STATE OF VERMONT
BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE, (Thomas Melone, Respondent)	PRB File No. 25-120

RESPONDENT'S OPPOSITION TO THE TOWN OF BENNINGTON'S MOTION TO QUASH THE SUBPOENAS TO DANIEL MONKS, SHANNON BARSOTTI, JEANETTE JENKINS AND JAMES SULLIVAN

Respondent THOMAS MELONE ("Respondent") hereby submits this opposition to the Town of Bennington's (the "Town") Motion to quash the Subpoenas (the "Subpoenas") to James Sullivan, Jeanette Jenkins, Shannon Barsotti and Dan Monks (collectively, the "Bennington Recipients").

INTRODUCTION

On December 5, 2025, Respondent issued subpoenas to each of the Bennington Recipients.

The subpoena to Dan Monks requested:

> 1. All e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to (A) the validity of the current Town Plan of the Town of Bennington, Vermont, including, without limitation, (i) the purported re-adoption of the Town Plan of the Town of Bennington, Vermont, in 2018 or (ii) claims that the Town Plan of the Town of Bennington, Vermont, expired in 2023 and (B) all grants applied for by the Town of Bennington since January 1, 2023, to the Vermont Agency of Commerce and Community Development or any subdivision thereof, and (C) Coronavirus State and Local Fiscal Recovery Funds received by the Town of Bennington.
>
> 2. All e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service), and other documents in your possession or control that evidence the hiring of Attorney Merrill Bent to represent the Town of Bennington in connection with (a) Public Utility Commission Case 23-0249, (b) Public Utility Commission case 24-3517, (c) Vermont Superior Court Docket No. 25-ENV-00016, (d) Vermont

Superior Court Docket No. 25-cv-01872, (e) Vermont Supreme Court Docket No. 25-AP-175, and (f) Vermont Superior Court, Docket No. 25-CV-01902.

The subpoena to James Sullivan requested:

1. All e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to (A) the validity of the current Town Plan of the Town of Bennington, Vermont, including, without limitation, (i) the purported re-adoption of the Town Plan of the Town of Bennington, Vermont, in 2018 or (ii) claims that the Town Plan of the Town of Bennington, Vermont, expired in 2023 and (B) all grants applied for by the Town of Bennington since January 1, 2023, to the Vermont Agency of Commerce and Community Development or any subdivision thereof, and (C) Coronavirus State and Local Fiscal Recovery Funds received by the Town of Bennington.

The subpoena to Jeannette Jenkins requested:

1. All e-mails, memoranda, text messages, electronic messages (including messages sent through an application-based messaging service, such as Slack or WhatsApp), analyses, manuals, evaluations, opinions, and other documents in your possession or control concerning, mentioning, or relating to (A) the validity of the current Town Plan of the Town of Bennington, Vermont, including, without limitation, (i) the purported re-adoption of the Town Plan of the Town of Bennington, Vermont, in 2018 or (ii) claims that the Town Plan of the Town of Bennington, Vermont, expired in 2023 and (B) all grants applied for by the Town of Bennington since January 1, 2023, to the Vermont Agency of Commerce and Community Development or any subdivision thereof, and (C) Coronavirus State and Local Fiscal Recovery Funds received by the Town of Bennington.

The subpoena to SHANNON BARSOTTI requested:

1. For the period from January 1, 2023, to December 5, 2025, all e-mails, text messages, electronic messages (including messages sent through an application-based messaging service), in your possession or control to or from, or concerning, mentioning, or relating to any of (A) all grants applied for by the Town of Bennington since January 1, 2023, to the Vermont Agency of Commerce and Community Development or any subdivision thereof, and (B) Coronavirus State and Local Fiscal Recovery Funds received by the Town of Bennington.

Each request goes to issues at the heart of this case.

The requests related to the validity of the Town Plan and all grants applied for by the Town of Bennington since January 1, 2023, to the Vermont Agency of Commerce and Community Development or any subdivision thereof, and the Coronavirus State and Local Fiscal Recovery

Funds received by the Town of Bennington, all go directly to the heart of Count I of the Petition for Misconduct (the "Complaint"), *i.e.*, specifically, the Complaint's accusation that certain statements made by Respondent were false.

The requests related to the purported hiring of Attorney Merrill Bent were put into issue in this case by both Merrill Bent and Mr. Hanley. Respondent has consistently challenged that Merrill Bent was properly hired. And whether Merrill Bent was validly hired by the Town for a particular matter goes to the heart of the Ms. Bent's and Mr. Hanley's complaints regarding the purported violation by Respondent of the "no contact" rule when Respondent communicated with elected officials. As explained below, the Town's claims of privilege regarding that information are without merit because, *inter alia*, the issue has been put into issue by Ms. Bent and Mr. Hanley.

The Town offers three arguments in opposition to the Subpoenas. First, the Town argues that the Subpoenaed information belongs to the Town and not its elected or appointed officials. Second, the Town argues that the requests implicate claims of privilege which also belong to the Town and not its elected or appointed officials. Third, the Town claims that the subpoenas impose an undue burden on the Bennington Recipients (even though by claiming that the records belong to the Town they would be subject to full disclosure under 1 V.S.A. § 316) because the documents requested are purportedly either not relevant or would take too much time to respond to. Each argument fails.

ARGUMENT

I. THE TOWN HAS NO STANDING TO CHALLENGE THE SUBPOENAS ON BEHALF OF THE BENNINGTON RECIPIENTS IN THEIR INDIVIDUAL CAPACITY.

Even assuming *arguendo*, that the law firm of Woolmington, Campbell, Bent & Stasny, P.C. could represent the Town in matters related to this case (and that such representation would not violate Rules 1.7 or 3.7 of the VRPC), the Town cites no basis for making arguments on behalf of the Bennington Recipients in their individual capacity. Unless and until searches are made by the Bennington Recipients, the Town cannot say that all of the responsive information is held by each of the Bennington Recipients in an official capacity or in their official email accounts.

II. THE TOWN HAS NO BASIS TO CLAIM THAT ALL REQUESTED DOCUMENTS ARE "OWNED" BY THE TOWN.

The Town claims that the requested documentation belongs to the Town and not its elected or appointed officials. The ownership of the documents requested would depend on whether or not the documents were created within the scope of their official duties. If created on personal time, for personal reasons or outside the assigned job duties, the requested documents are not municipal documents. An employee's communication is "within the scope of employment" only when the job requires it, the employer directs it, or it furthers the employer's interests. *Greene v. St. Paul-Mercury Indem. Co.*, 51 Wn.2d 569, 573, 320 P.2d 311 (1958) (citing *Lunz v. Dep't of Labor & Indus.*, 50 Wn.2d 273, 310 P.2d 880 (1957); *Roletto v. Dep't Stores Garage Co.*, 30 Wn.2d 439, 191 P.2d 875 (1948)). And covering up, for example, the expiration of the Town Plan is likely not required by the job or the employer.

