

STATE OF VERMONT
BEFORE THE PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE,
(Thomas Melone, Respondent)

PRB File No. 25-120

February 18, 2026

RESPONDENT’S MOTION FOR STAY.

Respondent THOMAS MELONE (“Respondent”) hereby respectfully moves to stay this case until after the federal courts have issued a final non-appealable decision in *Melone v. Hanley et al.*, Case 2:26-cv-38 (D. Vt. Filed February 18, 2026). *See* Exhibit 1. Good cause exists for such a stay.

First, a stay will avoid motion practice seeking a temporary restraining order and a preliminary injunction against the Defendants.

Second, the strength of the federal complaint counsels in favor of granting a stay. The claims made in the federal complaint are “not unfounded in the law.” *Richardson v. City of New York*, No. 21-cv-05080 (PAE), 2022 U.S. Dist. LEXIS 102899, 2022 WL 2003340, at *2 (S.D.N.Y. June 6, 2022) (quoting *Spencer Trask Software & Info. Servs., LLC v. RPost Int’l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002)). The “evidence” for the disciplinary charges against Plaintiff consists almost entirely of filings in his litigation activity, which is immunized by the *Noerr—Pennington* doctrine. The remainder of the evidence consists of comments filed with a Vermont Legislative committee regarding a bill under consideration by said committee, or communications with elected government officials, also immunized by *Noerr-Pennington*. The *Noerr-Pennington* doctrine extends to “all petitioning activity,” including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000)). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant

“through the use of the governmental process.”” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted). Neither factor of the exception to *Noerr-Pennington* applies here. The *Noerr—Pennington* doctrine “safeguards the First Amendment ‘right to petition the government for a redress of grievances,’ U.S. Const. amend. I, by immunizing citizens from the liability that may attend the exercise of that right.” *Waugh Chapel S., LLC v. United Food & Com. Workers Union Loc. 27*, 728 F.3d 354, 362 (4th Cir. 2013). Because *Noerr—Pennington* extends to all departments of the government, all of Plaintiff’s statements are protected. *Cal. Motor Transp. Co.*, 404 U.S. at 510-11 (“Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.”).

Third, if the federal courts grant the relief requested in the federal complaint, it would dispose of this entire case.

Fourth, there is no prejudice that would result from a stay. The Plaintiff does not represent third party clients so there is no need to plow ahead in this case.

Fifth, the failure to stay this case pending the federal case would be further confirmation of the claims made in the federal complaint, *i.e.*, that this case is being used to retaliate against Plaintiff for his various litigation involving one of Vermont’s legal elite—Attorney Merrill Bent, who is the chair of the Judicial Conduct Board and frequent legal counsel to the Town of Bennington, Vermont.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that this case be stayed.

Dated: February 18, 2026

Respectfully submitted,
THE PLAINTIFF,
/s/Thomas Melone
Thomas Melone
601 S Ocean Blvd.
Delray Beach, FL 33483
Phone: (212) 681-1120
Email: Thomas.Melone@AllcoUS.com

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

THOMAS MELONE,

Plaintiff,

v.

MICHAEL F. HANLEY, CAROLYN ANDERSON in her capacity of Chair of the Vermont Professional Responsibility Board, and JON ALEXANDER in his official capacity of Disciplinary Counsel of the Vermont Professional Responsibility Board, JANE DOE, ALEXANDER SHRIVER and BRIAN BANNON in their official capacities as members of Hearing Panel assigned to PRB Case 120-2025,

Defendants.

Case No. 2:26-cv-38

**COMPLAINT FOR CIVIL RIGHTS VIOLATIONS,
INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

THOMAS MELONE (the “Plaintiff”) by way of complaint against MICHAEL F. HANLEY, CAROLYN ANDERSON in her capacity of Chair of the Vermont Professional Responsibility Board (“PRB”), and JON ALEXANDER in his official capacity of Disciplinary Counsel of the PRB and JANE DOE, ALEXANDER SHRIVER and BRIAN BANNON in their official capacities as members of Hearing Panel assigned to PRB Case 120-2025 respectfully files this complaint and states as follows in support thereof.

NATURE OF THE ACTION

1. Plaintiff brings this suit to stop the ongoing blatant violation of his First, Fifth and Fourteenth Amendment rights by the Defendants.

2. Plaintiff alleges that the bar disciplinary machinery is being used to retaliate against Plaintiff for his various litigation involving one of Vermont’s legal elite—Attorney Merrill Bent, who is the chair of the Judicial Conduct Board and frequent legal counsel to the Town of Bennington, Vermont (the “Town”). Shortly after Plaintiff publicly disclosed governmental malfeasance of the Town and Ms. Bent’s firm’s potential role in it during a First Amendment-

protected filing in an ongoing adversarial proceeding, Attorney Merrill Bent filed a bar disciplinary complaint against Plaintiff, putting the bar disciplinary machinery in action in order to retaliate against Plaintiff and to chill the exercise of his First Amendment rights. Plaintiff seeks prospective injunctive relief to stop the blatant and extraordinary violation of Plaintiffs' First, Fifth and Fourteenth Amendment rights by the Defendants.

3. The First Amendment to the U.S. Constitution states that "Congress shall make no law ... abridging the freedom of speech, ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The provisions of the First Amendment were made applicable to the State of Vermont by virtue of adoption of the Fourteenth Amendment.

4. Any state effort to single out such speech and right to petition for sanction is a content-based and viewpoint-based speech restriction and is subject to the strictest of First Amendment scrutiny. *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019); *Matal v. Tam*, 137 S. Ct. 1744 (2017). Such speech and petition restrictions will survive First Amendment scrutiny only if the government can demonstrate that the restriction serves a compelling state interest in a narrowly tailored manner.

5. The First Amendment analysis does not change simply because the speech restriction is imposed on a lawyer. Speech and the right to petition is not subject to decreased constitutional protection simply because it is spoken by a lawyer in a setting "related to the practice of law." The Supreme Court held in *Nat'l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018), that the First Amendment protects "professional speech" just as fully as speech by nonprofessionals.

6. The Defendants' "evidence" for the disciplinary charges against Plaintiff consists almost entirely of filings in his litigation activity, which is immunized by the *Noerr-Pennington* doctrine. The remainder of the evidence consists of comments filed with a Vermont Legislative committee regarding a bill under consideration by said committee, or communications with elected government officials, also immunized by *Noerr-Pennington*.

7. The *Noerr-Pennington* doctrine has been extended to "all petitioning activity,"

including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000)). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted); see *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972) (“Misrepresentations, condoned in the political arena, are not immunized when used in the adjudicatory process.”); cf. *Hartman v. Great Seneca Fin. Corp.*, 569 F.3d 606, 616 (6th Cir. 2009) (“[T]he Petition Clause protects legitimate petitioning but not sham petitions, baseless litigation, or petitions containing ‘intentional and reckless falsehoods,’” (quoting *McDonald v. Smith*, 472 U.S. 479, 484, 105 S. Ct. 2787 (1985))). The *Noerr—Pennington* doctrine “safeguards the First Amendment ‘right to petition the government for a redress of grievances,’ U.S. Const. amend. I, by immunizing citizens from the liability that may attend the exercise of that right.” *Waugh Chapel S., LLC v. United Food & Com. Workers Union Loc. 27*, 728 F.3d 354, 362 (4th Cir. 2013). Because *Noerr—Pennington* extends to all departments of the government, all of Plaintiff’s statements are protected. *Cal. Motor Transp. Co.*, 404 U.S. at 510-11 (“Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.”).

8. None of Plaintiff’s litigation activity is “sham litigation.” None of Plaintiff’s litigation activity is both “objectively baseless” and “intended to cause harm to [anyone] ‘through the use of the governmental process.’” Defendants’ malice and ill-motives are demonstrated by the fact that Defendants lacked probable cause to bring any of the charges. *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024). The lack of probable cause is demonstrated *infra*, and is overwhelmingly demonstrated with the Defendants’ lead count—Count I—which as described herein is supported by mounds of evidence showing the Town’s municipal plan expired, there was an active cover-up to hide that fact, and that, *inter alia*, official records were unlawfully altered in

furtherance of the cover-up, all to obtain federal funds and other benefits that could not be obtained without a valid municipal plan in place.

THE FACTS

9. Plaintiff is a Vermont-licensed attorney. Plaintiff is also a licensed attorney in the States of California, Connecticut, Florida, Massachusetts, New Jersey, New York and Pennsylvania. Plaintiff has never had a disciplinary complaint filed against him in any of those jurisdictions. Plaintiff was first admitted to the bar in 1983 in New Jersey.

10. In his capacity as an attorney at all relevant times, Plaintiff does not represent any third parties. Plaintiff only represents his own interests.

11. Plaintiff is a frequent advocate for solar energy, a frequent advocate for challenging state energy policies, and a frequent litigant. Plaintiff is also a developer, operator and owner of small solar energy facilities. Two of those small solar facilities that Plaintiff has sought to develop are located on a 27-acre parcel of land in Bennington, Vermont, which have been in litigation for the past 13 years and still counting.

12. Those two 2-megawatt solar facilities generated opposition from the Town and various residents of Bennington. In 2018, Plaintiff and the Town entered into a settlement agreement in which the Town agreed not to oppose either project. Various residents of Bennington continued their opposition to the projects, who were successful in having the Vermont Public Utility Commission (“PUC”) ultimately deny (after having once granted) a certificate of public good (or “CPG”) needed to build a solar facility. Those denials were without prejudice and on January 25, 2023, Plaintiff refiled its application for one of the projects (which is PUC docket 23-0249), and in 2024 re-filed the application with the PUC for the second project (which is PUC docket 24-3517).

13. To Plaintiff’s surprise, Attorney Merrill Bent (asserting that she was representing the Town) filed opposition to those petitions for a CPG to build those projects.

14. Plaintiff filed suit against the Town in this Court, case 2:23-cv-0645-gwc, alleging, *inter alia*, a claim for breach of the Town’s obligation under the 2018 settlement agreement not to

oppose the project.

15. In 2025, Plaintiff filed suit against the Town in State court for alleged open meeting law violations regarding the alleged hiring of Merrill Bent and what Plaintiff alleged were her unauthorized actions in the PUC against the solar projects that the Town agreed in 2018 not to oppose.

