statewide interest” emerged early in the state agency planning process. It was an invented term -- not in the legislation or Executive Order -- that assisted the state agencies in addressing potential conflicts between state level goals and those in local or regional plans. It helped them over the awkward hurdle of that goal: “decisions shall be made at the most

² CRC Evaluation of 1991 Interim Plans p. 2.

³ *ibid.* p. 3

⁴ *ibid.* p. 4.

local level possible commensurate with their impact”. As Fred Dunnington saw it,

The agencies figured out how to get around Act 200. They claimed that their plans dealt with issues of statewide importance and thus they did not need to be compatible with local or regional plans - this provided state agencies with cover.

From Rose Paul’s ANR perspective it was an honest concern:

Some of these resources, well, they’re owned by the public... I think we were kind of glad to have this ‘overriding issue of state concern’. It was a good guarantee. It was the mission of the agency to protect these things. Looking at transportation [AOT], their mission is to provide safe, reliable transportation infrastructure ... They’re on the line in a liability sort of way. I don’t think there was any sinister effort to subvert Act 200. I think there were some genuine, maybe you could even call it confusion, about what’s the overriding thing here. Public safety is a high, high priority for AOT. In the case of [the Plainfield Bypass] local control is a good thing. People just wanted to have a vital downtown with the traffic and the business that the traffic brought and wanted to look more at traffic calming as a way to manage it. In other cases, like natural resources, I just don’t trust local control. I like having state laws that protect rare species. There are some things that should be inviolable.

In response to the second round of plans in 1993, the CRC noted that they improved on the previous plans and that it expected to see continued improvement in subsequent plans. The CRC set a number of priorities for the next round of plans. It felt that agencies needed to make significantly more effort to solicit public participation.

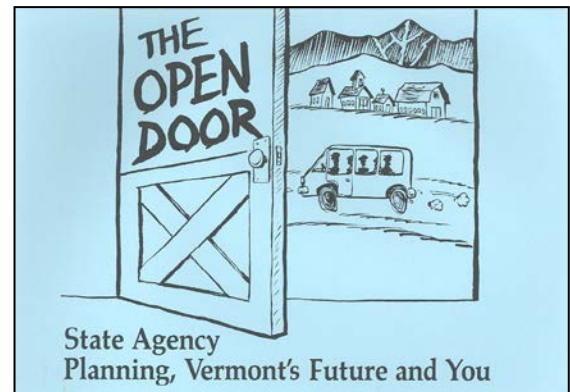
Rep. Jim Masland, who represented the Upper Valley Lake Sunapee Regional Planning Commission on the CRC at the

time had this perspective on the state agency plans:

They got progressively better. It was a good thing to do...My hunch is it strongly influenced the quality of work that was done. And then...the CRC was just about working up the courage to comment on incompatibilities between different agency plans – and there were some – but, we were a bunch of volunteers, we weren’t quite sure what the consequences would be in terms of our own time or council resources. So it’s something we never did, but could have done.

As Joss Besse, planning coordinator in the Agency of Commerce who partially staffed the CRC after they lost their Executive Officer, saw it:

It’s an absolutely huge job and the actual decisions were being asked of lay people. I don’t know how the volunteer CRC members got through it all. I think they relied really, really heavily on their one staff person.



1990 Public Information Brochure

Former Chair Fred Dunnington noted that “It didn’t generate much in the way of public interest.” Vermont is a small state, so a few people at a public hearing is normal. It was addressing all of state bureaucracy -- a complex and weighty process few would understand sufficiently to follow, much less critique. There were less than a handful of non-profit advocacy groups interested in

planning at the time, resulting in just a possible few people present who would be interested in seeing the quality of planning progress. Rose Paul's memory:

The people who turned out were very anti-planning, property rights advocates... They didn't want to see any of this planning business happening because to them it all spelled more and more control.

As mentioned above, one of the biggest challenges the CRC faced was evaluating whether the state plans were compatible with regional and municipal plans and with each other. This required a detailed knowledge of all of the current plans, which would only become more onerous as more towns adopted plans. In the words of the CRC's 1993 review: "the compatibility review of state agency plans is at the heart of the bottom-up planning process, and the hardest part to accomplish. [...] Reading the plans alone does not enable the Council to comprehend the circumstances and issues underlying the language of the plans. One must be familiar with local circumstances and other governmental activities to have the background information necessary to detect compatibility issues, which may well exist. For this reason the Council must rely on others to raise compatibility issues for it to consider while reviewing plans."⁵ Few people or organizations outside the CRC had the time or inclination to review the plans looking for incompatibilities.

Given the complexity and knowledge necessary, the lack of participation was understandable. It needed time. It was an opportunity lost, that provided local interests with the leverage to bring change to state agencies. A number of people have suggested, however, that the plans were so vague that they provided no handles for the

public to grasp and make use of. As Joss Besse explains it:

Planning is hard to get people involved in anyway and I think the more removed it gets, the harder it gets. When you start talking about agency plans, I think the only people that would ever show up would be interest groups.... These were not change documents, they were not bringing about a huge amount of change. So you get the plan changed but you know getting the action changed was a whole other process.

As for the regional planning commissions, Fred Dunnington observed:

We expected the RPCs to really get into it, being in the middle, to be very interested readers. But they were overwhelmed just doing their job under the new statute. They're a membership organization -- the towns are members. And to criticize one of their members is an inherently difficult thing. And a lot of their operating money comes from [the state] --they aren't inclined to bite the hand that feeds them.

Town planners criticized the plans as "inaccessible"(ie: they couldn't find the information that would matter to them), and that the towns wanted more concrete information about the changes on the ground that will affect them. (CRC minutes, 9/8/94)

There is widespread agreement that the plans the state agencies produced were vague documents with little in the way of concrete proposals for action. There are different interpretations as to why this occurred. Fred Dunnington suggests that agencies were unwilling to relinquish power by committing themselves to specific actions. Rose Paul felt that agencies made a good faith effort to write the plans they were expected to write but that the breadth and volume required necessarily led to shallow plans. Everyone was scrambling to demonstrate that they were in compliance so there was little time left over to have discussions of any substance. Both Rose Paul and Joss Besse note that an agency's

⁵ Evaluation of 1993 State Agency Act 200 Plans, p. 4

primary mission may not be fully in line with Act 200's goals and that a certain reluctance to make land use issues the highest priority is understandable. Joss Besse suggests that the plans needed a stronger link to the programs represented -- to Agency strategic plans and budget decisions -- in order to make a difference.

Future plans would need to state more clearly how they would be implemented. The Council recognized that some of the planning goals could conflict with each other and called upon the agencies to address how they would balance conflicting goals. However, the CRC had no enforcement powers. As Joss Besse noted,

They didn't have authority. They could review and comment. They couldn't force changes. Basically it was exposing this to the light of day and hoping that was enough...

In particular, the CRC noted that economic development was a key concern given the difficult times the state was facing; at the same time that it encouraged agencies to think creatively about how they could support economic development, it warned that the environment must not be sacrificed in the process.

Identifying what may have been the single most critical factor in continued state agency planning, the Council called for more active participation of the Governor and the Implementation Committee to ensure that the progress in the plans that had made it from the first round to the second would continue into subsequent rounds.

The Downhill Slide

Nearly everyone discussing the demise of the Council cites the lack of gubernatorial support as a deciding factor, although certainly not the only one. From Fred Dunnington, who was active in the process at all three levels:

The blame for the failure to continue the process of state agency planning does not lie with a single entity, like the governor or the legislature.... The concept was rooted in great intentions but in practice it was too cumbersome.

It became clear to agency personnel that the Dean administration did not see planning as a high priority. Given the huge amount of work that writing the plans represented, agency personnel had to choose between these plans and other projects that may have been more important to their agencies. As Joss Besse describes the dilemma:

I don't think any agency was ever given any more resources in order to do this work...there was no incentive to do more...having one staff person doing the majority of this massive process was really daunting.

The signals that the Dean administration sent included under-funding the CRC and failing to initiate the third round of planning in a timely fashion. The Office of Policy Research and Coordination, which had been leading the state agency planning effort for the Governor, was cut to one-fourth its prior staff (CRC minutes, 9/8/94)

The Governor's office shifted responsibility for overseeing planning to the Department of Housing and Community Affairs. As one agency among equals, DHCA could only encourage sister agencies to produce plans. Reading the writing on the wall, and called to make stiff budget cuts, DHCA cut the staff support for the Council of Regional Commissions in favor of other planning priorities.

The End of the Act 200 State Agency Planning Process

The state agency planning process died of its own weight, lack of funding resources and results. There was little outcry, certainly not loud enough to capture the

legislature's attention, when the Act 200 state agency planning process ground to a halt in the third round during 1994-95. The obstacles that it faced had become insurmountable given the constraints on staff and funding. In this context, the CRC decided to recommend that, in lieu of a full plan, agencies respond to the comments about their 1993 plans and try to document the impact on towns and regions of the activities they planned over the next two to three years (CRC minutes, Sept 8, 1994, p. 4). Only a handful of agencies completed even this revised plan. Without this support the volunteer council was unable to complete the review of the third round of plans, which already had been scaled back to an update and had fewer participating agencies. The process broke down completely during the review of the plans that were submitted. The DHCA no longer had staff to devote to support of the CRC and the demands of reviewing plans and drafting evaluations without that support proved to be too great a demand on the volunteer Council. According to Joss Besse:

...it just seemed like you were trying to beat a dead horse at some point there and people came to that realization at different points...a number of the CRC committees struggled to try to wrap up their reviews and I'm not sure I blame them for not being able to finish. It's a lot of work...we were asking of them. But we were trying to get these things wrapped up and pulled together and we were going to put together a report...Things weren't moving and communications fell apart. There was never this point of "we're done." It just drifted off.