Here the Respondent has requested all responsive documents, **whether or not located on private or municipal accounts** and whether or not created within the scope of their employment. The Town's argument that the documents are "municipal documents" simply cannot be determined until the documents are gathered by the Town. Moreover, even if the responsive documents are ultimately determined to be municipal documents, they are still discoverable by the Respondent under the Vermont Public Records Act unless subject to an exception thereto. A blanket objection based on ownership of documents that have yet to even be identified is simply premature and should be overruled.

III. THE TOWN'S CLAIMS OF PRIVILEGE FAIL.

A.O. 9, Rule 19(A)(2) provides the Respondent with the right "[a]fter a petition .. is filed [to] compel by subpoena … the production of pertinent books, paper, and documents." A.O. Rule 20(B) provides that "[e]xcept as otherwise provided in these rules, the Vermont Rules of Civil Procedure" apply. V.R.C.P. 45(a)(l)(C) states that a subpoena may "command each person to whom it is directed … to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the

possession, custody or control of that person ." V.R.C.P. 45(c) provides that "a person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production on inspection [emphasis added] unless commanded to appear for deposition, hearing or trial."

A. The Town's Claim Of Privilege Are Waived Due To Failure To Properly Make Them.

Privilege is construed narrowly because it blocks the discovery of relevant information. *United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011). *Id.* The party asserting the privilege bears the burden of establishing privilege. *Mejia*, 655 F.3d at 132. "[P]rivilege 'stands in derogation of the public's "right to every man's evidence."'" *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co., Ltd*., 232 F.R.D. 103, 114 (S.D.N.Y. 2005) (quoting *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973) (quoting 8 Wigmore, Evidence § 2192 (McNaughton rev. 1961), at 70)).[1]

V.R.C.P. 45(d)(2)(A) requires that privilege claims must be "made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim." The Town fails to do that. Instead, it offers boilerplate objections that courts reject.

[1] *See also, e.g., NXIVM Corp. v. O'Hara*, 241 F.R.D. 109, 125-26 (N.D.N.Y. 2007):

> Contrary to modern yet ill-informed perceptions, the attorney-client privilege is often "[n]arrowly defined, riddled with exceptions, and subject to continuing criticism." *United States v. Schwimmer*, 892 F.2d at 243. Grand as the privilege stands in our legal lexicon, it is nonetheless narrowly defined by both scholars and the courts. *Univ. of Pa. v. E.E.O.C*., 493 U.S. 182, 189, 110 S. Ct. 577, 107 L. Ed. 2d 571 (1990); *In re County of Erie*, 473 F.3d 413, 2007 WL 12024, at *3 (finding that the privilege is narrowly construed and applies only where necessary to achieve its purpose) (citing, *inter alia, Fisher v. United States*, 425 U.S. 391, 96 S. Ct. 1569, 48 L. Ed. 2d 39 (1976)). The attorney-client privilege is not given broad, unfettered latitude to every communication with a lawyer, but is to be narrowly construed to meet this narrowest of missions. *Fisher v. United States*, 425 U.S. 391, 403, 96 S. Ct. 1569, 48 L. Ed. 2d 39 (1976) ("However, since the privilege has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve its purpose."); *see also In re Horowitz*, 482 F.2d at 81 (privilege ought to be "strictly confined within the narrowest possible limits consistent with the logic of its principle") (quoting 8 WIGMORE § 2292 at 70); *United States v. Int'l Bhd. of Teamsters*, 119 F.3d at 214.

The Town argues that the Subpoenas implicate claims of privilege which also belong to the Town. As discussed above, the documents requested are not limited to municipal documents and the Town would obviously not control claims of privilege with respect to documents created by the Bennington Recipients outside the scope of their employment. Secondly, the Town does not even bother to describe which "claims of privilege" are implicated. The Town admits that it has not engaged an attorney to review claims of privilege, so it is impossible to ascertain the validity of its claims. The applicable rules require more than a blanket claim that the claims of privilege are "implicated" or that all documents and things responsive to Respondent's Subpoenas are privileged or otherwise properly withheld from disclosure.

The Town has not even come close to complying with the mandate of V.R.C.P. 45(d)(2)(A). And this is not an instance where a broad or "blanket" withholding of materials under the attorney-client privilege or the attorney work product doctrine is so clearly warranted that Rule 45(d)(2)(A) should not be followed. *See also United States v. Stern*, 511 F.2d 1364, 1367 (2d Cir. 1975) (party asserting attorney-client privilege has burden of establishing that the communication was protected); V.R.C.P. 45(c)(2)(B) (party objecting to subpoenas seeking documents and other things is "[s]ubject to paragraph (d)(2) of this rule").

The Town's claim of privilege is also waived because it failed to provide a privilege log. *Jansson v. Stamford Health, Inc*., 312 F. Supp. 3d 289, 299 (D. Conn. 2018), *reconsideration denied*, No. 3:16-CV-260 (CSH), 2018 U.S. Dist. LEXIS 86959, 2018 WL 2357271 *35-36 (D. Conn. May 24, 2018) ("A party's right to assert and succeed upon of a claim of privilege is conditioned upon its filing 'an adequately detailed privilege log'") (quoting *United States v. Construction Prods. Research*, 73 F.3d 464, 473 (2d Cir. 1996)); *Aurora Loan Servs., Inc. v. Posner, Posner & Assocs., P.C*., 499 F. Supp. 2d 475, 479 (S.D.N.Y. 2007) ("[f]ailure to furnish an adequate privilege log is grounds for rejecting a claim of attorney client privilege"); *OneBeacon Ins. Co. v. Forman Int'l, Ltd*., 2006 U.S. Dist. LEXIS 90970, 2006 WL 3771010, at *6 (S.D.N.Y. Dec. 15, 2006) ("Courts in this Circuit have refused to uphold a claim of privilege where privilege log entries fail to provide adequate information to support the

claim.").

B. Privilege Does Not Protect Documents Regarding The Purported Hiring Of Merrill Bent.

The Town also makes a claim of attorney-client privilege with respect to the document request in the Monks' Subpoena which requests all documents relating to the purported hiring of Attorney Bent in various specific matters. That privilege claim fails for multiple reasons in addition to the failure to be specific.

First, generally, the identity of a lawyer is not protected by the attorney-client privilege. *See Coffey-Garcia v. S. Miami Hosp., Inc.*, 194 So. 3d 533, 537-38 (Fla. 3d DCA 2016). As such, it is entirely unclear how communications relating to the hiring of Attorney Bent would be subject to the attorney-client privilege unless such communications included Attorney Bent and also included discussions about legal advice or strategy. Neither hiring discussion among municipal officials nor administrative communications concerning fee arrangements, billing rates, procurement logistics are protected. In other words, the exemption is content-based, not categorical and privilege must be shown document-by-document.