16. In a filing on January 10, 2025, with the PUC (which filing constitutes the entirety of the Defendants' evidence to support Count I of the disciplinary charges), Plaintiff exposed governmental malfeasance of the Town related to the expiration of the Town Plan. *See* **Exhibit 1**.¹ In a subsequent filing with the PUC on January 29, 2025, (which filing relates to Count VI) *see* **Exhibit 2**, Plaintiff disclosed that then Bennington Town Manager, Stuart Hurd, implicated an attorney in the alleged cover-up involving the expiration of the Bennington Town Plan, where Stuart Hurd states: "We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying." Plaintiff alleges that the alleged legal opinion was from Merrill Bent's law firm.²

17. Plaintiff then brought suit against the Town in this Court (case 2:25-cv-00469-wks) to declare that the Bennington Town Plan had expired in October 2023. Relatively contemporaneously with that suit, Plaintiff filed an appeal and a suit in Vermont Superior Court challenging the Town's actions and agreement with a private developer regarding a redevelopment project generally known as the "**Benn High**" project. *See*, **Exhibit 2** and **Exhibit 3**, respectively.

18. Attorney Merrill Bent claimed to be representing the Town in all of those lawsuits.

19. Vermont regulates the conduct of Vermont-licensed lawyers by means of its Rules of Professional Conduct (the "**Rules**").

¹ The highlighting on **Exhibit 1** and **Exhibit 2** was (according to the Adobe Acrobat properties' function) made by Merrill Bent on May 30, 2025. The bates numbering was applied by the Defendants.

² Merrill Bent's law partner Attorney John Stasny's recent filing in the PRB case against Plaintiff strongly implied that the "legal opinion" was in fact given by Merrill Bent or someone in her firm. *See* **Exhibit 3** at 7 ("Attorney Bent's law firm, Woolmington, Campbell, Bent & Stasny, P.C. provides general legal services to the Town, and is listed as the Town's law firm year after year as an exception to the Town's Purchasing Policy.")

20. Many of the Rules regulate speech and the right to petition. Many of the Rules are vague. The consequences of being considered to have violated the Rules can bring severe punishment, such as disbarment. All of the Rules challenged in this complaint attempt to regulate Plaintiff's exercise of his First Amendment rights. All of the Rules challenged herein impose content-based and viewpoint-based discrimination against disfavored speech. None of those challenged rules are supported by a compelling State interest. Nor are any of those challenged Rules narrowly tailored. All of the Rules challenged herein are vague.

21. In May 2025, while the various lawsuits noted above were pending, the defendants Carolyn Anderson and Michael Hanley claim that Ms. Anderson appointed Michael Hanley as disciplinary counsel to investigate pursuing charges against the Plaintiff in response to Merrill Bent's complaint. Permanent Disciplinary Counsel, Defendant Attorney Jon Alexander, recused himself because he reports directly to Merrill Bent as Chair of the Judicial Conduct Board.

22. Ms. Anderson's LinkedIn page states that she is Chief Compliance Officer and Associate General Counsel at Green Mountain Power Corporation ("GMP"). See **Exhibit 4**. GMP and Plaintiff have been involved in multiple adversarial litigation and there is active threatened litigation as well.

23. Mr. Hanley, a long-time former member and former Chair of the PRB (who was succeeded by Ms. Anderson in 2022), represents solar developers that are competitors to Plaintiff, and who stand to potentially benefit from harm to Plaintiff caused by Mr. Hanley.

24. In Vermont, the attorney disciplinary process is governed by the Vermont Supreme Court's Administrative Order ("A.O.") No. 9, which established the PRB and the Professional Responsibility Program. Under A.O. No. 9, disciplinary counsel investigates a complaint and after such investigation cannot proceed to file formal charges without first obtaining a finding of probable cause from one of ten hearing panels.

25. In August 2025, in response to the complaint filed by Merrill Bent, Michael Hanley

filed a motion for probable cause determination with PRB Hearing Panel #2. *See, Exhibit 5.*³ The Plaintiff received no prior notice of the presentment of an application for probable cause. The Plaintiff is not permitted to participate in the process determining whether there exists probable cause. There is no memorandum or opinion issued by the probable cause hearing panel. There is no transcript of the proceedings of the probable cause hearing panel.

26. Mr. Hanley's motion for probable cause finding was based upon a three-page affidavit and a two-page memorandum. *See, Exhibit 5.* Mr. Hanley engaged in judicial deception of Hearing Panel #2, *see infra*, and as a result, received a probable cause determination in September 2025. *See, Exhibit 5.*

27. There was no probable cause for bringing any of the eight charges that Michael Hanley presented to Hearing Panel #2.

28. Later that month, Michael Hanley filed a disciplinary complaint (the "Misconduct Petition") against Plaintiff, *see Exhibit 6*, charging eight counts, all of which were based on Plaintiff's First Amendment petitioning activity and exercise of his First Amendment rights to free speech. All of those counts are based solely on documents Plaintiff filed with, or sent to, a governmental entity. Count VIII seeks Plaintiff's disbarment.

29. The Misconduct Petition was assigned to Hearing Panel #1, the members of which are Defendants Jane Doe,⁴ Alexander Shriver and Brian Bannon.

³ A.O. 9, Rule 13C provides: "Probable Cause Review. Disciplinary counsel's decision to proceed with a petition of misconduct shall be reviewed for probable cause by a hearing panel assigned by the chair of the Board pursuant to a fixed rotation, and such review shall be based upon written application and affidavit setting forth a factual basis for the charges. If the panel finds probable cause to believe that a violation has occurred, disciplinary counsel shall present formal charges to a different hearing panel assigned by the chair of the Board, unless a stipulation to misconduct is earlier submitted."

⁴Mimi Brill recused herself from Hearing Panel #1 on February 12, 2026, in response to a motion from Michael Hanley due to Mimi Brill engaging in *ex parte* communications seeking to independently investigate one of the issues surrounding the Misconduct Petition, *i.e.*, whether Michael Hanley was validly appointed to his claimed position of substitute disciplinary counsel. On February 13, 2026, Respondent filed a motion seeking to recuse Alexander Shriver and Brian Bannon for the same reasons that Mimi Brill recused herself because all of Mimi Brill's *ex parte* investigative communications state that she was acting on behalf of the entire Hearing Panel.

30. Plaintiff filed various motions with Hearing Panel #1 to have the Misconduct Petition dismissed. Those were denied. Plaintiff filed three petitions with the Vermont Supreme Court seeking interlocutory review of the constitutional issues that Plaintiff asserts prevent the bringing of the counts in the Misconduct Petition, including two appeals from the Hearing Panel #1 orders that flatly state that no interlocutory appeals of any variety are permitted. The Vermont Supreme Court dismissed all three petitions. There is no ability in A.O. 9 or otherwise for Plaintiff to seek interlocutory review of constitutional issues in State court.

31. Plaintiff seeks declaratory and prospective injunctive relief preventing the Defendants from taking any further action against Plaintiff based on the Misconduct Petition because (i) Plaintiff's speech and petitioning activity targeted by the Defendants is immunized under the *Noerr-Pennington* doctrine, (ii) the Misconduct Petition is unlawful retaliation for Plaintiff's exercise of his right to petition and his right of free speech under the First Amendment, (iii) the Misconduct Petition is brought in bad faith or with ill-motive, (iv) each count of the Misconduct Petition is not supported by probable cause, thus establishing malice for bringing each count, (v) each count is based upon Rules that are unconstitutionally vague, and (vi) each count is based upon a content-based and viewpoint-based discrimination against disfavored speech that violates the First Amendment.

32. Michael Hanley has additionally violated Plaintiff's due process rights by engaging in judicial deception in order to obtain a probable cause finding. Plaintiff seeks declaratory and prospective injunctive relief preventing the Defendants from taking any further action against Plaintiff based on the Misconduct Petition because the injury suffered by Plaintiff from Michael Hanley's judicial deception is still being felt by Plaintiff. In other words, it is an ongoing injury and Plaintiff seeks prospective relief enjoining all future action by the Defendants against Plaintiff that would not have been able to, or would not be able to, be properly taken under A.O. 9 without the finding of probable cause that was obtained by Michael Hanley's judicial deception.

33. Plaintiff also now reasonably fears that he may be sanctioned for the sorts of speech and petitioning in the future.

34. Plaintiff also now reasonably fears that the Defendants may attempt to charge him with additional alleged violations of the Rules based upon the future exercise of his First Amendment rights to petition and to free speech. In fact, in a recent filing, Mr. Hanley did just that—he introduced the prospect of bringing more charges against Plaintiff because he does not like Plaintiff exercising his right to defend himself and his exercising rights under the Vermont Rules of Civil Procedure. *See*, **Exhibit 7**. In his filing of February 11, 2026, Mr. Hanley makes the following accusation: “Mr. Melone has obstructed these proceedings and blatantly violated his obligation to cooperate with the disciplinary process.”⁵ In other words, Mr. Hanley views Plaintiff raising issues regarding the process and constitutional issues multiple times now as an additional violation of the Rules of conduct that he can then pile on top of the existing 8 charges based solely on Plaintiff’s exercise of my First Amendment rights. Mr. Hanley makes the overt threat to file additional charges the day before Mimi Brill, the chair of the Hearing Panel #1, recused herself as the result of a motion filed by Mr. Hanley related to alleged violations by Ms. Brill of Rule 2.9(A) and Rule 2.9(C) of the Code the *Vermont Code of Judicial Conduct* (Vt. A.O. 10).

35. Accordingly, Plaintiff has chilled and must continue to chill his speech and petitioning activity in order to avoid being subject to bar disciplinary proceedings and bar sanctions in the future. That is precisely the result that the Defendants (and Ms. Bent) sought to achieve even if the Misconduct Petition lacked probable cause (which it did and still does), and even if the Plaintiff was cleared of all charges. In other words, the evil, harm and ongoing harm that the Defendants have caused the Plaintiff is chilling of his First Amendment rights in order to avoid the possibility of future attempts to punish Plaintiff.

36. Defendants’ blatant violation of Plaintiff’s First Amendment rights and Defendants’ blatant retaliation for immunized petitioning activity, has caused, and still causes, concrete injury to Plaintiff. Plaintiff has been and continues to suffer injury because the

⁵ *See*, “CONFLICT DISCIPLINARY COUNSEL’S REPLY TO THOMAS MELONE’S “RESPONSE” TO CONFLICT DISCIPLINARY COUNSEL’S MOTION FOR THE RECUSAL OF THE HEARING PANEL CHAIR,” at 5-6 (February 11, 2026).

Defendants' violations of Plaintiff's constitutional rights have, *inter alia*, caused him and continue to cause him to divert his time to the Misconduct Petition, which in turn harms him in both his personal life and his business activities.

37. Plaintiff has been and continues to suffer injury because the Defendants' violations of Plaintiff's constitutional rights have, *inter alia*, caused him and continue to cause him to live with the ongoing ordeal of Misconduct Petition proceedings.