The reviews were never completed.

The Council continues to exist in statute. When a town appeal of regional plan review action was hovering several years ago, the Department of Housing and Community Affairs understood it needed to be ready to request appointments and re-constitute the

Council to hear the appeal. The appeal was never received.

Karen Horn of the Vermont League of Cities and Towns still sees the potential of the CRC as a means of gathering information from state agencies to provide for town planning purposes, and fostering more productive interactions between the state and local levels, and acting as a Vermont form of a Council on Intergovernmental Affairs for planning and land use management. She adds:

The Council of Regional Commissions could have been and could still be a powerful entity invested with the capacity to resolve disputes between municipalities and regional commissions.

There have been several unsuccessful legislative attempts to staff the Council – or refer new duties to it to help it come alive. Although, on the surface, all that is required is the small appropriation it would take to regain one staff person, there are a number of process changes that would be necessary to render its work quicker, lighter and more targeted to need.

Lessons learned

The Agency plans looked at every activity of an agency rather than focusing on the ones with the most impact. Greg Brown points out:

The CRC made rules that were quite complex. Also the 2 year cycle is too short. It should be on a five year cycle like the other plans. That would make it more palatable to state agencies and reduce the labor that was required to produce a plan. It will only happen if the governor leads the charge. The governor would have to be around for at least 6 years. There was a reluctance on the part of senior bureaucrats. It took time and resources and it required them to think in a different way.

From Rose Paul:

It would have been better to just focus on the areas of incompatibility and going a little deeper

... instead of being like parrots and going through every single little program and saying this is how it conforms in eight different ways...

And her response on whether another state agency planning process is needed now:

There are maybe some very strategic things. I really wouldn't want to see another state agency planning process in the way it happened before because it was unfocused and didn't lead to much. Figure out what kinds of policies and growth management strategies we have in place now and are they working, before we launch another effort that gets cumbersome and unwieldy. There are probably some slices, strategic slices that we could always be working on.

Fred Dunnington echoed the suggestion to simplify:

A forum for coordination is good, but a formal process for review and appeal of regional planning actions all the way to the Supreme Court was never used and is unnecessary. On state agency reviews...having agencies still address the goals and develop their planning is a good thing – they do all kinds of policy plans and functional plans and strategic plans, there's an enormous amount of planning going on in various forms at the state level... I think that the process could be simplified – and ought to be.

From Joss Besse:

[The 2-year state planning cycle] was not linked to the election cycle, so an administration could be producing plans right before a new administration is voted in

He also suggests a triage of highest need for coordinated attention, whether by geographic area or issue, would have helped. Including some kind of benchmarks, and a process to measure change over time, would also be a good idea.

Accomplishments

A benefit of the Act 200 state agency planning effort was that it made agencies more aware of the impacts of their actions

on localities. Until Act 200, agencies could focus on their primary mission to the exclusion of other issues of clear statewide importance. This often led to the actions of one agency undermining the efforts of another. Act 200 sought to correct this. As Fred Dunnington describes:

Act 200 was billed as a growth management act when in fact it was a planning coordination act. The best legacy has been the planning goals. The law inspired towns [and regions] to adopt plans that further these goals – and the goals helped state agencies coordinate around a common framework.

The CRC minutes from Sept 8, 1994 state that “There was agreement among all who spoke that: ... there is more coordination taking place among state agencies because of their Act 200 planning experience.” Although that coordination ultimately was not accomplished as envisioned, one legacy of Act 200 is that the horizons have opened up within state agencies and the issue of interdependence is on the table.

The state agencies produced many more resources for town and regional planning, starting with the basic Planning Manual produced by the Department of Housing and Community Affairs, augmented by planning manual supplements from departments ranging from Agriculture to Public Service to all the myriad divisions of ANR. Rose Paul noted that more effort was made on providing towns with maps of these resources, so that they would know the next time they were doing their town plan, where the resources were.

It was a good thing for towns and regional commissions. I'm sure it made plans get better and more robust over time. So I think there was a lot of good that came out of this.

The Current Status of State Agency Planning

Governor Dean's method of state agency coordination was to institute a Development

Cabinet, made up of the Secretaries of the agencies most involved with land use issues and chaired by his Secretary of Administration, Kathy Hoyt. A Development Subcabinet, staffed by Commissioners and senior planning staff, met every two weeks to pool information. Key policy issues would be forwarded to the full Development Cabinet, which met less often. It was easy for this process to become subsumed in determining state agency response to controversial projects in the state permit process, but it was at the very least a regular process for coordination. The Development Cabinet does continue in statute, and has met under the Douglas Administration, although not regularly.

There is currently no centralized state planning office in Vermont, such as exists in many other states. Rather, there are planning divisions located within the Agency of Natural Resources, the Agency of Transportation, the Department of Public Service, and the Agency of Commerce and Community Development. There is currently no formal organizational mechanism for coordination, although the Planning Directors meet occasionally on their own initiative, as do the Secretaries and Commissioners, to share information. Lack of Agency coordination is a problem, as described by Jim Matteau of the Windham Regional Commission who interacts regularly with the whole range of state agencies:

I don't think the state currently has a solid idea of what it wants to do in terms of planning...the state is a whole bunch of agencies who are on different missions many times and are not acting the same way. Probably the mistake we make...is thinking of and referring to the state as a single entity, when it's not. Ultimately there's one governor and one administration, but these agencies are dealing with their own issues and have their own personalities.

Whether better coordination can be addressed is not clear. In Jim's words:

Coordination, what does that mean? It depends. If it means going to a monthly meeting and eating a couple of donuts, don't bother. But if it means really being involved in these things and helping things to happen, sure. I think what we need is more resources but where is the state going to get more money.

The Planning Division in the Department of Housing and Community Affairs, which is charged to provide technical assistance to the state, regional and municipal planning efforts, has a staff of 3.8 FTE's (full time equivalents). To support staffing at this level the division has obtained federal funding and then devoted staff to particular projects, such as to address onsite sewage treatment reform, interstate interchange development and emergency management. Resources have not been available to meet all statutory obligations. Some of the strongest planning occurring at the state level is in VTrans, the state's transportation agency, which is also primarily federally-funded. Sharon Murray, a consultant planner who works with all levels of government planning in Vermont notes,

[Vermont] has been struggling a long time with the connection between transportation and land use planning and that's finally getting somewhere through the RPCs and folks at the agency of transportation.

From Sharon Murray, who also serves as legislative liaison for the Vermont Planners Association:

There's not enough coordination between local, state and regional planning processes. Especially at the state level...and the state agency planning process appears to be broken. One recent example of that was the draft state energy plan. There was no input from any other sectors, despite the fact that there is an energy planning element required in local and regional plans as well. ...We need to start thinking about bringing back a state planning office, that would coordinate state agency planning and policy development and serve as a central information clearinghouse. But, there's also the issue -- given that the state planning office went away once -- what's going to keep it in place and functioning? The CRC was created in a sense to

do this, but I don't think it had the weight – it was never given the authority or power to do what it was tasked to do. Basically, no one took it seriously.

On the other hand, much has been accomplished to meet the framework of land use goals in Act 200. Barriers, particularly

to the first goal “To plan development so as to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside”, have been systematically identified and addressed one by one in state policy.

State Smart Growth Strategies influenced by Act 200 Goals:

Growth Centers Pilot Project (1993-95), which recommended changes in state policy, including the following achievements:

HUD Consolidated Plan (1995): includes priorities on applying both HOME and CDBG funds to projects in downtowns and planning for both downtowns and growth centers

Vermont Highway Standards (1997): flexible design standards (primarily focused on lane and shoulder widths) with greater sensitivity to the adjacent environment

Access Management (1998): criteria to consider in granting permits for curb cuts on state highways was broadened to include consistency with the state's land use goals and conformance with state agency plans, any regional plan and approved municipal plan.

Property Tax Reform (1998): enacted in response to court decision concerned with unequal local educational resources, but the tax sharing provisions will affect local land use decisions.

The Vermont Downtown Program (1994 and 2002): State program to enhance and protect the vitality of Vermont's downtowns. Provides training and technical assistance to communities, helping them develop skills and strategies for downtown revitalization. In 1998, the Downtown Development Act provided benefits to communities whose downtowns were designated by meeting thresholds, ensuring community investment in downtown revitalization. In 2002, “new town centers” and “village centers” were defined and added to expand some benefits of the downtown program to other densely-settled, mixed-use areas outside the downtown definition.

Residential New Construction Building Standards (1997): Previously applied only to construction reviewed under Act 250, this law requires all new construction of residential buildings, and residential additions 500 square feet or more, to meet the energy standards contained in the Model Energy Code prepared by the Council of American Building Officials.

State Board of Education Rules on School Buildings and Sites (1998): Provides flexibility for the Commissioner in determining adequacy of site size, in order to encourage re-use of historic schools in downtowns and village centers. Implements policy adopted in 1997.

Interstate Interchange Policy (1999) and Interstate Interchange Executive Order (2001): to encourage development and/or conservation of land at the interchanges to be consistent with state land use goals. The 2002 Order was formal action by the Governor to guide state agency decisions on planning for and responding to development proposed at Vermont's interchanges.

Infrastructure Funding Rules and Growth Center Guidance Document (2002): In order to be eligible for wastewater treatment funding from the EPA funded State Revolving Fund administered by the Agency of Natural Resources, municipalities must first show the proposed project will only serve to implement planning for a locally designated growth center. Funding of projects outside planned growth centers will occur only if severe health and environmental problems exist.