A recent case from the Appeals Court of Massachusetts is instructive in demonstrating that not all documents between a town select board and an attorney are subject to the attorney-client privilege. In *Kay v. Concord*, 105 Mass. App. Ct. 366, 257 N.E.3d 64 (2025), the defendant town claimed attorney-client privilege over a number of emails of Select Board members and the Court made it clear that only emails where the town was seeking legal advice were privileged:

> The essence of the nine remaining disputed e-mails is mere deliberations and musings among town officials. Such communications are not protected by the attorney-client privilege, even if town counsel is included. *See Suffolk Constr.*, 449 Mass. at 457 ("There is no 'deliberative process' subset of the attorney-client privilege"); Judge Rotenberg, 424 Mass. at 457 n.26 (attorney-client privilege inapplicable to general policy meeting even though counsel was present). Strictly construed, the privilege does not guard a person's expressed thoughts, contemplations, and ruminations come what may; instead, the privilege protects a specific class of communications only when a person seeks the superior knowledge and skill of an attorney in an effort "to obtain a more exact and complete knowledge of the law, affecting [the person's] rights, obligations or duties." *Foster v. Hall*, 29 Mass. 89, 101 (1831).

Again, the Town has not even come close to complying with the mandate of V.R.C.P. 45(d)(2)(A). If the Town is asserting the attorney-client privilege, the burden is on the Town to demonstrate exactly which of the requested documents are subject to the privilege and why.

Second, whether or not Merrill Bent was validly hired by the Town is "at-issue" in this case, and it is an issue first presented by Ms. Bent and Mr. Hanley. The requests related to the purported hiring of Attorney Merrill Bent were put into issue in this case by both Merrill Bent and Mr. Hanley. Respondent has consistently challenged that Merrill Bent was properly hired, including through open meeting law challenges. Those challenges were never resolved due to the settlement with the Town. Whether Merrill Bent was validly hired by the Town for a particular matter goes to the heart of the Ms. Bent's and Mr. Hanley's complaints regarding the purported violation by Respondent of the "no contact" rule when Respondent communicated with elected officials.[2]

The attorney-client privilege is waived when the client puts the privileged communication at issue in litigation. For example, a client can be held to have waived the privilege when it alleges that it relied on the advice of counsel. *See, e.g., In re von Bulow*, 828 F.2d 94, 102 (2d Cir. 1987). Communications are "at issue" when the party makes an assertion that in fairness requires examination of protected communications." *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir.) (criminal defendant waived privilege when he asserted that he had a good faith belief that his

[2] And if Ms. Bent was in fact involved in the town's alleged malfeasance, then the crime-tort-fraud exception to the attorney-client privilege may apply in any event. *See, e.g., United States v. Spinosa*, No. 21 CR 206, 2021 U.S. Dist. LEXIS 120141, *14-15 (S.D.N.Y. 2021):

> One long-recognized exception is when legal advice furthers a client's crime or fraud. *Zolin*, 491 U.S. at 562-63. Although "there is a societal interest in enabling clients to get sound legal advice, there is no such interest when the communications or advice are intended to further the commission of a crime or fraud." *Richard Roe, Inc.,* 68 F.3d at 40. Thus, a person may not claim the benefit of the privilege for communications or work product "made for the purpose of getting advice for the commission of a fraud or crime." *Zolin*, 491 U.S. at 563 (cleaned up). As the Supreme Court long ago put the point: "The privilege takes flight if the relation is abused," such that "[a] client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law." *Clark v. United States*, 289 U.S. 1, 15, 53 S. Ct. 465, 77 L. Ed. 993 (1933).

actions were legal), *cert. denied*, 502 U.S. 813, 116 L. Ed. 2d 39, 112 S. Ct. 63 (1991); *see also United States v. Amlani*, 169 F.3d 1189, 1195 (9th Cir. 1999) (attorney-client privilege may be implicitly waived where "'a party raises a claim which in fairness requires disclosure of the protected communications'") (citation omitted); *In re Kidder Peabody Sec. Litig*., 168 F.R.D. 459, 470 (S.D.N.Y. 1996) (party "may waive the privilege if [it] makes factual assertions the truth of which can only be assessed by examination of the privileged communication"). The "at issue" waiver doctrine centers on the "fairness" to the party seeking disclosure. It would be unfair for a party who has asserted a factual matter that places attorney-client communications at issue to deprive the opposing party of the means to test that factual matter through discovery of those communications. And here, whether Merrill Bent was hired for a specific matter is the condition precedent of Mr. Hanley's claims that the no-contact rule was violated. "[T]he attorney-client privilege cannot at once be used as a shield and a sword." *Bilzerian*, 926 F.2d at 1292. But that is exactly what the Town seeks to do.

C. Without A Privilege Log There Is No Basis To Determine That A Communication Is Privileged.

The attorney-client privilege does not protect communications made in the presence of or made available to third parties. *State v. Burak*, 201 Conn. 517, 526, 518 A.2d 639 (1986). Including an employee on the email who does not "***need to know***" the contents constitutes a waiver of the privilege. "[T]he attorney-client privilege is applicable if 'the communication is not disseminated beyond those persons who, because of the corporate structure*, need to know its contents*.'" *Feinberg v. T. Rowe Price Grp., Inc*., 2019 U.S. Dist. LEXIS 217544, *5-6 (D. Md. 2019) quoting *Krueger v. Ameriprise Fin., Inc., LLC*, 2014 U.S. Dist. LEXIS 197161, 2014 WL 12597432, at *10 (D. Minn. May 7, 2014) (emphasis added), and also citing *SmithKline Corp. v. Apotex Corp*., 232 F.R.D. 467, 476 (E.D. Pa. 2005) (recognizing attorney-client privilege may be waived in the corporate context "if the communications are disclosed to employees who did not need access to them"). There is no basis for concluding that all people copied on the emails needed to know the contents of the alleged attorney's communication until a privilege log is provided.

The attorney-client privilege protects lawyer-client communications for the purpose of obtaining or providing legal advice that were intended to be and in fact are kept confidential. *United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011). The privilege is construed narrowly because it blocks the discovery of relevant information. *Id.* The party asserting the privilege bears the burden of establishing privilege. *Mejia*, 655 F.3d at 132. "The attorney-client privilege should not be expanded without considerable caution because the privilege 'stands in derogation of the public's "right to every man's evidence."'" *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co., Ltd*., 232 F.R.D. 103, 114 (S.D.N.Y. 2005) (quoting *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973) (quoting 8 Wigmore, Evidence § 2192 (McNaughton rev. 1961), at 70)). "Communications between an attorney and someone who is not their client generally are not protected by the privilege. Similarly, the privilege generally is deemed to have been waived if communications between attorney and client are shared with a third party." *Walsh v. CSG Partners, LLC*, 544 F. Supp. 3d 389, 391 (S.D.N.Y. 2021) (holding communications involving investment bank, investment bank's ESOP clients, and those clients' legal counsel were not protected by attorney-client privilege). As is evident from those authorities, this issue also ties into whether Merrill Bent was validly hired. If she was not, then the attorney-client privilege would not apply in any event.