38. Plaintiff has been and continues to suffer injury because the Defendants' violations of Plaintiff's constitutional rights have, *inter alia*, caused him and continue to cause him the embarrassment of the Misconduct Petition.

39. Plaintiff has been and continues to suffer injury because the Defendants' violations of Plaintiff's constitutional rights have, *inter alia*, caused him and continue to cause him to live in a continuing state of anxiety with respect to the Misconduct Petition and the future prospective of additional charges from statements within and without the Misconduct Petition proceedings.

40. Plaintiff has been and continues to suffer injury because the Defendants' violations of Plaintiff's constitutional rights have, *inter alia*, caused him and continue to cause him to chill his petitioning activities and his speech.

41. In order to redress the injuries that Plaintiff has suffered and continues to suffer from Defendants' unlawful actions, including, without limitation, removing the chilling effect that Defendants' blatant attack on the exercise of his First Amendment rights has had, and continues to have, and remedy the ongoing threat to Plaintiff of future disciplinary charges being brought, Plaintiff seeks (1) a declaration from this Court invalidating certain of the Rules as violating Plaintiff's First, Fifth and Fourteenth Amendment rights, and enjoining those Rules, (2) a declaration from this Court that Plaintiff's speech and petitioning activity targeted by the Defendants is immunized under the *Noerr-Pennington* doctrine and (3) an injunction enjoining the Defendants from taking any further action in PRB case no. 120-2025 against Plaintiff.

42. Among other things, this civil rights action seeks a declaration that Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.4(a), 4.5, and 8.4(d) on their face and as applied violate the First and Fifth

Amendment (as incorporated through the Fourteenth Amendment), and an injunction preventing enforcement of those Rules.

43. Plaintiff also contends that the PRB proceedings were initiated by Ms. Bent and Mr. Hanley with, and are animated by, a retaliatory, harassing, or other illegitimate motive. Both the circumstances under which this proceeding was initiated and the lack of merit in the counts of the Misconduct Petition support the Plaintiff's claim of retaliatory, harassing, or other illegitimate motive.

44. Plaintiff has suffered and will continue to suffer irreparable harm by virtue of the Defendants' violation of the Plaintiff's rights under the First, Fifth and Fourteenth Amendments because *inter alia* (i) Plaintiff will continue to have to divert his time to the Misconduct Petition, which in turn harms him in both his personal life and his business activities, resulting in lost time spent with family and lost economic opportunities, (ii) Plaintiff will continue to have to live with the ongoing ordeal of Misconduct Petition proceedings, (iii) Plaintiff will continue to live with the embarrassment of the Misconduct Petition, (iv) Plaintiff will continue to live in a continuing state of anxiety with respect to the Misconduct Petition and the future prospective of additional charges from statements within and without the Misconduct Petition proceedings, (v) Plaintiff will continue to have to chill his petitioning activities and his speech and (vi) Plaintiff also now reasonably fears that he may be sanctioned for the sorts of speech and petitioning in the future.

45. Plaintiff is without any adequate remedy at law and no opportunity for compensation by the Defendants for the Defendants' violation of the Plaintiff's rights under the First, Fifth and Fourteenth Amendments.

46. A ruling in Plaintiff's favor, declaring the challenged regulatory actions void and unlawful, would redress those injuries by (i) eliminating Plaintiff's need to divert his time to the Misconduct Petition, which in turn would allow him in his personal life to have more opportunities to spend time with his family and would in his business activities allow him more time to benefit from increased economic opportunities, (ii) eliminating the Plaintiff's need to have to live with the ongoing ordeal of Misconduct Petition proceedings, (iii) eliminating the Plaintiff continuing to

live with the embarrassment of the Misconduct Petition, (iv) eliminating the Plaintiff continuing to live in a continuing state of anxiety with respect to the Misconduct Petition and the future prospective of additional charges from statements within and without the Misconduct Petition proceedings, (v) eliminating the Plaintiff ongoing need to chill his petitioning activities and his speech and (vi) eliminating Plaintiff's reasonable fears that he may be sanctioned for the sorts of speech and petitioning in the future.

47. If the Defendants' unlawful regulatory actions are nullified, then the Plaintiff would have decreased costs, increased likelihood of economic opportunities, a decrease in the risk of losses to Plaintiff, an increased likelihood of the opportunity to exercise his rights to free speech and petition.

No Probable Cause Exists Or Existed To Support Any Count. Hanley Engaged In Judicial Deception To Obtain A Finding Of Probable Cause.

48. Mr. Hanley did not have probable cause for each of the charges and engaged in misconduct and judicial deception in order to obtain the finding of probable cause. "Judicial deception" consists of either 'deliberate omission or affirmative misrepresentation.'" *Scanlon v. Cty. of L.A.*, 92 F.4th 781, 799 (9th Cir. 2024) (internal citations omitted). "By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw and denude the probable cause requirement of all real meaning." *Id.* (internal quotations and citations omitted). "Even otherwise true observations made misleading by the omission of facts that are not themselves material may result in an affidavit that, considered as a whole, is materially misleading." *Id.*

49. Mr. Hanley engaged in professional misconduct by misrepresenting the facts and the law to the probable cause hearing panel by his statements and his omissions. In doing so he further violated Respondent's Fifth and Fourteenth Amendment due process rights.⁶

⁶ *Scanlon v. Cty. of L.A.*, 92 F.4th 781, 799 (9th Cir. 2024):

"Judicial deception" consists of either "deliberate omission or affirmative misrepresentation." *Id.* at 801 n.3. A statement can also be misleading if, although technically true, it has been so wrenched from its context that the judicial officer will

50. Mr. Hanley’s judicial deception and violation of the rules of conduct began with his purported definition of what constitutes “probable cause.” For his purported definition he cited a case from Maryland. See **Exhibit 5**. But the leading case on the definition of probable cause comes from the Vermont Supreme Court, which Mr. Hanley knows or should have known. Probable cause is examined on a count-by-count basis. *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024).

51. The term “probable cause” has been stated by the Vermont Supreme Court “to refer to ‘a state of facts and circumstances as would lead a careful and conscientious man to believe’ that a violation had taken place.” *Diamond v. Vickrey*, 134 Vt. 585, 590 (1976) (internal citations omitted.) Mr. Hanley did not inform the probable cause hearing panel of the true “state of facts and circumstances.” Mr. Hanley was not a “careful and conscientious man” in performing his investigation or in his presentation to the probable cause hearing panel.

52. Mr. Hanley’s affidavit in support of his motion for a probable cause finding similarly is chock full of deliberate omissions and/or affirmative misrepresentations. Mr. Hanley’s affidavit consists of eleven numbered paragraphs. Only one paragraph—paragraph 11—contains anything vaguely resembling allegations of facts. But none set “forth a factual basis for the charges.” A.O. 9, Rule 13C. Paragraph 11 only states Mr. Hanley’s expectations: “I expect to prove by clear and convincing evidence that on multiple occasions over a period of years the Respondent Thomas Melone violated rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d)⁷ of the

not comprehend how it fits into the larger puzzle. For example, a statement uttered jokingly or sarcastically will be understood by those present one way but, when reproduced on the written page and read out of context, the statement may be understood to mean the opposite of what was said. In such a case, “the officer [has] omitted facts required to prevent technically true statements in the affidavit from being misleading.” *Ewing v. City of Stockton*, 588 F.3d 1218, 1224 (9th Cir. 2009). Even otherwise true observations made misleading by the omission of facts that are not themselves material may result in an affidavit that, considered as a whole, is materially misleading. “[B]y reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw . . . [and] denude the probable cause requirement of all real meaning.” *Liston v. Cnty. of Riverside*, 120 F.3d 965, 973 (9th Cir. 1997) (internal quotation marks and citations omitted).

⁷ 3.1 (Meritorious Claims and Contentions) “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not

Vermont Rules of Professional Conduct by ...”

53. Mr. Hanley’s statement of his expectations is then followed by lettered subparagraphs that at best could be characterized as a disconnected jumble or mash-up at listing the reasons for his expectations. His jumbling, however, makes it impossible for any neutral hearing panel or magistrate to unjumble what facts purportedly support what charges. Because probable cause is examined on a count-by-count basis, *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024), Mr. Hanley’s jumble prevents any count-by-count analysis by a neutral hearing panel or magistrate. That, in turn, renders his affidavit on its face deliberately misleading and invalid, thus denuding the probable cause requirement of all real meaning.

54. Mr. Hanley’s misrepresentations and omissions continue with his failure to attach any actual evidence, *i.e.*, documents, for a neutral hearing panel or magistrate. Mr. Hanley’s charges are based only on documents. Yet he fails to attach a single one to his affidavit. That failure makes it impossible for any neutral hearing panel or magistrate to make an independent

frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

3.3(a)(1) (Candor Toward the Tribunal) “(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

3.5(d) (Impartiality and Decorum of the Tribunal) “A lawyer shall not:.... (d) engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal.”

4.2 (Communication with Person Represented by Counsel) “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

4.3 (Dealing with Unrepresented Person) “In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.”

4.4(a) (Respect for Rights of Third Persons) “(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”

4.5 (Threatening Criminal Prosecution) “A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.”

8.4(d) (Misconduct) “It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice.”

determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning. What remains is simply a regurgitation of allegations by Mr. Hanley without the presentation of any evidence.

55. Mr. Hanley also failed to disclose that his "evidence" for the disciplinary charges against Plaintiff consists almost entirely of filings in Plaintiff's litigation activity, which is immunized by the *Noerr—Pennington* doctrine.

56. Mr. Hanley's misrepresentations and omissions continue in paragraph 11a. Paragraph 11a does not accurately reflect what was stated and is deliberately misleading. Mr. Hanley's Count I alleges that the January 10 Comments, *see Exhibit 1*, contained "false statements of law and fact" and that such statements allegedly resulted in multiple Rule violations as set forth in Count I. In order to prove a claimed violation of Vermont Rule 3.3(a)(1), Mr. Hanley must prove with clear and convincing evidence with respect to each statement that (1) the identified statement was *in fact* false, (2) Plaintiff knew the statement was in fact false,⁸ and (3) the statement was made by Plaintiff in "representing a client in the proceedings of a tribunal." Rule 3.3 Comment [1]. His alleged violation of Rule 3.5(d) is derivative of the alleged Rule 3.3(a)(1) violation. The basis on which he claims certain (still not specifically identified) statements were false is based solely on the fact that Plaintiff "never filed a complaint in any court alleging RICO violations by the Town of Bennington," which ties into his statement that in his view civil RICO does not at all apply to the Town and its officials. In other words, he has no evidence at all, nor did he ask to see Plaintiff's evidence during Mr. Hanley's alleged investigation. Said another way, Michael Hanley is alleging that Plaintiff's statements regarding the Town's malfeasance are untrue based solely on the fact that Plaintiff never filed a lawsuit based on such activities.