The goals, at least, were adopted as the backbone of land use policy by state agencies most involved in land use development decisions, and have resulted in changes to the situation 15 years ago. Many of these efforts are unique to Vermont and serve as models for other states. As veteran planner Mike Munson describes it:

The efforts to think through planning and growth centers that Act 200 sparked have helped at least two agencies (Commerce and Community Development and ANR) think through their policies on how to target investments.

As a vestige of the state agency planning years, the Department of Housing and Community Affairs maintains a list of state agency “planners” and continues to send them updated lists of towns with approved plans and notice of newly adopted regional plans. This is in recognition that the statute requires that state plans and policies affecting land use are required to be *compatible* with regional and approved municipal plans. It is understood by some that an appeal to the Council of Regional Commissions could still be possible under the statute, but that is not broadly recognized or understood.

Karen Horn of the Vermont League of Cities and Towns represents the municipal point of view regularly in state agency decision-making and planning. In her view:

We regularly encounter the attitude in state agencies that municipal planning is irrelevant and local officials incompetent to complete tasks that should lodge at the local level. This sentiment regarding municipal capacity is endemic in state government and has not changed much as a result of Act 200.

There are a number of state agency “strategic” plans, Natural Resources and Commerce providing two examples. These were developed to guide shorter-term action,

and with little or no outside public participation and comment. There is little or no recognized relationship to the Act 200 goals. There are even more state agency plans related to specific issue areas. Many of these are driven by federal sources of funding: the US Dept of Housing & Urban Development (HUD)-driven Consolidated Plan for housing and community development block grants, the US Environmental Protection Agency (EPA)-driven watershed plans, and the Federal Transportation Administration (FTA)-driven transportation plans are myriad -- ranging from the narrow public transit plan to the broad long range transportation plan. The federal process requires a certain level of public participation in these plans, and there are federal objectives to be met. Some of these, such as the Consolidated Plan, include state priorities related to the Act 200 land use goals.

As Joss Besse sums it up:

I think ultimately when you do a state planning process you have to have some coordinating capacity. The governor’s office isn’t big enough ...and the agencies go off and do their own thing. There’s not a lot of control and there’s very limited capacity to coordinate across agencies other than people wanting to coordinate. You’d have to have the governor’s office involved. I don’t see how you could have this happen across state government unless you start at the top.

But, as was stressed by several, including Joss Besse, a strong planning process takes time and money.

You can’t just ask agencies to do it with whatever they have. You really need to talk about money that will support it. And that will in turn send a message that it’s important. Do it with whatever you have, and there’s an implicit message there that it really isn’t that important. You get money to do things that are critical.

Regional Planning

During the development of Act 200 there was explicit discussion about where to focus planning resources in Vermont. Previous to Act 200 there was little authority at the regional or state level, or resources invested at any level, and the result had been weak planning at local, regional and state levels. The decision was made then to strengthen the resources of and reliance on Vermont's Regional Planning Commissions, and not to centralize that strength at the state level, as has been done in many states via a state planning office. The result is that planning at the regional level has changed in breadth and depth in the 15 years since.

As Jim Matteau, Executive Director of the Windham Regional Commission describes it.

Fifteen years ago, I think the regional planning commissions were much more generalist land use planners. Today we still have that function, but we are also carrying a large number of special projects and tasks. Right now, for example this commission has 33 open contracts and projects that are highly specialized. They're with towns, state agencies, local non-profit groups, and some are directly with federal agencies without the state in between. And they range from health care issues, to emergency planning, to local planning and zoning to transportation projects and a lot of other things.

As he notes, the RPC's have been vested with significant responsibility and resources but those responsibilities have mushroomed in complexity as well as increased the clients they need to satisfy.

In most states, a lot of the things we do would be handled by county government. And they're things that are broad in the sense of affecting more than one town and so someone other than the individual town needs to coordinate them, and the regional commissions in Vermont can fill that role.

From the perspective of Fred Dunnington who has represented the Town of Middlebury on the Addison County RPC throughout this period:

Regional planning commissions are still largely advisory entities. And their role is still kept, unfortunately, separated from other governmental things at the regional level. We used to like to say in Vermont that we don't like to create regional government. We ought to hold the line on the number of regional governments being created. There are all kinds of different districts. Solid waste districts. Affordable housing. Services provided by state agencies follow different regional boundaries. In any given region if you listed every organization that receives or uses public funds directly or indirectly, you would have a list of dozens of organizations even in the smaller regions of Vermont and hundreds in the larger regions. Regional planning commissions do a good thing -- they're a service to their towns, but their function is fairly narrow and really is separated from the full range of regional issues. Some regions do a better job than others to try to reach into these regional issues and coordinate them. But statutorily they are not connected even as the goals govern the full expanse of community needs. Regional planning is relatively weak in Vermont compared to the regional governmental structures that exist everywhere else.

RPCs have statutory duties, some 18 required and 7 optional. While the new tasks taken on fit under the general language of those responsibilities, they are a major expansion in detailed, complex planning. Given the lack of county government, and the ability and responsiveness of the regional planning commissions, they have become the organizations to assist towns with community development, brownfield redevelopment, transportation planning, emergency management planning and watershed planning.

Many of those tasks come with federal funds to help but often require a non-federal funding match and sometimes don't allow for coverage of administrative costs. The General Fund appropriation to the regional planning commissions has remained

unchanged for the past 5 years, despite the high performance of its source, the property transfer tax. Regional commissions have broad discretion on the use of those state General Fund dollars, so that becomes the source to cover the non-federal match on the transportation, emergency management or brownfield projects, and the means to cover operations needs. With the increase in breadth and depth of these other tasks that come with federal funding and deadlines, the commissions are getting spread thinner in providing technical assistance to towns for land use planning and regulations.

In Jim Matteau's words:

...no one is providing us enough money, anywhere near the money that we need to do it in the way that we'd like to.

The RPC's occupy a difficult middle ground between the state and their member towns. As Greg Brown, who worked for the Windham Regional Commission, then the Department of Housing & Community Affairs and now is Executive Director of the Chittenden County Regional Planning Commission:

RPCs fight with the state all the time. That's part of the tradition. There's no retribution. There are consistently disagreements between RPCs and the executive branch. RPCs are caught between a rock and a hard place – between the state that funds them and the towns that direct what they do. RPCs will almost always side with the municipalities.

Act 200 provided an ongoing funding mechanism for planning from the property transfer tax explained below.

The reality has been that the allocations have had little connection to the formula but have been appropriated annually via a “notwithstanding” the formula requirements. In the early years after Act 200, in the midst

The Property Transfer Tax Formula

The tax increased via Act 200 from 0.5% to 1.25% with disbursement of the revenues generated as follows:

1% -- Tax Department

Of the remaining 99%:

33% -- General Fund

50% -- Housing and Conservation Trust Fund

17% -- Municipal and Regional Planning Fund (MRPF)

The MRPF was to be divided:

10% -- Vermont Center for Geographic Information

70% -- regional planning commissions

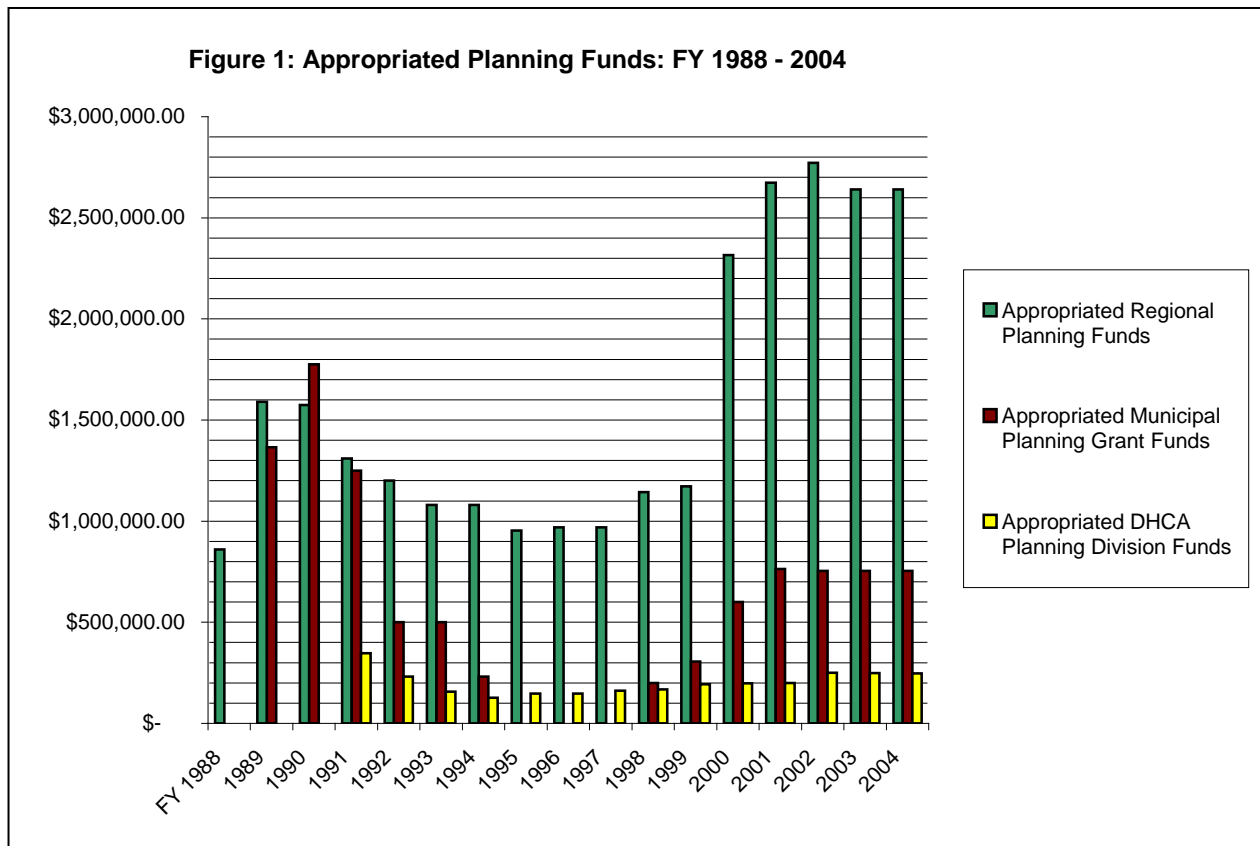
20% -- municipal planning grants program

of a recession, this meant that the regional commissions received more than they would have by formula. Then, in Fiscal Year '94 when the tax began to recover, the backlash against planning culminated in 3 years of cuts that brought them almost down to pre-Act 200 funding levels. (see Figure 1). The funds recovered somewhat in FY98-99. A major legislative push for added funding allocated to specific tasks on mapping and training brought the funding level back up in FY'00. In '01 the regional planning funds surpassed 2 million, and have remained at \$2.7 million for the past 5 years.