Moreover, "[a] communication from attorney to client solely regarding a matter of fact would not ordinarily be privileged, unless it were shown to be inextricably linked to the giving of legal advice." *Ullmann v. State*, 230 Conn. 698, 713, 647 A.2d 324 (1994). The attorney-client privilege is not a blanket one; rather, "[b]ecause the application of [the privilege] tends to prevent the full disclosure of information and the true state of affairs, it is both narrowly applied and strictly construed." *Harrington v. Freedom of Information Comm'n*, 323 Conn. 1, 12, 144 A.3d 405 (2016). To be protected, the communications must be in connection with and necessary for the seeking or giving of legal advice. *PSE Consulting, Inc. v. Frank Mercede & Sons, Inc*., 267 Conn. 279, 329, 838 A.2d 135 (2004).

IV. THERE IS NO BURDEN.

The final argument by the Town against the Subpoenas is that they impose an undue burden on the Town. This argument is twofold. First, the Town claims that the burden is undue because the materials requested are unreasonably broad, are not relevant and premised on speculation. Second, the Town claims that the burden is undue because the subpoenas would take approximately 50-100 hours of staff time.

A. The Requested Materials Are Not Unreasonably Broad, Are Relevant and Are Most Certainly Not Based on Speculation

(i) Relevancy of the Expiration of The Town Plan.

The Town argues that the requested documents will not shed any on whether Respondent made the statements at issue in Count I. That is correct, as whether or not Respondent made the statements is not in dispute. The Town then argues that the requested documents will not shed any light on whether Respondent's conduct violates the Rules of Professional Conduct. That is incorrect, as what is in dispute in these proceedings is the truth of the matter asserted in the January 10, 2025, comments of Respondent to the Vermont Public Utility Commission (the "PUC") concerning the conduct of officers and agents of the Town of Bennington (the "January Comments"). This is also explained in Respondent's opposition to quash the Bennington subpoenas. After all, one cannot be guilty of demonstrating lack of candor to a tribunal when everything stated to that tribunal is truthful. Nor can one be guilty of making a false statement if the statements are true.

The Town also argues that the Subpoenas issued to the Bennington Recipients reveal that Respondent does not and did not have factual support for the serious accusations of criminal conduct when he made them to the PUC. This is false and echoes the argument made by Mr. Hanley in his Motion to Quash the Subpoenas on the Bennington Recipients (the "Hanley Motion to Quash") that Mr. Melone "should have had evidence of criminal acts on January 10 2025, the day he made the allegations of criminal behavior, and should not be allowed to go fishing for that evidence now." As explained in *RESPONDENT'S REPLY TO MR. HANLEY'S OBJECTION TO*

RESPONDENT'S MOTION TO REVISE filed January 12, 2026 (the "Reply"), and in Respondent's opposition to the Hanley Motion to Quash (both of which are incorporated herein by reference pursuant to VRCP 10(c)) has ample evidence of wrongdoing to support the statements made in the January Comments, and that Respondent is entitled to exercise the full panoply of discovery rights that are relevant to the issues that Mr. Hanley has raised, which include, *inter alia*, the issues of the Bennington Town Plan (and the alleged cover-up), the Benn High development project, or whether Merrill Bent was validly hired as legal counsel on various specific matters.

The Town believes that Respondent should not have any opportunity to develop any defense, which is, of course, is the entire purpose of discovery in any forum or setting in every state. The Town argues that Respondent "now seeks sweeping discovery from a non-party in hopes that some post-hoc rationalization for his assertions will emerge." Even if the Town is correct that the time investment might be 50-100 hours of staff time, that is not an undue burden.

(ii) Relevancy of the Documents Relating to Attorney Bent's Representation of the Town Plan.

Although the Town does not object to the request of the documents relating to Attorney Bent's purported representation of the Town on any basis other than attorney client privilege, the relevancy of these documents should also be discussed. The requested documents are relevant with respect to Counts VI, Count VII and VIII. In Vermont, the authority to engage legal counsel for a town generally rests with the Selectboard, who has general supervision over the affairs of the town. That is as true in Bennington as it is anywhere else as the Bennington Town Charter specifically states that the authority to hire counsel rests with the Select Board (*see* **Exhibit A** hereto, §103-303(7)). Respondent alleges that the Bennington Select Board never took formal action to engage Attorney Bent with respect to certain matters.

30 V.S.A. § 248(a)(4)(H) authorizes the legislative body and the planning commission for the municipality in which a facility is located the right to appear as a party in a Section 248(a) proceeding for a certificate of public good before the PUC. That right belongs solely to the legislative body and the planning commission and the exercise of such right requires that such

municipal entities vote to make an affirmative determination to intervene. Nowhere in the Vermont statutes or in the Bennington Charter is that right to intervene delegated to any other person.

From the Town's perspective, it seems that they are arguing that it is sufficient that Attorney Bent's law firm is listed on the exceptions to their purchasing policy (*see* Exhibit A to the Town's Opposition). Whether or not the Town's formal bidding process for professional services applies to Attorney Bent's law firm has nothing to do 30 V.S.A. § 248(a)(4)(H). Nor does the exceptions document establish that Merrill Bent was in fact validly hired. Regardless, the exceptions document attached to the Town's motion is for the wrong fiscal year. It shows nothing about 2025.

Neither the Bennington Select Board nor the Planning Commission ever voted to intervene in PUC case 24-3517 prior to Attorney Bent doing so. This was specifically admitted to during a Special Meeting of the Town's Select Board on February 21, 2025, when the Select Board voted to ratify previous alleged actions of the "Town Staff" to direct Attorney Bent to intervene[3]. That attempted ratification of the action of "Town Staff" was also done in violation of Vermont's Open Meeting Law so is invalid. *See* **Exhibit B** hereto. It is also entirely unclear who the "Town Staff" was that directed Attorney Bent to intervene in the PUC proceedings, nor whether any such staff was authorized to do so. Regardless of the identity of the "Town Staff", under 24 V.S.A. § 1236, not even the Town Manager can "sign orders on the general fund of the town."

(iii) The Document Requests are Narrowly Tailored and There is No Undue Burden.

The Subpoenas are narrowly tailored, requesting documentation only related to the expiration of the Town Plan and the funds received through grants after the expiration of the Town Plan. The discovery request relating to the hiring (or non-hiring) of Attorney Bent in the Monks' Subpoena is also narrowly tailored and necessary to further demonstrate that Vermont state statutes and the Bennington Town charter were ignored by the Town and by Attorney Bent. With respect

[3] https://www.youtube.com/watch?v=Eo2CgxUbi2g at 12:50.

to "undue burden" the Town has a dedicated staff member, Jonah Spivak, that processes information requests of this nature so any argument that other Town staff might be somehow burdened by the request is dubious. A person asserting "undue burden" must demonstrate specific facts "as distinguished from stereotyped and conclusory statements." *See Petition of Vermont Transco LLC and Vermont Electric Power Company, Inc.,* Vermont Public Utility Commission, Docket No. 7752, 11/18/2011, page 2 (quoting 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure*, § 2035 (2d. 2009). *Mancia v. Mayflower Textile Servs. Co*., 253 F.R.D. 354, 358 (D. Md. 2008) ("[B]oilierplate objections that a request for discovery is 'over[broad] and unduly burdensome, and not reasonably calculated to lead to the discovery of material admissible in evidence,' . . . persist despite a litany of decisions from courts, including this one, that such objections are improper unless based on particularized facts.")