⁸ Vt. RPC 1.0(f) ("“Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question.”)

57. There was only one filing related to paragraph 11a’s embellished characterization. That occurred on January 10, 2025, *see* **Exhibit 1**. The deliberately inaccurate use of the plural of filing in Mr. Hanley’s memorandum to the probable cause hearing panel manipulates the inferences that he is pushing the probable cause hearing panel to draw. *Second*, as clearly stated in that January 10 filing, Plaintiff stated that the members of the Select Board (other than two) were engaged in “multi-faceted conspiracy to cover up” *the expiration of the Town Plan*.⁹ No allegations against any specific person or the Town were made with respect to the “forgery,” “counterfeiting,” filing of “false certifications to the state and federal government in violation of criminal statutes” or “false statement with the [Public Utility] Commission.”¹⁰ Only the “cover-up” of the expiration of the Town Plan was specifically alleged against the members of the Select Board (other than two).

58. But even if they were made, Mr. Hanley had access to all the information available from Plaintiff that establishes that the Town Plan expired,¹¹ and that no valid Town Plan meant forgery and counterfeiting when official documents are altered, which they were as shown in *RESPONDENT’S REPLY TO MR. HANLEY’S OBJECTION TO RESPONDENT’S MOTION TO REVISE* filed January 12, 2026, in PRB 120-2025 (the “Reply”). *See* **Exhibit 9**.¹² All of this information Mr. Hanley deliberately failed to disclose to the probable cause hearing panel thus denuding the probable cause requirement of all real meaning and violating Respondent’s constitutional due process rights.

⁹ *See*, **Exh. 1**, para. 6 (“cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect.”)

¹⁰ *See* **Exh. 1**, para. 7 (“The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A. §2002 and 32 V.S.A §631(a)(9).”) *See also id.* (“The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.”)

¹¹ The nuts and bolts of the expiration of the Town Plan are laid out in the complaint filed in *PLH Vineyard Sky LLC v. Town of Bennington*, 2:25-cv-469 (D. Vt. Filed May 2, 2025), *see* **Exhibit 8**.

¹² Available at: <https://www.vermontjudiciary.org/media/19783>.

59. To illustrate (as noted in **Exhibit 9**), the cover page of the Town Plan (which is a public record and official document) was twice altered to include false information as to the re-adoption of the Town Plan. This alteration of a public document was publicized on the Town’s website on or around October 2, 2024. The image below on the left is the cover page of the Town Plan on the Town website as it was publicized before October 2, 2024. The image on the right is the altered document.

Bennington Town Plan



Adopted: October 6, 2015

Prepared by the
Bennington Planning Commission

Bennington Town Plan



Adopted: October 6, 2015
Amended and Re-adopted: January 22, 2018
Amended: May 23, 2022
Amended: June 24, 2024

60. The altered document in addition to being published on the Town’s official website, was also uploaded to the Vermont Department of Housing and Community Development (“**DHCD**”) on October 2, 2024, apparently by Dan Monks, the current Town Manager, although Mr. Monk’s deposition would provide more information on that. As such, the altered document also can be found as of today’s date on the official DHCD website.¹³

¹³

https://outside.vermont.gov/agency/ACCD/bylaws/Bylaws%20and%20Plans%20Approved/Forms/Group%20by%20Municipality.aspx?_gl=1*Iglc6qy*_ga*MTQzMTIxMTk2MC4xNzMzMjQzNzI5*_ga_V9WQH77KLW*cze3NjAwNDgwNTQkbzExNyRnMCR0MTc2MDA0ODA1OSRqNTUkbDAkaDA

61. In addition to uploading an allegedly false and altered document to a State official document repository, on the “DHCD Municipal Plan and Bylaw Intake” form, on October 2, 2024, Mr. Monks also stated that the date of the adoption of the plan was January 22, 2018. Separately, Mr. Monks on July 16, 2024, on a different “DHCD Municipal Plan and Bylaw Intake” form had indicated that the adoption date was June 24, 2024. As of the date hereof, the DHCD website still lists the date of adoption of the Town Plan as June 24, 2024, even though when one clicks on the link it brings you to the altered version of the Town Plan showing an adoption date of January 22, 2018. An expired Town Plan means that all of those statements were false.

62. During the meet and confer conference on January 30, 2026, in PRB case 120-2025, Plaintiff asked Mr. Hanley how he could justify bringing and maintaining the charge in Count I in light of the overwhelming evidence in the Reply, all of which was available to him prior to filing the Misconduct Petition. His answer was straightforward. He expressed that it was his opinion that civil RICO only applies to “mobsters,” and in his view the officials in the Town of Bennington are not “mobsters.” Mr. Hanley’s position is in some sense consistent with his assertions in his motion to quash subpoenas filed in PRB case 120-2025 that evidence of “forgery,” “counterfeiting,” “false certifications” and violations of RICO are irrelevant (although the evidence provided in the Reply is far more than what would be needed to bring to a civil jury the question of whether “forgery,” “counterfeiting,” “false certifications” occurred).¹⁴ While Plaintiff appreciates Mr. Hanley’s candor on that issue during the meet and confer, that candor was owed to the probable cause hearing panel. His duty of candor and full disclosure also required him to inform the probable cause hearing panel that his opinion neither a municipality nor any of its officials could be held liable under RICO is baseless in the Second Circuit, whose opinions are controlling law in this case on the issue. *See, Gingras v. Think Fin., Inc.*, 922 F.3d 112, 124-25 (2d Cir. 2019). Likewise, Mr. Hanley’s duty of candor and full disclosure required him to inform the

¹⁴ *See, Mr. Hanley’s MOTION TO QUASH SUBPOENAS ISSUED BY THOMAS MELONE TO JAMES SULLIVAN, JEANETTE JENKINS, SHANNON BARSOTTI AND DAN MONKS dated December 16, 2025, at 6-7.*

probable cause hearing panel that stating that a party is preparing a *civil* RICO complaint is not a threat to report criminal violations as the Second Circuit has held. *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000). In recently denying a municipal police chief's motion to dismiss a RICO claim against him, a New York federal judge reiterated that the Second Circuit has found that some courts' holdings that a municipality and its officials could not form the *means rea* needed for RICO was "not persuasive" ... "particularly given that private corporations are routinely held liable for damages under RICO." *Winnie v. Sinagra*, No. 1:24-cv-00940 (BKS/PJE), 2025 U.S. Dist. LEXIS 159289 (N.D.N.Y. Aug. 18, 2025), *16 quoting *Gingas*. Mr. Hanley's failure to disclose the controlling precedent was misconduct, judicial deception and violates Plaintiff's constitutional due process rights.¹⁵ Paragraph 11a of Mr. Hanley's affidavit is *at best* grossly misleading. Regardless, his failure to inform the probable cause hearing panel of the whole story and applicable law is judicial deception. The effects of Mr. Hanley's judicial deception are still being felt by Plaintiff. Mr. Hanley has no evidence to support his targeting of Plaintiff's speech and petitioning activity and thus never had probable cause or any reasonable chance of a positive outcome.

63. Paragraph 11b fares no better. In paragraph 11b states: "Threatening to disclose purported criminal conduct by two other opponents if they did not support his companies' applications for Certificates of Public Good." Paragraph 11b another clear case of judicial deception. Mr. Hanley attaches no evidence to his affidavit. Paragraph 11b is simply a regurgitation of his allegations. No threat of criminal prosecution was made in any communications with ML or DG. And Mr. Hanley did not (and could not) point to any particular communication that threatened to present criminal charges. There is a single communication from

¹⁵ As to the mention of RICO, the January 10 filing says Plaintiff was finalizing a *civil* complaint against the Town and others (including unidentified "Does") that would include *various civil claims*, including breach of contract, declaratory and injunctive relief related to the Town Plan, civil rights violations and a civil RICO count. But the Plaintiff did not state what defendants would be charged in which Count. In other words, as to the Town, the two claims that were certain to be directed to the Town were the breach of contract and the declaration that the Town Plan expired. The breach of contract was based, *inter alia*, on what the Plaintiff alleged were unauthorized acts of Merrill Bent. There is no threat against any person Mr. Hanley can point to.

Plaintiff, *see* Misconduct Pet. ¶55, that occurred while Plaintiff and ML/DG were in the Misconduct Petition’s words “opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good.” Misconduct Pet. ¶50. In the May 3, 2024, email, Plaintiff said “I do want you to be aware that we will be asking about it in your depositions.” Misconduct Pet. ¶52. No criminal charges were threatened there. And Plaintiff had a conversation thereafter with Attorney Jon Cohen (who represents ML/DG) confirming that no threat of any type of prosecution was made or intended and that the information concerning ML/DG’s activities would be used only to impute their character as witnesses in the CPG proceeding. The communications thereafter occurred when neither ML/DG were a party to any civil proceeding involving Plaintiff. Mr. Hanley failed to disclose that information, all of which was available to him. Additionally, Mr. Hanley failed to disclose to the probable cause hearing panel that at the time Plaintiff made the alleged communications, threatening to present criminal charges was not even possible because the statute of limitations had expired.

64. Paragraph 11b does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story that would include the contrary evidence that Plaintiff provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley’s characterization of his asserted expectations, denuding the probable cause requirement of all real meaning. Mr. Hanley has no evidence to support his targeting of Plaintiff’s speech and thus never had probable cause or any reasonable chance of a positive outcome.

65. Paragraph 11c states: “Commencing site preparation for at least one of the proposed facilities in Bennington without a Certificate of Public Good from the Public Utility Commission.”

Mr. Hanley attaches no evidence to his affidavit. Paragraph 11c is simply a regurgitation of his allegations. Paragraph 11c does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story that would include the contrary evidence that Plaintiff provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

66. Paragraph 11c and 11d (both relate to Count III) targets speech, expressive conduct and petitioning activity as well, but this time it is Plaintiff's witness testimony regarding proposed clearing of land in Bennington for agricultural uses, witness testimony that is fully protected by the First Amendment. The mere fact that PUC commissioners that initiated the investigation made the comment that referred to Plaintiff's testimony regarding agricultural uses of the property in question as "not credible," does not make the Plaintiff's testimony false. After all, pleas to "the same body that approved the charges[] tend to go about as one might expect." *SEC v. Jarkesy*, 144 S. Ct. 2117, 2142 (2024) (Gorsuch, J., concurring). Mr. Hanley's claim that Plaintiff made "false" statements of fact and law (which he fails to identify), is based solely on a comment made in a PUC order that referred to Plaintiff's testimony regarding agricultural uses of the property in question as "not credible." But that comment is not evidence. It is hearsay, was not a factual finding, and regardless is testimony that is fully protected by the first Amendment. In other words, Mr. Hanley has no evidence to support his targeting of Plaintiff's speech and thus never had probable cause or any reasonable chance of a positive outcome.