Relationship to Town Planning

Act 200 clarified that every town will be a member of a regional planning commission. Towns may not all participate actively and pay dues, but they're all designated as belonging to a region.

Changes in regional boundaries can be requested, with the ultimate decision being made (in cases of disagreement) by the Secretary of the Agency of Commerce and Community Development. In 15 years only 3 boundary changes have been made, and all between the Upper Valley Lake Sunapee



Regional Planning Commission and the Two Rivers Ottawaquechee Regional Commission. Upper Valley was Vermont's only bi-state regional commission, with a large number of New Hampshire town members. The longtime role of regional commissions as a statutory party to Act 250 proceedings has triggered a couple of those boundary change requests, when an affected town has not agreed with the regional position. The longtime number of 12 regional commissions has just changed, on July 1, 2004, to 11, with the transfer of the remaining Vermont towns in the Upper Valley Lake Sunapee Regional Planning Commission to Two Rivers Ottawaquechee Regional Commission. (see Figure 2). The regional planning commissions differ as much as the territory they cover. Jim Matteau:

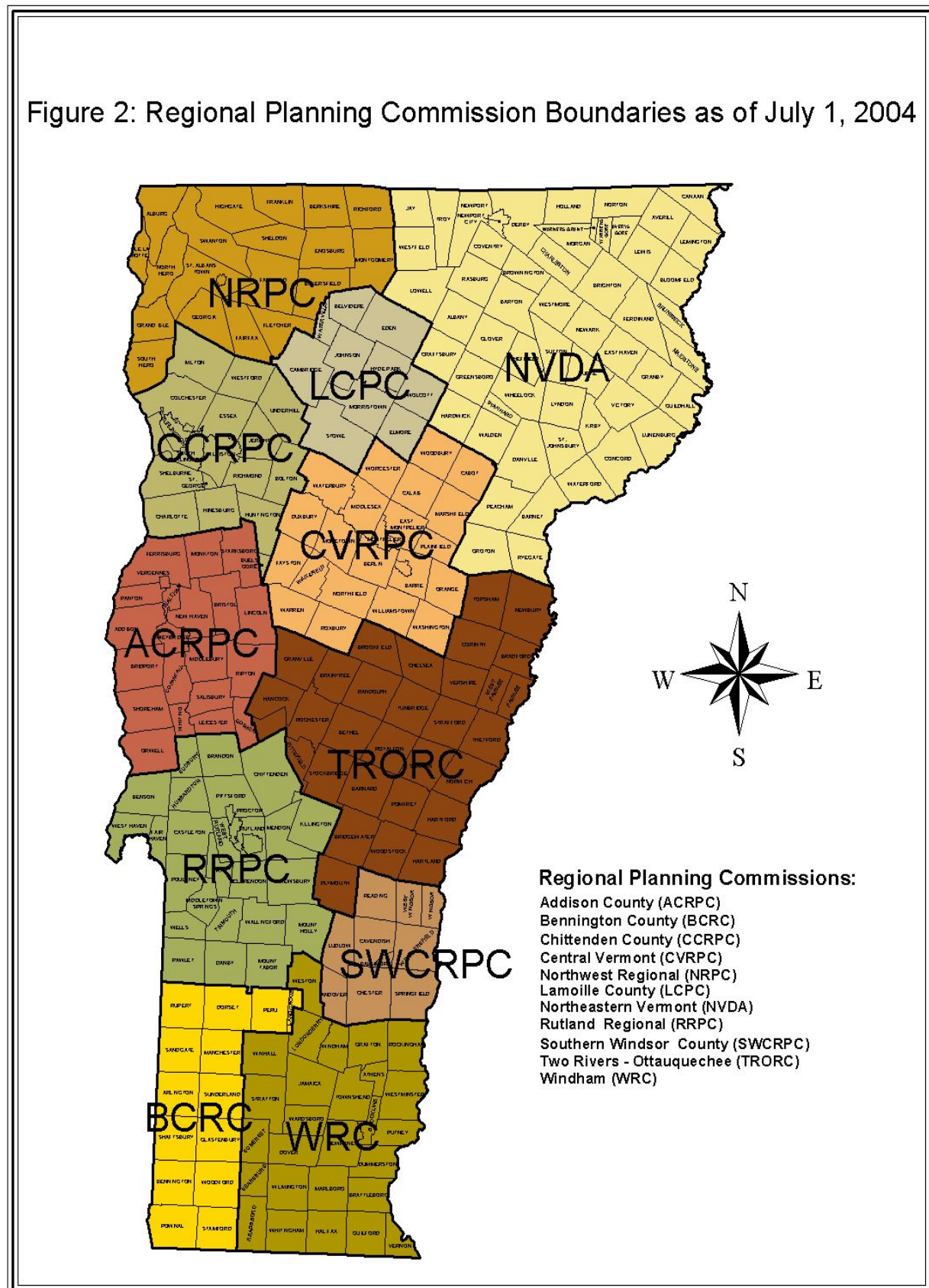
The regional commissions are very different in how they are structured, how they function, even how their boards are appointed. Each regional

commission has its own bylaws and its commissioners and boards are appointed in their own fashion. So I guess it's true in Vermont, one size never fits all.

Regional confirmation of town planning processes was the subject of much of the controversy stirred by Act 200 at its inception. Confirmation includes approval of a town's plan by the regional planning commission. Several legislative efforts were made in the early 1990's to "Axe Act 200". At the height of opposition to the law, Governor Dean vetoed legislation twice in the same biennium to maintain the integrity of regional approval mechanism. Greg Brown, former Housing and Community Affairs Commissioner, characterizes the attention paid to this as being one of the factors in the lack of interest shown by the public in the state agency planning process.

State agency planning issues were subsumed in the huge argument over RPCs and Act 200. State agency plans were lost in the shuffle.

Figure 2: Regional Planning Commission Boundaries as of July 1, 2004



Regional Planning Commissions:

- Addison County (ACRPC)
- Bennington County (BCRC)
- Chittenden County (CCRPC)
- Central Vermont (CVRPC)
- Northwest Regional (NRPC)
- Lamoille County (LCPC)
- Northeastern Vermont (NVDA)
- Rutland Regional (RRPC)
- Southern Windsor County (SWCRPC)
- Two Rivers - Ottauquechee (TRORC)
- Windham (WRC)

In order to be eligible to apply for municipal planning grants, and with steady funding of the municipal planning grant program, the number of confirmed towns has risen steadily to about 80% of towns in 2004. Most towns with an adopted plan now submit those plans for regional review in order to be eligible to apply for municipal planning grants. (see Figure 3 map).

As Mark Blucher, Executive Director of the Rutland Regional Commission for more than 20 years, describes the changes in the regional approval process:

At the beginning it was seen as an extensive intrusion on local control. We had people coming to our committee meetings, marching up and down outside with a picket sign, opposing this. And we simply worked through it... over the course of time most communities and most RPCs have worked to make it a positive process as opposed to a negative one. But I would also go ahead and say that I'm not sure any regional planning commission is implementing that process to the most extreme letter of the law.

In concert with other regional directors Mark notes that the municipal/regional relationship has to be handled delicately, with diplomacy, in order to succeed.

One of our jobs is to help communities do planning. If we are going to help communities do planning and then turn around and slap them because they didn't do planning properly there is an inherent conflict right there. If they are paying us ... to help them do a plan, shouldn't they reasonably expect us to approve that plan?... [Regional approval]'s always a judgmental process as to the extent to which the goals are being addressed... I would suspect that in just about every case, if regional commissions wanted to, they could find reasons for disapproval... we've gotten tighter in the extent to which we review plans now. We encourage them to work with us in whatever they're doing, whether they're contracting with us or not, to at least let us take a look at what they're proposing so we can flag areas that we think may present some difficulties in the approval process.

Until 1996 the law provided for conditional approvals. Since then, the legal choices for the regional commissions are only to approve or disapprove. The 11 regions have developed individual approaches to this process. In Windham County, Jim Matteau says,

...the regional commission only voted to deny approval to a town once, but several times has suggested that a town needs to take it back and rework it before submitting it to approval. And that has made a change, it's been good. The goals are clear and towns have had to react to them, and have reacted to them.