The Town's argument that certain of its staff members will automatically be subjected to an undue burden because of their identity is the epitome of "stereotyped and conclusory". The Town has simply failed to allege why the Bennington Recipients would be subjected to "undue burden."

CONCLUSION

The Respondent made certain statements related to the Town and its attorney that he believed and continues to believe were truthful. The Town, for obvious reasons, does not want the truth to be revealed in any forum and, therefore, seeks to quash the Subpoenas. However, by filing the ethics complaint against Respondent, the Town's attorney placed these issues front and center. There is no getting around the issues of the Bennington Town Plan, the Benn High development project, or whether Merrill Bent was validly hired as legal counsel on various specific matters. The specific charges brought in the Petition for Misconduct filed by Michael Hanley against Respondent on September 26, 2025, put all of those issues, as well as others, squarely at issue. As explained in the Reply, no valid Town Plan means forgery and counterfeiting when official documents are altered to cover-up that there is no valid Town Plan (as shown in the Reply), and obtaining or receiving grants or other benefits that require a valid Town Plan involves false

certifications (also as shown in the Reply).

The Motion to quash must be denied.

Respectfully submitted,

Dated: January 13, 2026

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EXHIBIT A

—BENNINGTON—

TOWN CHARTER

T.24 VSA Chapter 103

REVISED TO INCORPORATE AMENDMENTS

June 10, 2019

Preamble

The people of Bennington reaffirm faith in government of the people, by the people, and for the people and describe this government in a charter with provision to review and amend. The charter of the Town of Bennington reflects concern to improve the quality of life for all people and to improve the operation of Town government.

Subchapter 1: Powers Of The Town

§ 103-101. General law applies

(a) All provisions of the Constitution and laws of the State relating to towns and villages shall apply to the Town of Bennington, except as modified by this charter.

(b) The Town of Bennington shall have all the powers and functions conferred upon towns and villages by the Constitution and laws of the State and shall also have all implied powers necessary to implement such powers and functions.

(c) The powers and functions conferred upon the Town of Bennington by this charter shall be in addition to the powers and functions conferred upon the Town by the laws of the State. Nothing in this charter shall be construed as a limitation upon such powers and functions. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-102. Additional Town powers

In addition to powers otherwise conferred by law, the Town of Bennington is authorized to adopt, amend, repeal, and enforce ordinances:

(a) relating to collection and removal of garbage, ashes, rubbish, refuse, waste, and scrap by the Town and establishment of rates to be paid to the Town for such service;

(b) relating to construction and alteration of public and private buildings and the use thereof, including establishment of minimum standards for plumbing, heating, and wiring, so as to prevent hazardous and dangerous conditions, fires, and explosions by precautionary regulations and inspection;

(c) relating to the use of firearms in settled areas;

(d) relating to the packaging, marketing, and handling of produce and other foodstuffs;

(e) relating to the prevention of pollution of streams, ponds, and other waterways within the Town.

§ 103-103. Initiative: advisory votes

The voters of the Town have the power to petition for a nonbinding advisory vote to reflect public sentiment. Such petition shall be signed by at least five percent of the voters of the Town and shall state that it is advisory only. The Select Board, upon receipt of such a petition, shall place the article on the warning for the next Town meeting or any other Town election.

§ 103-104. Recall

(a) The voters of the Town may recall any of the elected Town officers listed in subchapter 2 of this charter.

(b) A recall petition, clearly stating cause, signed by at least 30 percent of the legal voters of the Town, and bearing their addresses, shall be filed with the Select Board within 15 calendar days of its issue. The Select Board upon receipt of a valid petition shall, after 60 calendar days, hold a special election, with voting by Australian Ballot, to consider the recall of an elected Town officer. When such a petition is approved by a majority of two-thirds of the ballots cast at such special election, the officer named in the petition shall thereupon cease to hold his/her office, and the office shall be considered vacant until filled by a special election to be held within 60 days.

(c) A recall petition shall not be brought against an individual more than once during his/her term of office.

Subchapter 2: Officers

§ 103-201. Elective officers

(a) The elective officers of the Town shall be seven Select Board members elected from the Town at large at a duly warned annual town meeting; a Town Clerk; a Treasurer; and a Moderator.

(b) All elective officers shall hold office for a three-year term. The term shall expire the first day of April following the annual Town meeting. (Amended 2003, No. M-7, § 2.)

§ 103-202. Appointive officers

(a) The Select Board members shall annually appoint a Constable and other officers required by law or this charter, including a Board of not less than three nor more than five listers to serve for such terms as the Select Board members decide, but not less than one nor more than five years, such appointments to be made as vacancies occur in the elected Board of Listers.

(b) The Select Board members may create such appointive officers not provided for by this charter or required by law as they deem to be in the best interest of the Town.

§ 103-203. Compensation

(a) Compensation paid to the Select Board members shall be set by the voters at Town meeting.

(b) Subject to subsection (a) of this section, the Select Board shall fix the compensation of all elective officers and of all officers appointed by the Select Board.

(c) The Town Manager, under policies approved by the Select Board, shall fix the compensation of all other officers and employees whose compensation is not fixed by the Select Board pursuant to subsection (b) of this section. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

Subchapter 3: Select Board

§ 103-301. Select Board; the legislative body

The Select Board shall constitute the legislative body of the Town of Bennington and shall have all powers and authority necessary for the performance of the legislative function. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-302. Additional powers of Select Board members to adopt ordinances

In addition to powers otherwise conferred by law, the Select Board members are authorized to adopt, amend, repeal, and enforce ordinances:

(1) regulating the parking and operation of motor vehicles; including, despite any contrary provisions of law, the establishment of speed zones wherein the limit is less than 20 miles per hour, all as may be required by the safety and welfare of the inhabitants of the Town;

(2) relating to regulation, licensing, and prohibition of the storage and accumulation of junk cars, garbage, ashes, rubbish, refuse, waste, and scrap, and collection, removal, and disposal of such materials;

(3) relating to registration and regulation of bicycles;

(4) relating to the keeping of dogs, cats, and other domestic animals in settled areas.

§ 103-303. Further powers of Select Board members

In addition to powers otherwise conferred by law, the Select Board members shall also have the power to:

(1) organize, and from time to time reorganize, the Fire Department under the supervision of a coordinating committee formed by the Select Board from its members; such Department shall be a volunteer department, unless an affirmative vote of the members of the Fire Department authorizes a transition to a paid or combination paid and volunteer department as set forth in a transition plan proposed by the Select Board working with a committee formed from members of the Fire Department;

(2) continue any existing contract with a volunteer fire department or to enter on behalf of the Town into contracts with other volunteer fire departments to provide additional fire protection to the inhabitants;

(3) create, consolidate, or dissolve departments as necessary or relevant for the performance of municipal services;

(4) create, consolidate, or dissolve commissions and committees as necessary or relevant and appoint the members thereof;

(5) provide on an annual basis an independent audit of all Town financial records by a certified public accountant;

(6) inquire into the conduct of any officer, commission, or department and investigate any and all municipal affairs;

(7) discharge all duties heretofore devolving on the Town Agent by general law and hire attorneys on behalf of the Town; and

(8) establish an adequate number of polling places within the Town as required for the convenience of the Town voters and without regard to election district boundaries, to the end that election expenses may be lessened and confusion among the voters as to the proper place for them to vote may be avoided; however, one such polling place shall be in North Bennington and the central polling place shall be within the boundaries of the former Village of Bennington. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-304. Organization of Select Board

(a) Forthwith after the annual meeting of the town, the Select Board members shall organize and elect a Chair and Vice Chair.