67. Paragraph 11c and 11d do not tell the whole story that would include the contrary evidence that Plaintiff provided. Those failures (as well as Mr. Hanley's failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or

magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

68. Paragraph 11e states: "Attempting to have an *ex parte* communication with the Chair of the Public Utilities Commission." Paragraph 11e does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. None of the alleged rules which are "3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d)" relate to *ex parte* communications. Nor does it tell the whole story that would include the contrary evidence that Plaintiff provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

69. Paragraph 11e (Count IV) targets Plaintiff's free speech to a legislative committee commenting on testimony of Edward McNamara, who is chair of the PUC. Mr. McNamara's testimony was not a judicial function but an administrative one. Plaintiff's copying Mr. McNamara on the communication does not transform Mr. McNamara's role regarding that testimony into an *ex parte* communication in a separate proceeding. Mr. Hanley has no evidence to support his targeting of Plaintiff's speech and thus never had probable cause or any reasonable chance of a positive outcome.

70. Paragraph 11f states: "Bringing legal proceedings when there was no basis in law of for those proceedings." Paragraph 11f does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Paragraph 11f does not tell the whole story that would include the contrary evidence that Plaintiff provided. Those failures

(as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

71. Paragraph 11f (Count V) targets Plaintiff's free speech and right to petition. As such it is fully protected by the First Amendment. Plaintiff had good faith arguments in support of the filings in the Environmental Division as well as expert testimony regarding the potential adverse environmental impacts of the Benn High project. Plaintiff appealed to the Environmental Division and then to the Vermont Supreme Court because an important jurisdictional question was at stake and one left open by the Vermont Supreme Court's opinion in *Gould v. Town of Monkton*, 2016 VT 84, which is are there some claims against a municipality that a person is "left without a remedy," *id.* at ¶12, under Vermont law. *See also, id.* at ¶13 ("First, the record does not show that landowner has no remedy in the Environmental Division. Landowner did not appeal the denial of his permit application and challenge the validity of the statute in the context of that appeal. Second, he did not actually bring a declaratory judgment action in the Environmental Division, so his presumptions about what the Environmental Division would do are merely speculative. They do not support his claim that he has no forum to challenge Monkton's compliance with 24 V.S.A. ch. 117.") What that language from *Monkton* meant to Plaintiff is that a litigant needs to first go to the Environmental Division (or else risk losing the claim for failure to first go to the Environmental Division) and see what the Environmental Division does, then appeal that to the Vermont Supreme Court, and then file as Plaintiff did, a suit in the Superior Court, Civil Division, because the Environmental Division has no guidance on transferring cases between divisions, even though that guidance is supposed to exist. In other words, the substantive claims against the Town and the project were valid, but where complete relief could be obtained was unclear, and Plaintiff did not want to be on the receiving end of a Vermont Supreme Court opinion (as in *Monkton*) where this

Court said that you can't say that you had no ability to get relief in the Environmental Division because you didn't go there first. And because there is only one Superior Court, *see* 4 V.S.A. Ch. 3, 4 V.S.A. § 30, and "[t]he Supreme Court shall promulgate rules, subject to review by the Legislative Committee on Judicial Rules under 12 V.S.A. chapter 1, that establish criteria for the transfer of cases between divisions," it is only the absence of rules that were supposed to be in effect that enables Count V. And the Superior Court *did have* jurisdiction over the controversy. Mr. Hanley has no evidence to support his targeting of Plaintiff's speech and petitioning activity and thus never had probable cause or any reasonable chance of a positive outcome.

72. Paragraph 11g (Count VI) states: "Threatening to sue the Complainant when she made a privileged, confidential complaint to the Professional Responsibility Program." Paragraph 11g does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story that would include the contrary evidence that Plaintiff provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

73. Paragraph 11g (Count VI) targets Plaintiff's free speech and is based upon "Rule 12 of The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement." In other words, Paragraph 11g (Count VI) is based upon the baseless proposition that Rule 12 of The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement represents a rule that constitutes the law in the Vermont. An ABA Model Rule has no legal effect, and that model rule has not been adopted in Vermont. Mr. Hanley has no evidence to support his targeting of Plaintiff's speech and thus never had probable cause or any reasonable chance of a positive outcome.

74. Paragraph 11h (also related to Count VI) states: “Disclosing the Complainant’s confidential complaint to the Complainant’s client and its officers and agents.” Paragraph 11h does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley’s characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

75. Paragraph 11i (related to Count VI) states: “Directly communicating with and threatening to sue the Complainant’s client and its officers and agents on account of the Complainant’s privileged, confidential complaint to the Professional Responsibility Program.” Paragraph 11i does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley’s characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

76. Paragraph 11i (Count VII) targets Plaintiff’s free speech and is baseless too. Paragraph 11i (Count VII) charges Plaintiff with communicating with elected officials. But simply communicating with elected officials is not the charged violation. Rather the charged violation of Rule 4.2 is that Plaintiff’s “communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent’s complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend

action in connection with Ms. Bent's complaint.” That charge makes no sense at all. Rule 4.2 provides that “[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer *in the matter*.” First, there is no client. Second, the “matter” in Count VII as presented by Mr. Hanley is “Ms. Bent’s complaint to the Professional Responsibility Program.” But if Ms. Bent were representing the Town in connection with “Ms. Bent’s complaint to the Professional Responsibility Program,” that would mean that the Town knew about the complaint and was the client behind the complaint. But that contradicts Ms. Bent’s position that she filed the complaint solely on behalf of herself. Mr. Hanley has no evidence to support his targeting of Plaintiff’s speech and thus never had probable cause or any reasonable chance of a positive outcome

77. Paragraph 11j (related to Count VIII) states: “Engaging in a persistent and deliberate violations of the Rules.” Paragraph 11j does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story. In fact, it does not explain at all the basis for how Plaintiff’s protected exercise of his First Amendment rights was prejudicial to the administration of justice. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley’s characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

78. Paragraph 11j (Count VIII) targets Plaintiff’s protected free speech and petitioning activity. It is based upon Rule 8.4(d), which is patently unconstitutionally vague. The phrase “prejudicial to the administration of justice” is undefined and vague. “[V]ague[] and ambigu[ous]” provisions “are not appropriate as ethics standards.” *In re Supreme Court Advisory Comm. on Prof’l Ethics Opinion No. 697*, 188 N.J. 549, 911 A.2d 51, 59 (N.J. 2006). “If attorneys’ violations of ethical rules are to have implications for litigation, as well as their own disciplinary status, the

standards against which their conduct is to be measured should be consistent and clear.” *Miano v. AC & R Adver., Inc.*, 148 F.R.D. 68, 83 (S.D.N.Y. 1993) (emphasis added). Likewise, in *O’Brien v. Superior Court*, 105 Conn. App. 774, 794, 939 A.2d 1223 & n.22 (2008), the court observed that “[a]cademic commentators have identified a serious problem in the open textured provisions of rule 8.4(4). . . . ‘[Subsection 4] rais[ing] the specter of a disciplinary authority creating new offenses by common law, and perhaps harassing an unpopular lawyer through selective enforcement.’” (quoting 2 G. Hazard & W. Hodes, at § 65.6). And that is exactly what is occurring here—the Defendants harassing an unpopular lawyer.

79. Count VIII of the Misconduct Petition seeks disbarment. Count VIII is in part based upon the following cases in which Plaintiff has been involved in this judicial District:

1. *Allco Renewable Energy Ltd. v. Volz*, 5:20-cv-00034-gwc;
2. *Allco Renewable Energy Ltd. v. Kulkin*, 2:20-cv-00044-kjd;
3. *Allco Finance Ltd. v. Roisman*, 2:20-cv-00103-mkl (which was reassigned from Chief Judge Reiss after the remand from the Second Circuit);
4. *Apple Hill Solar LLC v. Cheney*, 2:23-cv-00644-wks;
5. *PLH Vineyard Sky LLC v. Town of Bennington*, 2:23-cv-00645-gwc;
6. *Allco Finance Ltd. v. Roisman*, 2:23-cv-00691-gwc;
7. *PLH Vineyard Sky LLC v. Town of Bennington*, 2:25-cv-00469-wks.¹⁶

80. Each of the judges of this District have “personal knowledge of disputed evidentiary facts concerning the” disciplinary proceeding against Plaintiff. That knowledge relates to the facts of each of the above-captioned cases. In the disciplinary case against Plaintiff, disputed evidentiary facts include, without limitation, whether Plaintiff’s bringing the above-listed actions, and/or Plaintiff’s speech or conduct in the above-listed actions, violated the Vermont Rules of Professional Conduct, specifically Rule 8.4(d) in Count VIII. As a result, not only does each of

¹⁶ Attached hereto as **EXHIBIT 11** is the docket sheets from each of the listed cases. These docket sheets were produced to Plaintiff by Defendant Hanley as part of the disclosure of what evidence he is relying on for Count VIII.

the judges of this District have “personal knowledge of disputed evidentiary facts” involved in Count VIII, but at this point it is also unknown whether Plaintiff or Mr. Hanley or the Hearing Panel would seek testimony from any of the judges in this District.

81. On top of the judicial deception of Mr. Hanley of the probable cause hearing panel, Mr. Hanley also failed to disclose that the *Noerr-Pennington* doctrine extends to “all petitioning activity,” including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000)). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted). None of Plaintiff’s litigation activity is sham litigation. And tellingly, the Defendants make no allegation (nor could they in good faith) that any of the Plaintiff’s litigation activity that is targeted by the Misconduct Petition constitutes “sham litigation.” Application of the *Noerr-Pennington* doctrine here, lays bare that there is and never was probable cause to bring any of the charges in the Misconduct Petition.

Requiring Plaintiff To Surrender First and Fifth Amendment Rights Is An Unconstitutional Condition To Obtaining A License To Practice Law In Vermont.