Looking for that workable middle ground, Mark notes:

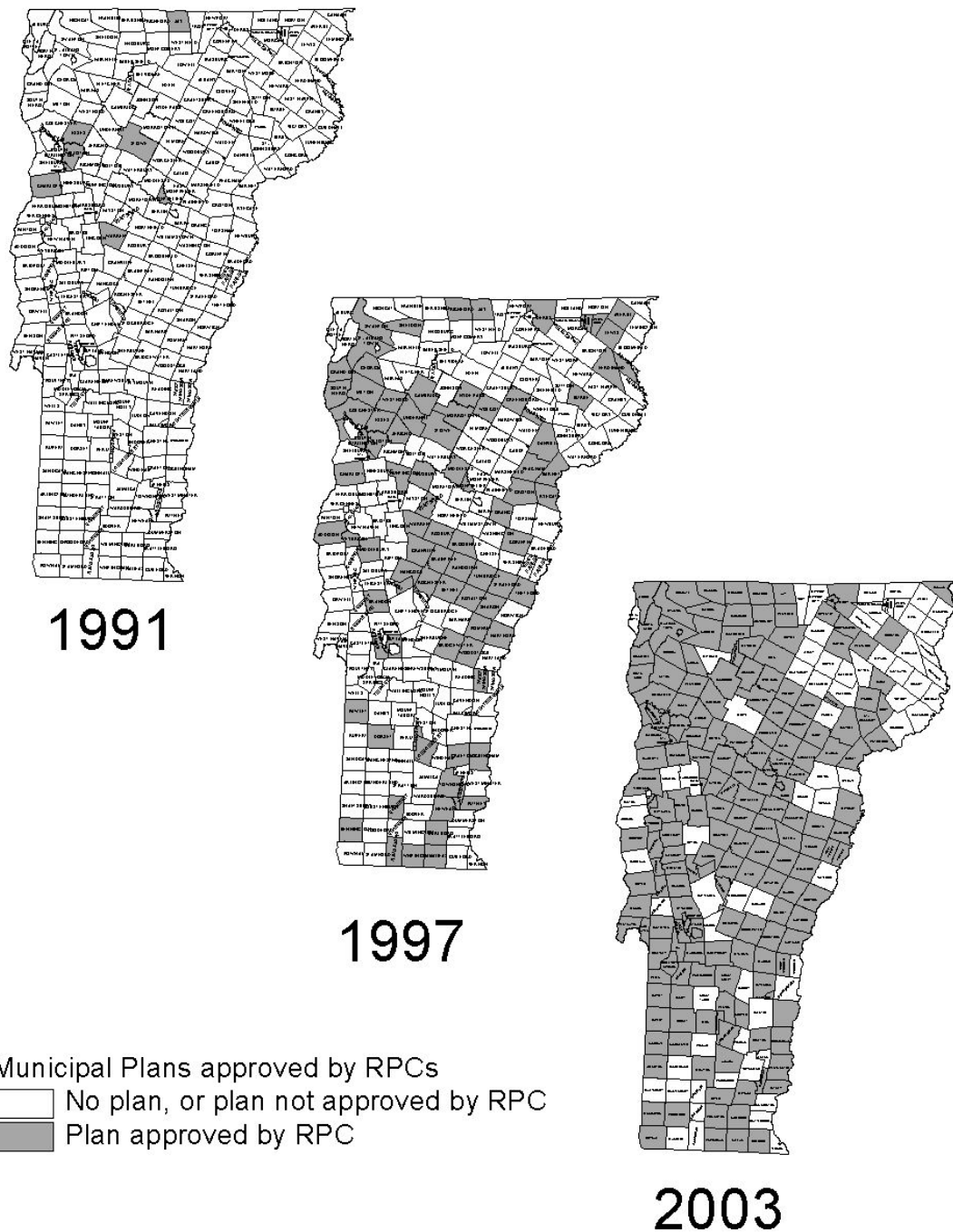
We will on occasion approve a plan and say the next time you revise this you need to address more fully the following...

The power of persuasion only goes so far, but is really the tool to apply. The conversation that the confirmation process requires has fostered better relations between the regional commissions and towns. Mark Blucher is emphatic about this.

Absolutely, because all the towns are different and you've got to start where they are. So they may not decide what we, as trained planners, think is the best thing to do. But who are we to impose our concepts on someone else? What makes us right?... We can try and show them the rationale for doing something differently than the way that they are considering it. But after a while, they will either let us know that they are not going to change or it becomes evident that they are not going to change and we're not gaining anything by continuing to beat on a drum that nobody's hearing.

Chittenden County, being by far the most urban and suburban, differs from the rest in having more professional planners working for the towns than for the regional commission. That sets up another level of tensions. Mike Munson, who worked more

Figure 3: Towns with Municipal Plans Approved by Regional Planning Commissions, 1991-2003



than 20 years in Chittenden County, both for the regional planning commission, and then for the booming town of Williston:

Certainly in the first decade since Act 200 passed, a lot of the approvals for town plans were pro forma. The RPCs did not exhibit any strength. In Chittenden County at least that may be changing. There is more rigor in reviewing whether a plan is consistent with the plans of adjacent towns and with the goals. But big issues such as boundary disputes -- like between Williston and South Burlington -- these are something that the RPCs can't seem to resolve. I'm not sure there is a regional incentive to do it. Many of the towns seem to be interested only in a mediator that agrees with them.

There is no suggestion that the influence of regional planning would be improved if the commissions had more power. Mark Blucher:

If we can't work cooperatively with our communities then it's not going to do us any good to have the ability to force them to do something.

Mark suggests that there are the other statutory components of that "confirmation" of the municipal planning process beyond the regional approval of the town plan, which could be examined for utility: For instance, the questions on whether a town is supplying money for local and regional planning, and whether they have an active planning commission is important.

...what's "active"? In a small town that has done a plan and has it in place, but doesn't have any desire to do any regulatory mechanism because they think that the soils are going to regulate development in the community in any case, what's "active"? Meeting once a year, or every six months. They have a plan. It does provide them with some protection in the Act 250 process. How are we to go out and determine the extent to which they are supporting local and regional planning? We use fairly broad criteria for doing that.

The Regional Plan

Much of the regional planning commissions' resources go into developing and maintaining the regional plan, which goes through a process of updating every 5 years. All 11 have plans and are regularly working on updating elements of them. This was not the case at the time Act 200 passed. After all the work, there are few clear venues for implementation other than the regional plan's application under criterion 10 of Act 250 in specific development projects. Part of the regional planning process involves negotiating the criteria for judging whether projects have a regional impact, to activate the regional commission's participation in an Act 250 review.

Broader implementation of the regional plan beyond Act 250 depends again on the level of cooperative relations with a region's municipalities. This places the commissions squarely in the center of the tension that exists in guiding decisions to meet the best interests of a region, which are not always the same as the interests of individual communities. As Mark Blucher notes, on a day-to-day level, implementation happens by:

the staff working with the communities and getting them to incorporate into their local plans the concepts and theories that are in the regional plan, ...we have a whole series of implementation strategies that we really need to make more public and to put more emphasis on.

Mark brings up the gap created by the loss of the Council of Regional Commissions.

I know that the one time that we had to take our regional plan through the review process at the state level, through the Council of Regional Commissions, it was stressful and very, very useful. Because we got some feedback that we don't otherwise get. We don't really get it from our communities.

Not everyone thinks the regional plans have gotten stronger as a result of Act 200. Mike Munson:

I left regional planning in '86 and I don't think it's gotten much better since. There has always been a debate about whether the regional plan should be a mosaic of all the member towns' plans or whether there should be a regional vision. Since I started, there seems to have been a general shift on the part of the [Chittenden County] commission towards the mosaic.

Much of that is due to the critical but difficult negotiating forum the RPC's provide. Mike Munson:

RPCs are strange creatures. They are beholden to their member communities but they are also beholden to the state for funding. Furthermore, they don't have direct implementation power. Development interests have had a strong representation on the RPCs [especially in Chittenden County]. It's hard to find volunteers, so it's no surprise that the people who end up on the commissions are people whose interests are tied up in the fate of development.

The regional planning commissions have a long list of statutory duties. In 2003, DHCA surveyed them on how they were doing in meeting those duties, and to see if any have become moot. A few have faded in 15 years, such as developing implementation guidelines to assist the regions and towns in developing planning processes to meet the Act 200 goals. All regions developed these to meet a 1989 deadline, and they no longer carry much meaning. Another relatively inactive area is the application of the Land Evaluation and Site Assessment (LESA) criteria in farmland conservation efforts, which was attached as a statutory duty at the time Act 200 passed. Reliance on that technique has since faded. The least active areas under the duties are related to the RPCs' role in assisting in mediating conflicts between municipalities. Their response is that this is because of lack

of opportunity – that their services in this area have not been requested.

Technical skills at the RPC's have grown in the 15 years to meet the diverse demands, including emergency management and transportation. Act 200 made a clear decision to elevate the capacity of the RPC's in GIS (Geographic Information Systems) mapping technology, and the resources and skill level at the RPC's have blossomed in response. Mike Munson notes the difference between Chittenden and other RPC's:

Municipalities working with RPCs – the relationship varies depending on the town. Williston has a large professional staff and big capabilities. We tended to look to the RPC for technical stuff, especially GIS. Also on coordinating stormwater work. We didn't turn to them for everyday sorts of things. Towns without professional staff need them more for the day-to-day planning activities like drafting bylaws and so on.