(b) The Chair of the Board or in his/her absence, the Vice Chair, shall preside at all meetings of the Board and such presiding officer shall be a voting member of the Board.

(c) When a vacancy occurs on the Select Board, except as provided in section 104, the remaining members may fill the vacancy by appointment of a registered voter of the Town, such appointment to be for the period until the next annual meeting, when the voters of the District shall fill the vacancy.

(d) The Board shall fix the time and place of its regular meetings to be held at least twice a month.

(e) The presence of four members shall constitute a quorum.

Subchapter 4: Town Manager

§ 103-401. Appointed by Select Board

The Selector Board members shall appoint a Town Manager for an indefinite term, and upon such conditions as they may determine.

§ 103-402. Town Manager nonpartisan

(a) The Town Manager shall be chosen solely on the basis of his or her executive, administrative, and professional qualifications.

(b) The Town Manager shall not take part in the organization or direction of a political party, serve as a member of a party committee, nor be a candidate for election to any public office. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-403. Oath and bond

Before entering upon his or her duties, the Town Manager shall be sworn to the faithful performance of his or her duties by the Town Clerk and shall be bonded in such amount and with such sureties as the Select Board may require. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-404. Duties for Manager

(a) The Town Manager shall be the Chief Executive Officer of the Town and shall:

(1) Carry out the policies established by the Select Board, to whom the Town Manager shall be accountable.

(2) Attend all meetings of the Select Board, except when his or her compensation or removal is being considered, shall keep the Select Board informed of the financial condition and future needs of the Town, and shall make such other reports as may be required by law, requested by the Select Board, or deemed by him or her to be advisable.

(3) Perform all other duties prescribed by this charter or required by law or by resolution of the Select Board.

(4) Be an ex-officio member of all standing committees except the Development Review Board, and shall not vote.

(5) Prepare an annual budget, submit it to the Select Board, and be responsible for its administration after adoption.

(6) Compile for general distribution at the end of each fiscal year a complete report on the finances and administrative activities of the Town for the year.

(7) Provide to the Select Board a monthly financial statement, with a copy to the Town Treasurer.

(8) Perform all duties now conferred by law on the Road Commissioner within all areas of the Town, except within such villages as may vote not to surrender their charters under this charter, notwithstanding the provisions of 24 V.S.A. § 1236(5).

(9) Perform all duties now conferred by law on the Collector of Delinquent Taxes.

(10) Under policies approved by the Select Board, be the General Purchasing Agent of the Town and purchase all equipment and supplies and contract for services for every department pursuant to the purchasing and bid policies approved by the Select Board.

(11) Be responsible for the system of accounts.

(12) Be responsible for the operation of all departments, including the Police and Fire Departments.

(13) Under policies approved by the Select Board, have exclusive authority to appoint, fix the salaries of, suspend, and remove, all officers and employees except those who are elected or who are appointed by the Select Board. When the Town Manager position is vacant, this authority shall be exercised by the Select Board.

(b) The Town Manager may, when advisable or proper, delegate to subordinate officers and employees of the Town, any duties conferred upon him or her. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-405. Compensation

The Town Manager shall receive such compensation as may be fixed by the Select Board. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-406. Removal

(a) On 90 days' written notice from the Select Board, the Town Manager may be removed without cause by a majority of the Select Board at a meeting called for the purpose of voting on removal. During the 90-day period, the Town Manager may be suspended with pay.

(b) The Select Board may adopt at any time a resolution stating its intention to remove the Town Manager and the reasons therefore, a copy of which shall be sent to the Town Manager. The Town Manager may, within 10 days after such notice is sent, request a hearing. The hearing shall be held by the Select Board not less than 10 days nor more than 20 days from the date of such request, after which the Select Board may dismiss the Town Manager. If no request for a hearing is filed in accordance with the foregoing, the Select Board may dismiss the Town Manager immediately. During the period after the resolution of intention is adopted and until the Town Manager's dismissal, he or she may be suspended with pay. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

Subchapter 5: Taxation

§ 103-501. Taxes

Taxes shall be assessed by the Town based on the fair market value of real property, in accordance with State law. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-502. Discounts elimination

At such time as the discounts given on the tax rate to those who do not have water or sewer provided by or available from the Town may be eliminated, all costs of operation, and previously incurred debt, shall be paid from funds established for those purposes and funded by user fees, as may be established from time to time, by the Select Board, and applied against users of water and sewer services only.

§ 103-503. Fair market value of real estate

(a) In the event that the fair market value of real estate is materially changed because of total or partial destruction of, or damage to the property; or because of alterations, additions, or other capital improvements, the taxpayer may appeal as provide by law.

(b) When the fair market value of real estate is finally determined by appeal to the Board of Listers or to the Board of Civil Authority, then the value so fixed shall be the fair market value of such real estate for the year in which the appeal is taken.

(c) When the fair market value of real estate is finally determined by the Director of Property Valuation and Review (PVR) or by a court having jurisdiction, then the value so fixed shall be the fair market value of such real estate for the year for which such appeal is taken and for the ensuing two years, unless the taxpayer's property is altered materially; is damaged; or if the Town in which it is located has undergone a complete revaluation of all taxable real estate, in the event of which, such fair market value may be changed. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-504. Special assessments

Despite any contrary provision in general law, the Select Board may in its sole discretion make a special assessment upon real estate for the installation or construction of a public improvement, such special assessment to be such proportion of the total cost of such improvement as the benefit to a parcel of real estate bears to the total benefit resulting to the public in general. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-505. Tax within Bennington Rural Fire District No. 1

(a) The tax assessed by the Town on the grand list shall be reduced with respect to real estate in the Bennington Rural Fire District No. 1. This reduction shall be in direct proportion to the amount of the tax assessed by the Town that is used by the Town to provide fire protection services to property not included in the Bennington Rural Fire District No. 1.

(b) The purpose of this section is to make substantially uniform the taxes assessed throughout the Town for fire protection furnished by all fire departments in the Town. This tax reduction shall remain in effect until such time as the Bennington Rural Fire District No. 1 dissolves itself or merges with the Town of Bennington, in accordance with the charter of the Town of Bennington. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-506. Creation of Bennington Downtown District

There is hereby created in the Town of Bennington a special district to be known as the Bennington Downtown Improvement District (District) which shall be that area set forth on a map approved by the voters of Bennington and filed with the Town Clerk. The area of the District may be changed upon a majority vote of the legal voters at an annual or special meeting duly warned. (Amended 2005, No. M-6, § 2, eff. June 4, 2005.)