82. “[G]overnment may not deny a benefit to a person on a basis that infringes his constitutionally protected interests.” *See, Sheetz v. Cty. of El Dorado*, 144 S. Ct. 893, 900 (2024) (internal quotation marks and citations omitted). “[T]he [unconstitutional conditions] doctrine applies when the government attempts to ‘exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary,’” *Stavrianoudakis v. United States Fish & Wildlife Serv.*, 108 F. 4th 1128 (9th Cir. 2024) citing *United States v. Scott*, 450 F.3d 863, 866-67 (9th Cir. 2006). That is precisely what is happening here. The Defendants are trying to exact waivers of rights (such as Plaintiff’s First Amendment rights) as a condition to becoming and remaining an attorney licensed to practice law in Vermont. In other words,

none of the Rules that the Misconduct Petition charges the Plaintiff with violating would apply to a non-attorney engaging in the same petitioning or the same speech. The plain result of that fact is that the government requires Plaintiff to surrender some of his First Amendment rights. This is another concrete constitutional injury to Plaintiff. As the Ninth Circuit explained in a case involving a falconry license, *see Stavrianoudakis* at *15-16:

A plaintiff suffers a ‘constitutionally cognizable injury’ whenever the government succeeds in pressuring the plaintiff into forfeiting a constitutional right in exchange for a benefit or the government withholds a benefit based on the plaintiff’s refusal to surrender a constitutional right. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606-07, 133 S. Ct. 2586, 186 L. Ed. 2d 697 (2013); *id.* at 607 (holding that the plaintiff suffered a “constitutionally cognizable injury” where he refused to waive his constitutional rights and was therefore denied a discretionary benefit); *cf. Dolan*, 512 U.S. at 379 (reversing lower court’s rejection of an unconstitutional-conditions claim where the “government had granted [the] petitioner’s permit application subject to conditions” requiring the petitioner to waive her Fifth Amendment rights). That is, “regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.” *Koontz*, 570 U.S. at 606.

83. Here, the Defendants claim that in order to obtain an attorney license in Vermont, Plaintiff must give up some of his First and Fifth Amendment rights, which places an unconstitutional condition on obtaining a license to practice law, even when Plaintiff is representing his own interests.

84. For example, the PUC considers Plaintiff to be proceeding *pro se*. Plaintiff was representing his own interests and not that of a third-party client. The Rules do not apply to individuals who are not attorneys. Even if some of the Rules could constitutionally apply to a lawyer representing his own interests, then Plaintiff did not have fair notice. A rule change would be required in order to make them apply (as suggested by Vermont Bar Counsel Michael Kennedy), *see Exhibit 10*, and charging Plaintiff with a violation that by definition involves retroactive application without a rule change violates Plaintiff’s Fifth Amendment rights. *In re Discipline of Schaefer*, 117 Nev. 496, 507-08, 25 P.3d 191 (2001) (Rule “was unconstitutionally vague on ‘the absence of clear guidance’ from the Nevada State Supreme Court and on ‘the existence of

conflicting authority from other jurisdictions.”” *See also, In re Haley*, 126 P.3d 1262, 1267, 1272 (Wash. 2006).

Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d) Are All Unconstitutionally Vague target expressive content, are not supported by a compelling State interest, and are not narrowly tailored.

85. The Misconduct Petition charges Plaintiff with violating Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3,¹⁷ 4.4(a), 4.5, and 8.4(d). All those Rules are unconstitutionally vague, target expressive content, are not supported by a compelling State interest, and are not narrowly tailored.

PARTIES

86. Plaintiff Thomas Melone is a United States citizen, who is resident and citizen of the State of Florida.

87. Defendant Michael Hanley claims to have been appointed as disciplinary counsel and filed the Misconduct Petition. He joined the PRB in 2011. He was appointed Chair in 2018 and served in that capacity until the end of fiscal year 2022. Michael Hanley is a citizen of New Hampshire.

88. Defendant Carolyn Anderson is the current Chair of the PRB. Carolyn Anderson is a citizen of Vermont.

89. Defendant Jon Alexander in his official capacity of Disciplinary Counsel of the PRB. Jon Alexander is a citizen of Vermont.

90. JANE DOE, ALEXANDER SHRIVER and BRIAN BANNON are members of Hearing Panel assigned to PRB Case 120-2025 and are citizens of Vermont.

JURISDICTION AND VENUE

91. This Court has subject matter jurisdiction over this action pursuant to Article III, section 2 of the United States Constitution. Chief Justice John Marshall declared during the early

¹⁷ On multiple occasions Plaintiff has asked that this charge be amended if it meant to recite a different Rule, i.e., 3.3. Mr. Hanley has refused to do so, presumably because an amendment to the Misconduct Petition would then re-start Plaintiff’s time clock and right to file motions challenging what would then be an amended complaint. Mr. Hanley’s strategic decision is one he must be forced to live with. There is no evidence of a Rule 4.3 violation.

days of the republic that “[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.” *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). This Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because of diversity of citizenship under 28 U.S.C. §1332 and the amount in controversy exceeds \$75,000. The Court has jurisdiction under 28 U.S.C. § 1331 (federal question).

92. Plaintiff also brings this action under 42 U.S.C. § 1983.

93. The Court may award injunctive relief, as well as declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

94. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

95. The Court is empowered to grant declaratory relief by 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

96. This Court has personal jurisdiction over Defendants because each Defendant either resides in Vermont and/or conducts his or her activities in the District of Vermont.

97. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2) because a substantial part of the events giving rise to this action occurred in the District of Vermont.

CAUSES OF ACTION

COUNT I

THE MISCONDUCT PETITION VIOLATES PLAINTIFF’S FIRST, FIFTH AND FOURTEENTH AMENDMENT RIGHTS

98. Plaintiff repeats and re-alleges the allegations contained in each and every preceding paragraph of this Complaint. The bar disciplinary machinery is being used to retaliate against Plaintiff for his various litigation involving one of Vermont’s legal elite—Attorney Merrill Bent, who is the chair of the Judicial Conduct Board and frequent legal counsel to the Town.

99. The Defendants’ “evidence” for the disciplinary charges against Plaintiff consists almost entirely of filings in his litigation activity, which is immunized by the *Noerr—Pennington* doctrine. The remainder of the evidence consists of comments filed with a Vermont Legislative committee regarding a bill under consideration by said committee, or communications with elected

government officials, also immunized by *Noerr-Pennington*. The *Noerr-Pennington* doctrine extends to “all petitioning activity,” including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000)). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted). None of Plaintiff’s litigation activity is sham litigation. And tellingly, the Defendants make no allegation (nor could they in good faith) that any of the Plaintiff’s litigation activity that is targeted by the Misconduct Petition constitutes “sham litigation.” Application of the *Noerr-Pennington* doctrine here, lays bare that there is and never was probable cause or any basis to bring any of the charges in the Misconduct Petition.

100. Defendants’ malice and ill-motives are demonstrated by the fact that Defendants lacked probable cause to bring any of the charges.

101. Plaintiff seeks a declaration that Misconduct Petition violates the Plaintiff’s rights under the First, Fifth and Fourteenth Amendments, and that the Plaintiff’s petitioning activity targeted by the Misconduct Petition is immunized by the *Noerr-Pennington* doctrine. Plaintiff seeks an injunction enjoining the Defendants from taking any further action in PRB case no. 120-2025 against Plaintiff.

COUNT II

VERMONT PROFESSIONAL CONDUCT RULE 4.5 VIOLATES PLAINTIFF’S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

102. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

103. Rule 4.5 states:

Threatening Criminal Prosecution
A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.

104. Rule 4.5 targets a lawyer’s expressive conduct when it states that a “lawyer shall not present, [or] participate in presenting ... criminal charges.”

105. Rule 4.5 targets a lawyer’s expressive speech when it states that a “lawyer shall not ... threaten to present criminal charges.”

106. State officials have articulated no compelling interest for this speech restriction, and the restriction is not narrowly tailored. Accordingly, Rule 4.5 violates the First Amendment.

107. Plaintiff has been injured by the adoption of Rule 4.5 because of his well-founded fear he will be in the future and is now the target of a disciplinary complaint imposing a chill on his speech activity and retaliating against him for statements already made.

108. Rule 4.5 is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

109. Rule 4.5 does not serve a compelling governmental interest.

110. Even if Rule 4.5 served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest. It thus violates Plaintiff’s First Amendment rights.

111. There is no counterpart in the ABA Model Rules of Professional Conduct to Vt. Rule 4.5. Rule 4.5 is based upon the prior DR 7-105(A) of the Model Code (minus the word “solely”), which prohibited a lawyer from using or threatening a criminal prosecution against an opposing party to gain an advantage in a civil matter. Although this provision has no counterpart in the Model Rules, it has historically been interpreted as not applying if the criminal matter is related to the civil matter. *See, ABA Formal Ethics Op. 92-363* (1992) (“The Model Rules do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a civil matter, to gain relief for a client, provided that the criminal matter is related to the client’s civil claim, the lawyer has a well-founded belief that both the civil claim and the criminal

charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process.”)

112. The fact that the ABA Model Rules abandoned the equivalent of Rule 4.5 in 1983, and almost all States have as well, is compelling evidence that Rule 4.5 is not the least restrictive means of targeting speech while also serving a compelling governmental interest.

113. In addition, Rule 4.5’s key terms—including the terms “present,” “participate in presenting,” “threaten to present,” and “in order to obtain an advantage” are not well defined in either Rule 4.5 or the accompanying commentary, further establishing that Rule 4.5 is not narrowly tailored.

114. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech is prohibited by Rule 4.5, and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

115. The overly vague nature of Rule 4.5’s speech restrictions additionally violate Plaintiff’s rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

116. Regardless Rule 4.5’s speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule 4.5 is unconstitutional and invalid.

117. Plaintiff seeks a declaration that Rule 4.5 violates the Plaintiff’s rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities that would ensure that Rule 4.5 will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT III

VERMONT PROFESSIONAL CONDUCT RULE 8.3(a) VIOLATES PLAINTIFF’S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

118. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

119. Rule 8.3(a) states:

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

120. Rule 8.3(a) is a government mandate compelling speech. The First Amendment prohibits the government from compelling speech.

121. Additionally, Rule 8.3(a) does not serve a compelling governmental interest.

122. Even if Rule 8.3(a) served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest. It thus violates Plaintiff's First Amendment rights

123. In addition, Rule 8.3(a)'s key terms—including the terms “a substantial question,” and “fitness as a lawyer in other respects” are not well defined in either Rule 8.3(a) or the accompanying commentary, further establishing that Rule 8.3 is not narrowly tailored.

124. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech is compelled by Rule 8.3(a) and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against an attorney for the failure to speak or otherwise penalizing an attorney for failure to speak.