As Sharon Murray, formerly the Executive Director for the Northwest RPC and now a consultant describes the 15 years:

Planning has changed in part because of Act 200, because of new technology and also because of people's growing acceptance of planning over time. When I first started [at the RPC], back in '87, there were no computers in the office. We did our mapping with Zip-a-tone and pen and ink. We didn't have the information base that we do now. One of the biggest benefits of Act 200 was the increase in resources available for planners both at the regional and local level, including the creation of the Vermont Geographic Information System. Planning staff, and the amount of information available to planners has made planning more sophisticated – it's easier to tailor a plan to a specific municipality and really look in more detail at local issues. And it's constantly improving. So it's made for a more sophisticated process all around, that can be more responsive to local needs.

Municipal Planning

Improved Plans

Act 200 has given planning more visibility in Vermont. Most of the emphasis has been on the local level. Towns in Vermont first began adopting plans along with the national movement in the 1920's, but the action was spotty. Momentum gathered around the passage of the state enabling act in 1969, with the result that almost all towns in Vermont had adopted town plans prior to Act 200's passage, due in no small part to a required link for eligibility between the town plan and federal funding, such as for construction of town facilities in the late '70's. Those plans varied widely in quality and quantity – a plan less than 10 pages in size wasn't unusual. And many plans had expired or were expiring in 1988 when Act 200 passed. As Mike Munson describes the 15 years since:

The fact that towns have had to think about planning at all is in itself a good thing... and the quality of the plans has certainly improved. Act 200 changed what towns were required to address in their plans. The goals have been very valuable. And while it's true that there is a wide spectrum of interpretation on the goals, they couldn't really be defined more precisely. The negative side is that the towns that don't really want to plan have a lot of wiggle room. The Act 250 people complain that the town plans are not specific enough.

From Fred Dunnington's perspective:

The state of planning in Vermont is somewhere between crawling and walking on average. Some communities are running, they're doing great things. There are some that are just getting used to getting people to get a permit to do things and beginning to figure out how to use a town plan to make a difference in their town. And, it may seem incredible that this many years after the passage of the first planning and zoning enabling statutes, there are still towns that are just adopting zoning for the first time, just figuring out how to use it as a tool constructively

and effectively to make things different in their town. That spread of time [and capability] is enormous.

Professional planning staff, and the amount of information available to planners has grown significantly since passage of Act 200. A result is that planning is more sophisticated. The cookie-cutter approach to borrowing a plan from one town and substituting a different town name is gone. As Sharon Murray sees it:

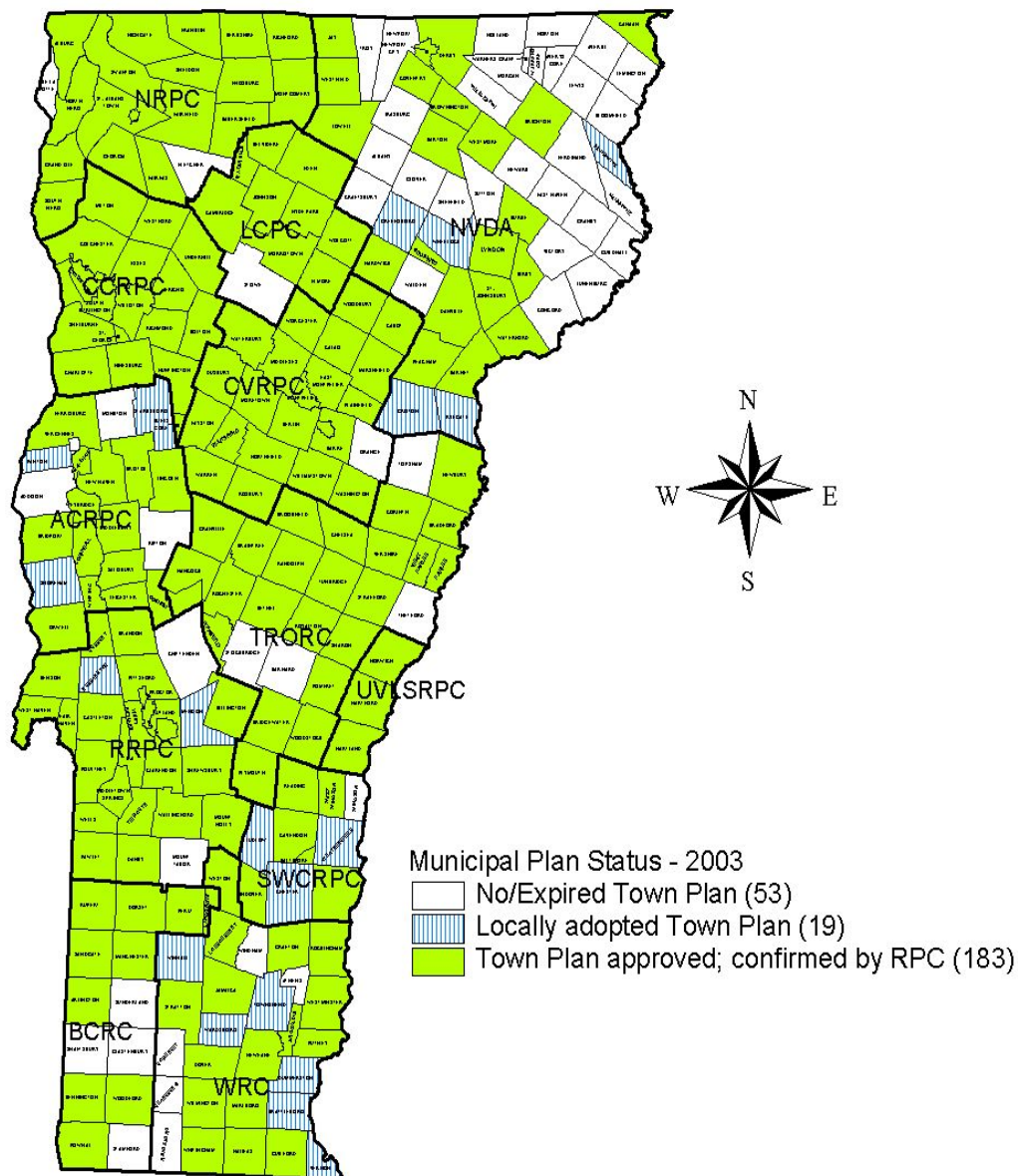
It's made planning processes much stronger, and it's made plans better – some would say all it's done is made them much lengthier – but it's improved the overall quality of local and regional plans dramatically. At least from a statewide perspective the goals help put us all on the same page, without being overly mandating.

Figure 3 shows the number of town plans that have been regionally approved, growing each year. Figure 4 shows the number of confirmed towns in 2003 compared with towns with adopted town plans that have not requested regional confirmation. It is unusual now for a town to adopt a plan and not submit it for regional review and approval.

Early controversy

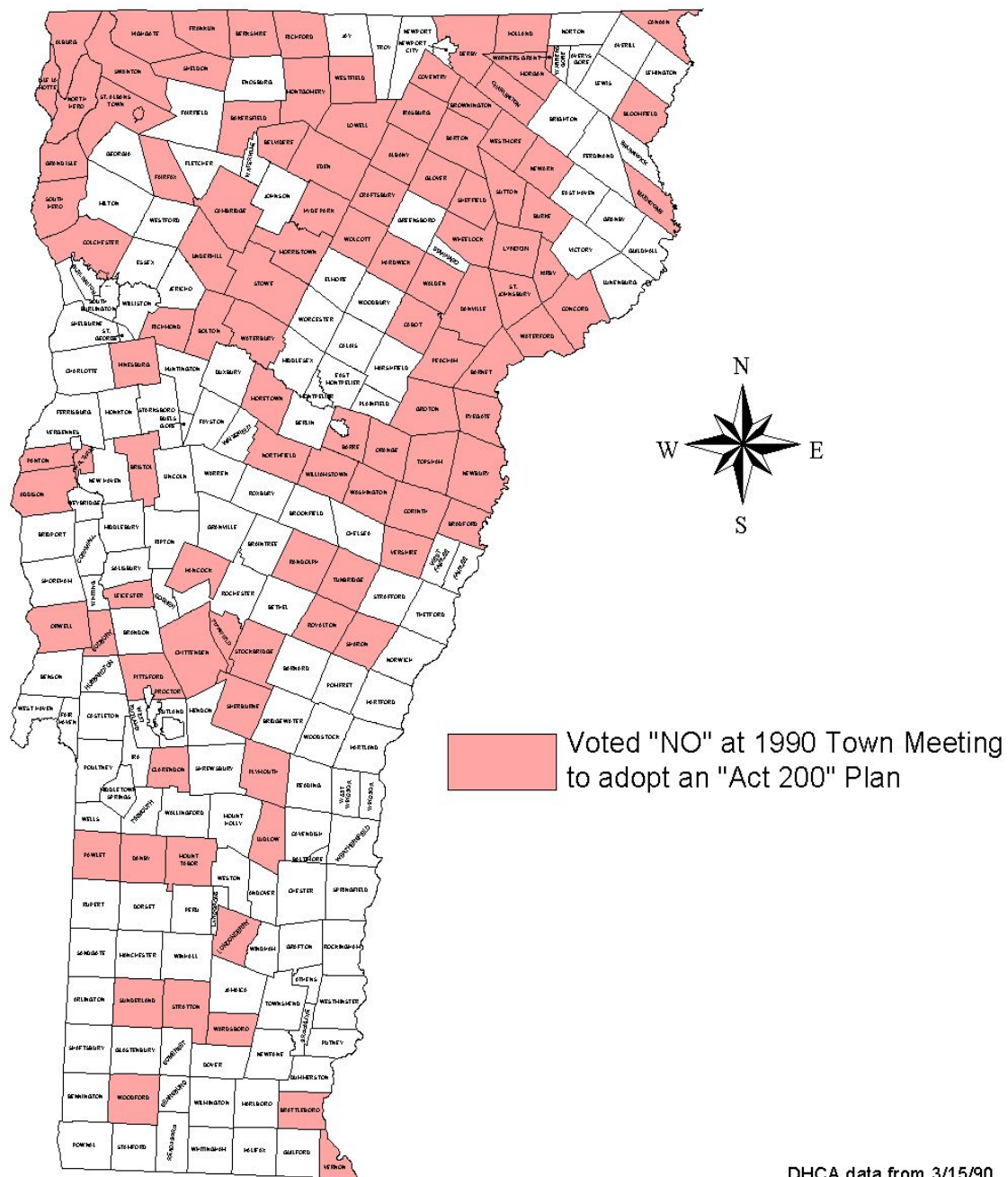
When Act 200 was first passed there was a strong backlash from property rights activists. The anti-planning debate was played out in town after town, particularly the first years after passage. An item was placed on town meeting ballots in 131 municipalities in 1990 to vote to: "not adopt an Act 200 plan" (see Figure 5). The Town of Bristol was the scene of some of the highest drama, where Governor Kunin was denied the right to speak at town meeting, and outspoken planning proponents suffered vandalism of their private property. Planning commission meetings shifted from a gathering of community members interested in doing some good for the future