§ 103-507. Repealed, 2005, No. M-6, § 6, eff. June 4, 2005.

§ 103-508. Purposes and powers

(a) The District is created for the general purpose of maintaining and improving the economic, social, cultural, and environmental vitality and quality of the Town of Bennington (in particular, the District created by section 506 of this charter); to promote the Town and the District as a regional retail, commercial, and service center; and to serve as an advocate for the orderly development of the District in order to encourage expansion of the retail, commercial, and service base of the District and the Town by attracting new business and investment.

(b) The rights, powers, and duties of the District shall be exercised by the Select Board and shall be broadly construed to accomplish the purposes set forth above and shall include the following:

(1) To advertise and promote the Improvement District.

(2) To represent the interests of the District.

(3) To receive and expend contributions, grants, and income.

(4) To expend funds as provided for in the budget or as otherwise approved.

(5) To manage and maintain public spaces and to assume or supplement the services and maintenance heretofore provided to the District by the Town as recommended to and approved by the Select Board.

(6) To acquire and dispose of property on behalf of the Town.

(7) To install and make public improvements.

(8) To improve, manage, and regulate public parking facilities and vehicular traffic within the District.

(9) To enter into contracts as may be necessary or convenient to carry out the purpose of this charter.

(10) To regulate, lease, license, establish rules and fees, and otherwise manage the use of public spaces within the District.

(11) To plan for the orderly development of the District in cooperation with the Town Planning Commission.

(12) To do all other things necessary or convenient to carry out the purposes for which this District was created. (Amended 2005, No. M-6, § 3, eff. June 4, 2005; 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-509. Annual budget

The Town Manager shall submit each year an operating budget of anticipated expenditures and revenues to the Select Board for approval for the next fiscal year. In the event the Select Board does not approve the budget as submitted, the Select Board shall return the budget forthwith to the Town Manager with its recommendations for the Town Manager's reconsideration. Appropriations other than from contributions, grants, and income shall be raised solely through

District taxes which shall be assessed and collected as a tax on property as provided for in section 515 of this charter. The Select Board may borrow money in anticipation of District taxes. (Amended 2005, No. M-6, § 4, eff. June 4, 2005.)

§ 103-510. District taxes

(a) District taxes are charges levied upon the owners of taxable properties located in the District, excepting properties used exclusively for residential purposes, which taxes shall be used to defray the expenses incurred in connection with the operation, maintenance, and repair of the District.

(b) The District tax for each property in the District subject to the tax shall be based upon a rate on each $100.00 of listed value of the property as adjusted under subsection (c) of this section. The tax rate shall be determined by dividing the amount to be raised by taxes, by the total value of the taxable properties on the grand list as adjusted located in the District which are subject to the District tax under this subchapter.

(c) The District tax shall be set by the Select Board upon approval of the budget by the Select Board and notice in writing thereof shall be given to owners of record as of April 1 of each year of property so assessed, or to their agents or attorneys, stating therein the amount of such District taxes, and such taxes shall be due and payable to the Town Treasurer when normal Town and school taxes are due. The Town Treasurer shall collect unpaid District taxes as provided for the collection of taxes in the charter. District taxes shall be a lien on the properties when assessed and until the tax is paid or the lien is otherwise discharged by operation of law.

(d) In the case of any property used for both residential and nonresidential purposes within the District as of April 1, the Board of Listers (Board) shall adjust the listed value for the purposes of determining the District tax under this section to exclude the value of that portion of the property used for residential purposes. The Board shall determine the adjusted grand list value of the business portion of the property and give notice of the same as provided under 32 V.S.A. chapter 131. Any property owner may file a grievance with the Board and appeal the decision of the Board as provided for under 32 V.S.A. chapter 131; however, the filing of an appeal of the determination of the Board and pendency of the appeal shall not vacate the lien on the property assessed, and the District taxes must be paid and continue to be paid as they become due. (Amended 2005, No. M-6, § 5, eff. June 4, 2005.)

§ 103-511. Local option tax

(a) If the Select Board by a majority vote recommends, the voters of the Town may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:

(1) a one percent meals tax;

(2) a one percent rooms tax;

(3) a one percent alcoholic beverages tax; or

(4) a one percent sales tax.

(b) Any local option tax assessed under subsection (a) of this section shall be collected and administered and may be rescinded as provided by the general laws of this State. (Added 2019, No. M-8, § 1, eff. June 10, 2019.)

Subchapter 6: Zoning

§ 103-601. Repealed. 2019, No. M-8, § 1, eff. June 10, 2019.

§ 103-602. Ordinances of villages not merging

The zoning ordinance in force within any village in the Town shall continue within the control of such village and the officials appointed to administer the same within such village shall continue in office pursuant to law until such time as said village ceases to exist and becomes a part of Town.

§ 103-603. Administration of ordinance of villages that merge

When villages cease to exist pursuant to this charter, the Select Board, Development Review Board, and Administrative Officer shall have jurisdiction of and administer zoning in the village area as a separate zoned area in accordance with the provisions of the ordinance in force therein and the general law. If no Town Administrative Officer or Development Review Board has then been appointed by the Select Board, the Select Board shall make such appointment. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

§ 103-604. Comprehensive Town ordinance

When Town officials having charge of zoning acquire jurisdiction of the zoning ordinance in other zoned areas as provided in this section, the ordinances shall be deemed to be part of a general Town zoning ordinance duly and legally enacted in accordance with a comprehensive plan. The general ordinance shall be subject to repeal, amendment, or alteration by the Town. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

Subchapter 7: Water System

§ 103-701. Town powers

The Town may make, alter, and repeal ordinances relating to management, operation, maintenance, replacement, and extension of a Town water system and may fix, and from time to time alter water rates, insofar as such ordinances and water rates are not in conflict with the deeds of gift to the Village of Bennington and Village of North Bennington.

Subchapter 8: Miscellaneous

§ 103-801. Severability

If any provision of this charter is for any reason held invalid, such invalidity shall not affect the remaining provision which can be given effect without the invalid provision. To this end, the provisions of this charter are declared to be severable.

§ 103-802. Merger of municipalities within Town

(a) Any municipality with the Town of Bennington which votes to surrender its existing charter and dissolve under this charter, shall cease to exist as a corporate body and political entity on the January 1st next succeeding, unless such vote becomes final or after October 1st in any year, in which event the municipality shall cease to exist as a corporate body and political entity on the March 1st next succeeding.

(b) All assets of any municipality which surrender its existing charter or dissolves under this charter shall become the property of the Town of Bennington on the day such municipality ceases to exist under subsection (a) of this section.

(c) All liabilities of any municipality which surrenders its existing charter or dissolves under this charter that are outstanding obligations of such municipality on the day it ceases to exist under subsection (a) of this section, including the bonded indebtedness of such municipality shall become liabilities of the Town of Bennington on the day such municipality ceases to exist under subsection (a) of this section.