125. Plaintiff seeks a declaration that Rule 8.3(a) violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities that would ensure that Rule 8.3(a) will not be enforced against Plaintiff or otherwise used to penalize Plaintiff for failure to speak in PRB case no. 120-2025 or in the future.

COUNT IV

VERMONT PROFESSIONAL CONDUCT RULE 4.2 VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

126. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

127. Rule 4.2 states:

Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

128. Rule 4.2 targets a lawyer’s expressive speech when it states that a “lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter.”

129. As such Rule 4.2 is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

130. Rule 4.2 does not serve a compelling governmental interest.

131. Even if Rule 4.2 served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest.

132. In addition, Rule 4.2’s key terms—including the terms “In representing a client,” “communicate about the subject of the representation with a person,” “the matter,” “knows to be represented” and “is authorized to do so by law” are not well defined in either Rule 4.2 or the accompanying commentary, further establishing that Rule 4.2 is not narrowly tailored.

133. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech is prohibited by Rule 4.2, and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

134. The overly vague nature of Rule 4.2’s speech restrictions additionally violate Plaintiff’s rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

135. Regardless Rule 4.2’s speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule

3.1 is unconstitutional and invalid.

136. Plaintiff seeks a declaration that Rule 4.2 violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities that would ensure that Rule 4.2 will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT V

VERMONT PROFESSIONAL CONDUCT RULE 3.5(d) VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

137. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

138. Rule 3.5(d) states:

Impartiality and Decorum of the Tribunal
A lawyer shall not: ... (d) engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal.

139. Rule 3.5(d) targets a lawyer's expressive speech and expressive conduct when it states that a "lawyer shall not ... engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal."

140. As such Rule 3.5(d) is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

141. Rule 3.5(d) does not serve a compelling governmental interest.

142. Even if Rule 3.5(d) served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest.

143. In addition, Rule 3.5(d)'s key terms—including the terms "undignified," "discourteous," "degrading" and "disrupting," are not well defined in either Rule 3.5(d) or the accompanying commentary, further establishing that Rule 3.5(d) is not narrowly tailored.

144. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance

precisely what speech is prohibited by Rule 3.5(d), and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

145. The overly vague nature of Rule 3.5(d)'s speech restrictions additionally violate Plaintiff's rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

146. Regardless Rule 3.5(d)'s speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule 3.1 is unconstitutional and invalid.

147. Plaintiff seeks a declaration that Rule 3.5(d) violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities that would ensure that Rule 3.5(d) will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT VI

VERMONT PROFESSIONAL CONDUCT RULE 3.5(b)(1) VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

148. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

149. Rule 3.5(b)(1) states “[a] A lawyer shall not ... (b) communicate ex parte (1) with a judge or other person acting in a judicial or quasi-judicial capacity in a pending or impending adversary proceeding, unless authorized to do so by the Code of Judicial Conduct, by other law, or by court order.”

150. Rule 3.5(b)(1) targets a lawyer's expressive speech when it states that a “lawyer shall not ... communicate.”

151. As such Rule 3.5(b)(1) is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

152. Rule 3.5(b)(1) does not serve a compelling governmental interest.

153. Even if Rule 3.5(b)(1) served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest.

154. In addition, Rule 3.5(b)(1)'s key terms—including the terms “communicate,” “*ex parte*,” “quasi-judicial capacity in a pending or impending adversary proceeding,” “unless authorized to do so ... by other law” are not well defined in either Rule 3.5(b)(1) or the accompanying commentary, further establishing that Rule 3.5(b)(1) is not narrowly tailored.

155. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech is prohibited by Rule 3.5(b)(1), and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

156. The overly vague nature of Rule 3.5(b)(1)'s speech restrictions additionally violate Plaintiff's rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

157. Regardless Rule 3.5(b)(1)'s speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule 3.1 is unconstitutional and invalid.

158. Plaintiff seeks a declaration that Rule 3.5(b)(1) violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities that would ensure that Rule 3.5(b)(1) will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT VII

VERMONT PROFESSIONAL CONDUCT RULE 4.4(a) VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

159. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

160. Rule 4.4(a) states “[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”

161. Rule 4.4(a) targets a lawyer’s expressive speech and conduct when it states that a “lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”

162. As such Rule 4.4(a) is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

163. Rule 4.4(a) does not serve a compelling governmental interest.

164. Even if Rule 4.4(a) served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest.

165. In addition, Rule 4.4(a)’s key terms—including the terms “[i]n representing a client,” “no substantial purpose,” “embarrass,” “delay,” “burden,” “third person,” “methods of obtaining evidence,” and “legal rights of such a person,” are not well defined in either Rule 4.4(a) or the accompanying commentary, further establishing that Rule 4.4(a) is not narrowly tailored.

166. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech or conduct is prohibited by Rule 4.4(a), and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

167. The overly vague nature of Rule 4.4(a)’s speech and conduct restrictions additionally violate Plaintiff’s rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

168. Regardless Rule 4.4(a)'s speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule 3.1 is unconstitutional and invalid.

169. Plaintiff seeks a declaration that Rule 4.4(a) violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities would ensure that Rule 4.4(a) will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT VIII

VERMONT PROFESSIONAL CONDUCT RULE 3.1 VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

170. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

171. Rule 3.1 states “[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration or hospitalization, may nevertheless so defend the proceeding as to require that every element of the case be established.”

172. Rule 3.1 targets a lawyer's expressive speech and conduct when it states that a “lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”

173. As such Rule 3.1 is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

174. Rule 3.1 does not serve a compelling governmental interest.

175. Rule 3.1 is clearly a viewpoint-based restriction. While it may be noble or idealist to think that all judges and States in which they sit share the same viewpoint as to whether a

position is frivolous, the reality is far different. A judge in Texas or Alabama may have a different viewpoint as to what is frivolous as compared to a judge in New York or California. But the First Amendment condemns all viewpoint discrimination and censorship. Rule 3.1's targeting expressive content in petitioning activity goes far beyond the appropriate rule which is that only "sham litigation" that is both "objectively baseless" and "intended to cause harm to the defendant 'through the use of the governmental process.'" *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted) is not immunized.

176. Even if Rule 3.1 served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest. The least restriction means would be the "sham litigation" standard.

177. In addition, Rule 3.1's key terms—including the terms "not frivolous," and "basis in law and fact" are not well defined in either Rule 3.1 or the accompanying commentary, further establishing that Rule 3.1 is not narrowly tailored.

178. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech and conduct is prohibited by Rule 3.1, and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

179. The overly vague nature of Rule 3.1's speech restrictions additionally violate Plaintiff's rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

180. Regardless Rule 3.1's speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule 3.1 is unconstitutional and invalid.

181. Plaintiff seeks a declaration that Rule 3.1 violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official

capacities would ensure that Rule 3.1 will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT IX

VERMONT PROFESSIONAL CONDUCT RULE 3.3(a)(1) VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

182. Plaintiff repeats and re-alleges Paragraphs 1 through 97.

183. Rule 3.3(a)(1) states “[a] lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

184. Rule 3.3(a)(1) targets a lawyer’s expressive speech and conduct when it states that a “lawyer shall not knowingly ... make a false statement of fact or law.” Rule 3.3(a)(1) also compels speech when it states that a “lawyer shall not knowingly ... fail to correct a false statement of material fact or law previously made.”

185. As such Rule 3.3(a)(1) is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

186. While preventing knowingly false statements of fact or law to a court serves a compelling governmental interest, Rule 3.3(a)(1) is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest. For example, the Defendants in PRB case 120-2025 have extended Rule 3.3(a)(1)’s reach to jurisdictional issues. In other words, the Defendants treat the allegation of jurisdiction in a complaint as a statement of fact or law under Rule 3.3(a)(1). As a result, any attorney who has his or her complaint dismissed for lack of jurisdiction is subject to be charged under Rule 3.3(a)(1). Such a broad application makes selective enforcement easy, and chills (more like freezes) Plaintiff’s First Amendment rights to petition.

187. In addition, Rule 3.3(a)(1)'s key terms—including the terms “false statement of fact or law,” are not well defined in either Rule 3.3(a)(1) or the accompanying commentary, further establishing that Rule 3.3(a)(1) is not narrowly tailored.

188. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech is prohibited by Rule 3.3(a)(1), and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers. For example, by extending Rule 3.3(a)(1) to jurisdictional issues, the Defendants can as here use Rule 3.3(a)(1) to target unpopular lawyers.

189. The overly vague nature of Rule 3.3(a)(1)'s speech restrictions additionally violate Plaintiff's rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

190. Plaintiff seeks a declaration that Rule 3.3(a)(1) violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities would ensure that Rule 3.3(a)(1) will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT X

VERMONT PROFESSIONAL CONDUCT RULE 8.4(d) VIOLATES PLAINTIFF'S FIRST AND FIFTH AMENDMENT RIGHTS AND IS UNCONSTITUTIONAL

191. Plaintiff repeats and re-alleges Paragraphs 1 through 97 of this Complaint.

192. Rule 8.4(d) states: “It is professional misconduct for a lawyer to..... engage in conduct that is prejudicial to the administration of justice.”

193. Rule 8.4(d) targets a lawyer's expressive speech and conduct when it states that a lawyer shall not “engage in conduct.”

194. As such Rule 8.4(d) is a content-based regulation that triggers strict scrutiny analysis. Under strict scrutiny, a law is presumptively unconstitutional unless the government can show the challenged law is the least restrictive means of targeting speech while also serving a compelling governmental interest.

195. Rule 8.4(d) does not serve a compelling governmental interest.

196. Even if Rule 8.4(d) served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest

197. In addition, Rule 8.4(d)'s key terms—including the terms “engage in conduct,” and “prejudicial to the administration of justice,” are not well defined in either Rule 8.4(d) or the accompanying commentary, further establishing that Rule 8.4(d) is not narrowly tailored.

198. In addition, as a result of that lack of clarity, Plaintiff is unable to discern in advance precisely what speech and conduct is prohibited by Rule 8.4(d), and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against attorney speakers.

199. The overly vague nature of Rule 8.4(d)'s speech and conduct restrictions additionally violate Plaintiff's rights under the Due Process Clause of the Fifth and Fourteenth Amendments and imposes a chill on his speech activity.

200. Regardless Rule 8.4(d)'s speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, Rule 8.4(d) is unconstitutional and invalid.