Figure 4: Status of Municipal Planning - 2003



DHCA
Data as of 1/04

Figure 5: "NO" Votes on Adopting "Act 200" Plans
1990 Town Meeting



of their town to a nightly heated debate on planning vs property rights, as opponents were appointed to local commissions.

There was a lot of turnover on commissions in the early years, due in no small part to the controversy. But, as Sharon Murray describes:

That seems to have died down some, at least in relation to Act 200. Vermonters have always been independent, and hopefully always will be. There still is a strong desire for local control out there. In many cases rightfully so – a lot of planning decisions really should be made at the local level. There are still property rights issues as well but, over time, as towns have progressed in their planning, it's helped assuage some of the fears.

At the height of the backlash in 1990, 200 Vermont municipalities had adopted local plans. In September 2003, 15 years after Act 200, 192 municipalities had adopted regionally approved plans.

Local Control

In Karen Horn's words:

The promise of Act 200 was that decisions would be made at the most local level possible commensurate with the impact of the decision. In tremendously heated discussions that I remember well, issues of whether or not there should be a state plan; whether or not municipal planning should be mandated; who should approve municipal planning efforts; what the sanctions should be for not planning in an acceptable manner; and how to pay for it all were debated for months. The upshot was that municipal planning was to remain the basis of Vermont's planning efforts and that there would be no comprehensive state land use plan.

Act 200 did not require that municipalities plan, as has happened in some states. When the legislation passed, debate and misunderstandings fueled a backlash claiming that Act 200 was a mandate to plan. That debate returns whenever

planning comes under discussion -- whether or not municipalities should be required to plan. Sharon Murray:

I think in Vermont planning should remain a local initiative. There are areas of the state where towns don't feel the need to do planning, probably because they aren't experiencing a lot of growth pressure. Maybe at this stage in their development, they don't need to plan. They would probably benefit as a community, but making them do it is not helpful.

Mike Munson describes the political reality:

I don't think Act 200 would have passed without the provision for local control... The irony is that everyone accused Act 200 of being a power grab by the state when in fact it gave a lot more control to the towns.

Funding

Just as there is broad agreement that the goals of Act 200 have been key to its successes there is also strong agreement that money for planning has been key. Figure 2 shows the history of funding. In the beginning there was a small competitive fund for "special" planning grants, but all towns were provided with some funding for planning based on population size -- although some voted to return the funds during the anti-Act 200 backlash. Even now, 15 years later, towns regularly discover they have a savings account called Act 200 with that early money still sitting unused.

Mike Munson:

Act 200 created a fund that entitled each town to planning money. That was perceived as very unsuccessful and terminated. There are lots of weird stories out there about that – towns that never spent the money or used it to buy a dump truck. The funding was changed from an entitlement into a competitive grant program. These funds have generally been used effectively.

Shortly after the first years, the funding amount changed from the formula set in Act 200 to an annual appropriation. From Karen Horn:

We think that the fund providing planning dollars to each town was a good initiative that was never given the opportunity to work. [It] could have been adjusted to provide dollars to those towns that said they were planning, instead of including towns that verbalized no interest in planning. It could have been emphasized that the dollars were for planning and that any misspent dollars would have to be repaid to the state or the next year's funds could have been forfeited. But the fund was terminated without any effort to tweak it. The bottom line is that municipal planning, the ostensible foundation of Vermont's planning efforts, has always subsisted on a shoestring.

In the recession years from 1994-1997, there was no funding provided for municipal planning grants. The Agency of Commerce was provided a small amount of funding during that time for a "growth centers pilot project" as part of an "Economic Progress Act", which was then dispersed via competitive application. The growth centers project allocated a small amount of funding to a few towns, but kept interest and activity alive on planning – and resulted in major

advances toward the current downtown and village centers programs and other changes to state policy affecting local land use decisions (see Smart Growth strategies on p.12).

With consistent funding since 1998, the program has become increasingly pursued. Due to the statutory requirement that town plans must be renewed every five years, in any one year about 45-50 town plans will be expiring. Another 45-50 towns will be in the process of updating their land use regulations, and that need will expand for the next few years as towns update their regulations to meet the recent legislative changes to Chapter 117. Municipal planning grant funds are also in demand to assist in non-regulatory implementation of town plan goals, such as land conservation projects, and training of local board members.

Like the regional planning commissions, the municipal planning grant program has remained level-funded for the past 5 years at \$754,000. The higher number awarded in 2003 and 2004 is due to rollover of unused or returned funds.

Figure 6: Municipal Planning Grant Applications and Awards: 1997-2004

State Fiscal Year	Number of MPG Applications	\$'s Requested	Number of Awards	\$'s Awarded
FY 1997 (actual)	0	0	0	0
FY 1998 (actual)	63	\$382,618	45	\$200,000
FY 1999 (actual)	65	\$434,673	51	\$305,000
FY 2000 (actual)	73	\$793,772	66	\$613,457
FY 2001 (actual)	86	\$993,691	75	\$792,485
FY 2002 (actual)	89	\$1,069,262	75	\$728,488
FY 2003 (actual)	88	\$939,452	84	\$823,737
FY 2004 (actual)	110	\$1,307,621	94	\$863,108

Gaps

Sprawl: All interviewed, when asked about challenges and noticeable gaps post-Act 200, noted concern about protecting the rural countryside. In these 15 years, Vermont has done some remarkable work to shift infrastructure, funding and regulatory decisions to help maintain historic centers and encourage infill development. Progress on that first planning goal is an uphill battle, as Sharon Murray describes it:

It goes back to that goal of compact villages surrounded by countryside in Act 200 – the need to limit sprawl and the impacts that has, but in order to develop growth centers you need the infrastructure – water and sewer - to support higher densities. It's expensive to put in that infrastructure. You also need the market for higher density – in many rural communities there's still this sense of rural character and rural life and access to land, so there's a tension there too. The market is there for large lot development. If people wanted to live in a village they'd live in the village...so they tell me.

And from Fred Dunnington:

People talk about sprawl and smart growth -- that it is important to develop village areas -- but most people come to Vermont to live in the country. We're fighting economic gravity to try and get them to live in villages. [To turn that around] there would have to be financial incentives that have the effect of getting people to live in villages, such as the price of gas going up enormously, or make the villages much more attractive to live in. In the meantime, the countryside is getting riddled with scattered development. The visual effect of that in terms of the sense of Vermont is nowhere near as bad as some of the strip commercial development, but the character of Vermont, the ...very thing that we cherish about Vermont is being dulled all the time.

The image includes having villages with a distinct edge and countryside but the edges are being lost. And, as Fred notes, "the

tools in zoning are very much challenged in those areas." He continues,

One of the big gaps out there is the strip, the highways on the approaches to communities. We have programs to support downtowns, to save working farms, but the [area] in the middle where the farm is going out and the land is more valuable than for customary agricultural purposes and isn't suited for affordable housing and where zoning tools to regulate strip development are stressed to the max of their capabilities given property rights and investment opportunities -- we are losing the battle there.

Jim Matteau also describes concern about Vermont's ability to protect the quality of its landscape:

...Sprawl and that pressure is going to increase...the Walmarts of the world, to pick on them as the most visible, are moving down the foodchain. They've knocked off the big metropolitan areas and the suburban areas and the mid-sized towns and now they're moving into rural areas like Vermont. It's not because we've changed, it's because they're just getting to us now...If we think that our landscape is in good shape because we've done an outstanding job of controlling growth and development, we're going to be sadly surprised when we suddenly see [that] this place looks an awful lot like suburban New Jersey. But if we can say, wait a minute, we have the good fortune to have not been wrecked while these people were busy wrecking other places, so let's get the controls in place that we need. But if we try to rest on our laurels, we'll find out that they're not there.

Mike Munson:

The next step is to focus on what's happening outside of the growth centers. It will be a tough sell. Landowners won't take to it very quickly. A lot of the small communities are looking for whatever they can get for economic development. If the state really wants to do something to maintain rural areas, it's going to have to bite the bullet and say these areas are going to stay rural and that means not stimulating economic growth there. At the same time we need to acknowledge the concerns of the landowners.