§ 103-803. Method of adoption; time; voting

(a) A majority of the qualified voters of the Village of Old Bennington voting by ballot at a meeting duly warned for the purpose, may at any time vote to surrender the charter of said Village and merge with the Town of Bennington under the terms of this charter by voting in the affirmative on an article substantially as follows:

"To determine by ballot whether the Village of Old Bennington will

surrender its existing charter and merge with the Town of Bennington

under the provisions of No. 83 of the Acts of 1966 entitled an Act to

Provide a Charter for the Town of Bennington.".

(b) A majority of the qualified voters of the Village of North Bennington voting by ballot at a meeting duly warned for the purpose may at any time vote to surrender the charter of said Village and merge with the Town of Bennington under the terms of this act by voting in the affirmative on an article substantially as follows:

"To determine by ballot whether the Village of North Bennington will

surrender its existing charter and merge with the Town of Bennington

under the provisions of No. 83 of the Acts of 1966 entitled An Act to

Provide a Charter for the Town of Bennington.".

(c) A majority of the qualified voters of the Bennington Fire District No. 1, voting by ballot at a meeting duly warned for the purpose may at any time vote to dissolve said Fire District and merge with the Town of Bennington under the terms of this charter by voting in the affirmative on an article substantially as follows:

"To determine by ballot whether the Bennington Fire District No. 1 will

dissolve and merge with the Town of Bennington under the provisions

of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for

the Town of Bennington.".

(d) A meeting to consider an affirmative vote under any of the foregoing sections shall be held only upon petition of not less than five percent of the qualified voters of the municipality filed with the legislative body thereof within 20 days after such affirmative vote requesting a meeting to vote on an article substantially as follows:

"To determine by ballot whether the (insert municipality) will confirm

its vote of (insert date) in favor of No. 83 of the Acts of 1966 entitled

An Act to Provide a Charter for the Town of Bennington."

(e) If any municipality votes under subsection (d) of this section to reconsider an affirmative vote, such municipality may at any time thereafter hold a meeting in accordance with subsections (a), (b), and (c) of this section to vote again on this charter.

(f) An affirmative vote by any municipality shall become final and conclusive when a petition to reconsider is not filed in accordance with subsection (d) of this section or when a meeting to reconsider is held under subsection (d) of this section and the vote at such a meeting confirms the affirmative vote.

(g) Early Voter Absentee Balloting. Voting by early absentee ballot shall be permitted at any meeting held under this section.

§ 103-804. Notice to Secretary of State

The Clerk of the Town of Bennington shall notify the Secretary of State of the vote of any meeting held under section 803 of this charter within 10 days after the meeting.

§ 103-805. Existing water systems; succession by Town

If the Village of North Bennington ceases to exist in accordance with this subchapter, the Town shall succeed to all the rights, title, interest, privileges, duties, and obligations of said Village under a deed of gift from Laura H. Jennings, dated March 3, 1924.

§ 103-806. Charter Review Committee

At least once every five years, the Select Board shall appoint a Charter Review Committee of not fewer than five nor more than nine members from among the residents of the Town. The Committee shall review the charter and recommend any changes it finds necessary or advisable for the purpose of improving the operation of Town government. The Committee shall prepare a written report of its recommendations in time for those recommendations to be submitted to the Select Board for review no later than one year after the appointment of the Committee. At the discretion of the Select Board, the recommendations may be warned for ballot vote at an annual or special Town meeting to be held no later than one year after the submission of the report. The Select Board shall provide in its budget for any year when a Charter Review Committee is appointed funding for the Committee. (Amended 2019, No. M-8, § 1, eff. June 10, 2019.)

EXHIBIT B

ALLCO RENEWABLE ENERGY LIMITED
157 Church Street, 19th Floor
New Haven, CT 06510
Telephone (212) 681-1120

February 24, 2025

Bennington Select Board
Attn: Stuart Hurd
205 South Street
Bennington, VT 05201

Re: Notice of Open Meeting Violation

Dear Mr. Hurd:

Pursuant to 1 V.S.A. § 314(b)(1), we are writing to allege a specific violation of the Vermont Open Meeting Laws (1 V.S.A. § 312). On February 21, 2025, the Select Board held a Special Meeting which was noticed as "Discussion of Open Meeting Law Violation Complaint". In response to a notice of violation of the Open Meeting Laws, 1 V.S.A. § 314(b)(2) allows for a municipality to either (A) acknowledge the violation and cure it within 14 days or (B) determine that no violation occurred. This is an either-or process. Notwithstanding the statutory process, the Select Board took the mutually exclusive actions of (i) denying that a violation occurred under 1 V.S.A. § 314(2)(B) and (ii) attempting to cure it under 1 V.S.A. § 314(4)(A).

While we will address the substance of the initial violations and the incongruities of the February 21, 2025, meeting through the procedures set forth in 1 V.S.A. § 314(c) at the Superior Court, this letter is to provide you with notice of yet another violation of the Open Meeting Laws, specifically under 1 V.S.A. § 314(4).

1 V.S.A. § 314(4) allows for alleged violations to be cured by ratification "**at an open meeting**". 1 V.S.A. § 312(c)(2) requires that "The time, place, **and purpose** of a special meeting subject to this section shall be publicly announced…". The purpose of the February 21, 2025, meeting was limited to: "Discussion of Open Meeting Law Violation Complaint". Notwithstanding, the Select Board took an action to approve (by ratification) the actions previously taken by Town's counsel related to the Apple Hill Solar facility (the "Project") of (1) filing a notice of intervention in the PUC proceedings on December 17, 2024 (the "Notice of Intervention") and (2) filing a letter with the PUC on January 9, 2025 (the "Opposition Letter") making recommendations in opposition to the Project by arguing, among other things, that the Project should not proceed based on collateral estoppel and raising issues regarding orderly development and aesthetics.

The noticed purpose of the special meeting was not to vote on formal actions of the Town related to the Project. The citizens of Bennington had no idea that the Select Board would be taking actions with respect to the Project because there was no notice of it. This violation of the

Open Meeting Law is the exact type of violation that 1 V.S.A. § 314(4) seeks to avoid by giving the municipalities 14 days to cure a violation by preparing for and properly noticing an open meeting for ratification of previous actions. Ironically, by cramming the ratification of past actions related to the Project into a special meeting limited to discussing the initial Open Meeting Law violations, the Select Board committed yet another violation of the Vermont Open Meeting Laws.

Pursuant to 1 V.S.A. § 314(b)(1), we request (again) that the Town cures these violations by (1) immediately withdrawing the Opposition Letter and (2) not filing anything further in the Project proceedings before the PUC without first satisfying the requirements of the Vermont Open Meeting Law.

Thank you.

Sincerely,

Michael Melone
Chelsea Solar LLC
c/o Allco Renewable Energy Limited
157 Church Street, 19th Floor
New Haven, CT 06510
212-681-6974
mjmelone@AllcoUS.com