There's an ongoing concern for the future of the working landscape in Vermont – the viability of the rural economy that depends on forces outside the state's control. There's been excellent achievements through land trust work, assisted by solid funding of the Housing and Conservation Fund. As Fred Dunnington describes it:

Zoning and Act 250 become permit mills and in many cases really produce least common denominator standards, when people in their hearts would rather wish for something that was more effective and lasting. One response to that in Vermont has been the land trust movement where, quite independent of planning and zoning, a movement has sprung up around permanent preservation. Another response has been the growth of public-private partnerships and the improvement programs in the downtown historic areas.

Some communities have acted to protect ridgelines, steep slopes and fragile constituents of their watersheds. This can get controversial, as described by Sharon Murray,

There's some concern that planning and regulations can be used to create an exclusive enclave. It's very difficult from a lot of perspectives – nimbyism, property rights versus property values, infrastructure, getting people around and just land prices in general. In communities that have strong conservation planning – it varies from town to town and it's not the only factor – but it can affect land and housing prices. There are a few towns we're working with that have a large amount of conserved land. The Vermont Land Trust is sensitive to this – [there's] a project up in Newport Center where the land trust had actually secured development rights around most of the village. The selectboard and planning commission were concerned that as a result they'd have nowhere to grow. So VLT helped fund a town project to look at the land around Newport Center and identify where the village should expand in the future, and possibly renegotiate land holdings to meet their needs. There are a lot of things to balance, and every community has different goals and objectives.

Karen Horn raised concerns about water and the need for watershed planning:

Municipalities need to pay far more attention to the impacts of water on their land uses. Towns need to involve themselves in watershed planning that is on a broader level than individual municipalities and in planning for infrastructure such as stormwater management infrastructure.

Conservation Commissions (CC's) are other municipal organizations that contribute to the local planning process and have grown in number and effectiveness since Act 200 passed. When Act 200 was enacted there were eight towns that had created CC's, although they'd been enabled in statute for eleven years. The conversation around Act 200 spurred the organization of the Association of Vermont Conservation Commissions, which has worked to encourage more towns to establish CC's and to improve their effectiveness. Now more than a third, or 92, of the towns in Vermont have CC's in place. As Mike Munson describes their contribution:

They are pretty effective at supplementing the planning commission in areas specifically related to open space preservation and, in some cases, agricultural preservation -- that's a net plus.

Jim Matteau adds:

Some planning commissions and selectboards see the conservation commissions as interlopers. And the conservation commissions feel like the unrecognized prophets in their own land. Those connections [between the boards] need to be improved because there's more work than there are people to do it. Conservation commissions have a great role to play, in addition to the direct [projects] they take on, in helping the towns and planning commissions to address resource conservation.

There are only so many willing volunteers to work on the tasks of the planning commission. CC's have added to that

volunteer base in by drafting town plan sections and local regulations, as well as conducting research to develop local data the plans rely on.

Development Review Boards

Enabled in 1994, a town can create a development review board (DRB's) and consolidate the former development review functions of the zoning board of adjustment and the planning commission in that one body. The number of towns moving to this structure has been growing over the 10 years from 0 to more than 40. It has been considered to help improve effectiveness and efficiency in town permitting and planning. It has also shown that good ideas don't have to be mandated – they catch on. Sharon Murray describes her experience with them:

Quite a few towns we've worked with have gone to [the DRB structure]. It does give the planning commission more time to do planning and focus on planning issues. It also, however, breaks a link that existed between drafting regulations and actually trying to enforce them. We encourage towns to try to sustain that link locally –to make sure that the planning commission stays in touch with the DRB on a regular basis to see what's broken and needs to be fixed. Overall, it can – it doesn't always – but it can make the review process more efficient. It doesn't matter what size the town is, or how active the development review, the DRB works as well as a ZBA at the rural level.

Recent Changes to Chapter 117

A concern raised by several interviewed was the lack of connection between a town plan and the town's regulations. The 2004 legislative revisions to the land use regulatory enabling in Chapter 117 will change that. While Act 200 strengthened Vermont's planning goals that resulted in stronger plans, as Jim Matteau explains:

In the past, you could have a town whose plan was outstanding and had been approved and upgraded every three or four years, but their zoning was last changed in 1975. It's not hard to find towns that are an example of that....the gap was that the zoning bylaws were not required to be linked to the plans directly. The new law that passed this year goes a long way towards doing that. We're going to have a long transition period... but basically the new law in a lot of places directly connects the dots between the implementation bylaws and the plans.

Karen Horn cheers the authority given towns in the recent change:

The law just passed establishes that, "a municipality that has adopted a plan through its bylaws may define and regulate land development in any manner that the municipality establishes in its bylaws, provided those bylaws are in conformance with the plan and are adopted for the purposes set forth in section 4302 of this title. In its bylaws, a municipality may utilize any or all of the tools provided in this subchapter and any other regulatory tools or methods not specifically listed..." in 24 V.S.A.117 § 4410. Here is enabling authority to undertake innovative planning measures that Vermont has never before granted municipalities.

Sharon Murray notes that the towns furthest ahead on planning that had already made the most progress in connecting implementation tools to the plan, are those that have been faced with the most growth pressure.

It's often the towns that are experiencing the most growth pressure or are dealing with specific issues that tend to have the strongest or most progressive planning and regulations. As communities grow, plans and associated regulation become important tools to manage growth and are more readily accepted. There are certainly some issues that will always be controversial – but in terms of making amendments to bylaws and things, it becomes more a matter of course in communities over a certain size. In rural towns it's a challenge to create bylaws that are suitable for and acceptable to the community.

The revisions to Chapter 117 also encourage more proactive planning that won't rely only on regulation. An important inclusion in the new revisions is a whole section of plan implementation on non-regulatory tools.

The Goals

While there is consensus that the goals in Act 200 are its strongest legacy, there is also interest in addressing some of the missing issues in them. The addition of the childcare goal just last year highlighted the fact that social equity issues aren't covered comprehensively. Sharon Murray noted the social equity and participation concerns but added:

The last thing some folks want to see are more goals. But I suspect there are certain things that could be better addressed, such as infrastructure issues, including telecommunications and energy infrastructure.

Mark Blucher notes the impossibility of having "one size fits all" goals:

Some of the goals are difficult for smaller communities to even think about. They're just too complex and they deal with issues that are well beyond the town's ability to grapple with. They were written more for larger communities than they were for the small rural ones. Energy is an example. What's a small town going to do?... You can have something in the plan that says all structures should be energy efficient and you should go to some source to find out what those things are. But there is no way of implementing that... there are few if any smaller communities in the state that have any kind of building code, which is where that kind of issue would be dealt with. The law does say that towns don't have to address them all and they can say why. But to me that seems sort of counterproductive.

Other Challenges

Mike Munson describes the balancing act in community planning:

Effective planning needs to look at a balance between all the components that a community thinks are important. If you focus on environmental issues too strongly, for instance, you can end up choking off economic development. But at the same time if you take economic development as being by definition good, you end up missing things that are really important to a community's well-being.

Public participation, and the reliance of local decision-making on volunteerism, are also mentioned as challenges by several. Mike Munson:

Another challenge is how to get people interested in planning and willing to commit time to these volunteer boards. It's getting harder and harder to fill them. And it seems like the public definition of getting involved has come to be – going to a meeting and getting your way. Otherwise [they don't want to] participate. It's something of a cultural shift in how public involvement is viewed.

In addition, as Sharon Murray describes a common gap in public participation:

The goal language is certainly there to have citizen participation and have it be inclusive but low-income folks or people on the edges of society – special needs populations – aren't well represented by the regular process and are hard to involve.

Jim Matteau from Windham Regional Commission describes the dilemma created by the turnover in volunteers:

Boards change, new people come in. Sometimes a town will have a major turnover in the planning commission or selectboard and lose that institutional memory. If we're paying attention and catch it we can come in and help them replace some of that history, and we try to do that. But it's a variable.

The major challenge, wrapped up by Sharon Murray, will be,

trying to preserve what's special about Vermont while trying to live and survive in the 21st

century. We want to preserve rural character, rural economies, rural culture – but Burlington and Chittenden county keep getting bigger...And the big picture issues like global climate change, global markets – how does a small state adapt and survive global trends and still maintain its identity?

Summary

What has worked:

- statutory land use goals as a framework to guide plans and decision-making
- steady funding of municipal planning, as well as more resources provided from the state and regional levels to assist municipal planning
- land trusts, the housing and conservation fund, conservation commissions, downtown and village center incentive programs
- increased coordination and communication among state agencies, regional planning partners and towns on land use issues
- stronger regional planning commissions and a stronger GIS network
- state agency policies adopted in support of the first land use goal
- confirmation of town planning processes by regional planning commissions
- improved town and regional plans
- reliance on local control, which improves public interest and participation
- voluntary incentives
- development review boards

What has not worked:

- providing for coordinated municipal, regional and state agency planning
- providing for coordinated state agency planning consistent with the goals,

perhaps due to cumbersome procedures and lack of focus

- implementing the Council of Regional Commissions through complex rules, and allowing for appeals by an individual all the way to the Supreme Court
- coordinating state planning from an agency department, rather than directing it out of the Governor's Office
- requiring state agency plans every 2 years
- generating public interest in state agency planning
- overwhelming local volunteers with controversy over property rights

Gaps:

- planning goals related to social equity
- following the funding formula for the Municipal and Regional Planning Fund
- coordinating state agency planning that provides for public input and is coordinated with municipal and regional planning
- providing sufficient detail in local or regional plans to satisfy questions raised in Act 250 reviews
- providing for affordable housing

Challenges:

- preventing the “blurring of the edge”, developing successful strategies to curb strip development and sprawl
- finding adequate funding resources for planning at all levels
- stimulating and maintaining sufficient public interest for all the volunteerism needed
- maintaining state level planning that survives political cycles
- providing adequate resources to fund planning