201. Plaintiff seeks a declaration that Rule 8.4(d) violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities would ensure that Rule 8.4(d) will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT XI

VERMONT PROFESSIONAL CONDUCT RULES 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) AND 8.4(d) IMPOSE AN UNCONSTITUTIONAL CONDITION ON PLAINTIFF'S RIGHT TO BE A LAWYER

202. Plaintiff repeats and re-alleges Paragraphs 1 through 200 of this Complaint.

203. “[G]overnment may not deny a benefit to a person on a basis that infringes his constitutionally protected interests.” *See, Sheetz v. Cty. of El Dorado*, 144 S. Ct. 893, 900 (2024) (internal quotation marks and citations omitted). “[T]he [unconstitutional conditions] doctrine applies when the government attempts to ‘exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary,’” *Stavrianoudakis v. United States Fish & Wildlife Serv.*, 108 F. 4th 1128 (9th Cir. 2024) citing *United States v. Scott*, 450 F.3d 863, 866-67 (9th Cir. 2006). That is precisely what is happening here. The Defendants are trying to exact waivers of rights (such as Plaintiff’s First Amendment rights) as a condition to becoming and remaining an attorney licensed to practice law in Vermont. In other words, none of the Rules that the Misconduct Petition charges the Plaintiff with violating would apply to a non-attorney engaging in the same petitioning or the same speech. The plain result of that fact is that the government requires Plaintiff to surrender some of his First Amendment rights. This is another concrete constitutional injury to Plaintiff. Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d) seek to extract from Plaintiff a waiver of his First, Fifth and Fourteenth Amendment rights in order to become and remain a Vermont licensed attorney.

204. As a result, Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d) are unconstitutional.

205. Additionally, Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5 and 8.4(d) speech and petitioning restrictions are an unlawful attempt to cutback on the protection of the *Noerr-Pennington* doctrine, and for that additional reason, those Rules are unconstitutional and invalid. Plaintiff seeks a declaration that Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d) violate the First, Fifth and Fourteenth Amendments, and an injunction against Defendants in their official capacities would ensure that Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d) will not be enforced against Plaintiff in PRB case no. 120-2025 or in the future.

COUNT XII

DECLARATION THAT MICHAEL HANLEY ENGAGED IN JUDICIAL DECEPTION OF THE PROBABLE CAUSE HEARING PANEL

206. Plaintiff repeats and re-alleges Paragraphs 1 through 200 of this Complaint.

207. Michael Hanley has injured Plaintiff by violating Plaintiff's due process rights by engaging in judicial deception in order to obtain a probable cause finding. Plaintiff seeks declaration that Michael Hanley engaged in judicial deception of the probable cause hearing panel in PRB case 120-2025.

208. Plaintiff seeks prospective injunctive relief preventing the Defendants from taking any further action against Plaintiff based on the Misconduct Petition because the injury suffered by Plaintiff from Michael Hanley's judicial deception is still being felt by Plaintiff. In other words, it is an ongoing injury and Plaintiff seeks prospective relief enjoining all future action by the Defendants against Plaintiff that would not have been able to, or would not be able to, be properly taken under A.O. 9 without the finding of probable cause that was obtained by Michael Hanley's judicial deception.

209. The requested declaration and injunctive relief will redress the irreparable harm that Plaintiff has suffered and continues to suffer as a result of Michael Hanley's judicial deception of the probable cause hearing panel.

COUNT XIII

DECLARATION THAT THERE WAS NO PROBABLE CAUSE TO BRING COUNT I-VIII OF THE MISCONDUCT PETITION

210. Plaintiff repeats and re-alleges Paragraphs 1 through 200 of this Complaint.

211. None of Plaintiff's litigation activity is "sham litigation." None of Plaintiff's litigation activity is both "objectively baseless" and "intended to cause harm to [anyone] 'through the use of the governmental process.'" As a result, there was no probable cause to bring any of Counts I through VIII.

212. Defendants' malice and ill-motives are demonstrated by the fact that Defendants lacked probable cause to bring any of the charges. *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024). The lack of probable cause is demonstrated above and is overwhelmingly demonstrated with the Defendants' lead count—Count I—which as described above is supported by mounds of evidence.

213. Plaintiff seeks declaration that there did not exist probable cause to bring any of Counts I through VIII of the Misconduct Petition. The requested declaration relief will redress the irreparable harm that Plaintiff has suffered and continues to suffer as a result of Michael Hanley's bringing charges without probable cause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court award the following relief against Defendants:

- A. That this Court grant judgment in favor of Plaintiff and against Defendants;
- B. That this Court issue the declarations and injunctive relief requested herein by Plaintiff;
- C. That this Court issue a declaratory judgment declaring that that Misconduct Petition and Defendants' bringing it violates the Plaintiff's rights under the First, Fifth and Fourteenth Amendments;
- D. That this Court issue a declaratory judgment declaring that the Plaintiff's petitioning activity targeted by the Misconduct Petition is immunized by the *Noerr-Pennington* doctrine;
- E. That this Court issue an injunction enjoining the Defendants from taking any further action in PRB case no. 120-2025 against Plaintiff (other than dismissing it with prejudice);
- F. That this Court issue a declaratory judgment declaring that Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d) are unconstitutional and violate Plaintiff's rights under the First, Fifth and Fourteenth Amendments;

- G. That this Court issue an injunction enjoining the Defendants from bringing, maintaining and/or or processing of any misconduct complaint to the extent that the misconduct complaint alleges a violation of, or seeks to penalize Plaintiff or any other person under, any of Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d).
- H. That this Court issue a declaratory judgment declaring that that there did not exist probable cause to bring any of Counts I through VIII of the Misconduct Petition;
- I. That this Court issue a declaratory judgment declaring that Michael Hanley engaged in judicial deception of the probable cause hearing panel in PRB case 120-2025;
- J. Such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: February 18, 2026

THE PLAINTIFF,

/s/Thomas Melone

Thomas Melone

601 South Ocean Blvd.

Delray Beach, FL 33483

Phone: (212) 681-1120

Email: Thomas.Melone@gmail.com

EXHIBIT 1

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC,)	Docket No. 24-3517-PET
pursuant to 30 V.S.A. § 248, for a)	
certificate of public good authorizing)	
the installation and operation of a 2.0)	
MW solar electric generation facility)	
located off Willow Road in Bennington,)	
Vermont)	

**APPLE HILL SOLAR LLC’S PRELIMINARY COMMENTS OF THE DEPARTMENT
OF PUBLIC SERVICE’S MOTION TO STAY**

Apple Hill Solar LLC (“AHS”) will be prepared to preliminarily address the Motion to Stay of the Department of Public Service (“DPS”) and the Town of Bennington’s comments at the scheduling conference set for January 13, 2025.

In advance of the conference, AHS provides the following preliminary comments.

1. AHS has already explained to DPS that AHS is proceeding with the petition under the assumption that it would be a merchant generator. That is the same basis on which the Commission reviewed the project initially in docket 8797, which then eventually became a project with a standard offer contract *after* the CPG was issued. There is no difference here. AHS is not seeking to rely on any waivers. If DPS needs AHS to say that in different ways or clarify testimony, AHS is happy to do so.

2. With respect to Commission Rule 5.403(A)(19), it is difficult to believe that DPS even raised that point because the existence of Chelsea Solar has such a storied history. AHS has supplemented the testimony to state that the Chelsea Solar LLC project currently before the Commission in Case 23-0249 is a project described in Rule 5.403(A)(19), and that there are no others.

3. With respect to the AHS project in docket 8454, the issue of estoppel may be interesting, after all, the Commission held that the Chelsea Solar project satisfied all the requirements for a CPG but only denied the CPG based upon a then newly announced single plant rule. If estoppel is at play then the CPG for Chelsea Solar in case 23-0249 should be summarily

granted now that the Commission denied the extension of the AHS standard offer contract. Counsel to Chelsea Solar will review the estoppel issue for that proceeding and make the appropriate motion for summary judgment.

4. As for the AHS project itself in this docket, the petition itself describes the differences that would be material from the prior one such as, for example, the smaller footprint, the removal of what the Commission referred to as a “black box,” and the growth in existing vegetation.

5. Some of the players have also changed. For example, the closest neighbor to the project has filed written support for the projects. So too have other neighbors. And those neighbors spoke out in support of the project before the Town’s planning commission. In fact, more than twice the number of people spoke out in favor of the Project than against it.

6. There are other differences as well, including, *inter alia*, that there is no Bennington Town Plan in effect. Thanks to the doggedness of two honest Bennington Select Board members and a number of whistleblowers, AHS has become aware that the Bennington Town Plan expired under 24 V.S.A. §4387 on October 6, 2023, eight years after its adoption. What has ensued is a multi-faceted conspiracy to cover up that fact for a variety of reasons, including reasons related to the AHS and Chelsea Solar projects. The still active cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect. The expiration of the Town Plan also resulted, *inter alia*, in the loss of the Downtown Designation and the Town’s Bolio Amendment being *void ab initio*.

7. The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A §2002 and 32 V.S.A §631(a)(9). The dramatic scope of the cover up is not surprising considering that since the expiration of the Town Plan in 2023, the Town has applied for and/or received millions of dollars in state and federal funds through grants and tax benefits as well as other types

of benefits from various programs that specifically require that a duly adopted municipal town plan be in place. The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.

8. AHS's parent Allco Finance Limited is finalizing a complaint to be filed in Federal District Court against the Town of Bennington, its Select Board members (other than the aforementioned), the town planner and town manager involving their conspiracy to cover-up the fact that the Town Plan expired on October 6, 2023, as well as other claims, such as breach of contract (i.e., the settlement agreement between AHS and the Town), violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c)), injunctive and declaratory relief, and violations of civil rights. The complaint will also set the record straight on why the Mount Anthony Country Club (who the Town was and may still be working with) withdrew as an intervenor in the Chelsea Solar case.

Dated: January 10, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC

By: /s/ Thomas Melone

Thomas Melone

Apple Hill Solar LLC

157 Church Street, 19th Floor

New Haven, CT 06510

Thomas.Melone@AllcoUS.com

212-681-1120

EXHIBIT 2

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC, pursuant)
to 30 V.S.A. § 248, for a certificate of public)
good authorizing the installation and)
operation of the “Apple Hill Solar Project,”)
a 2.0 MW solar electric generation facility)
located off Willow Road in Bennington,)
Vermont)

Docket No. 24-3517-PET

**PETITIONER’S RESPONSE TO THE TOWN OF BENNINGTON’S
MOTION TO STRIKE**

On January 15, 2025, the Attorney Merrill Bent, purportedly on behalf of the Town of Bennington (“Town”), filed a Motion to Strike (the “Motion”) the Petitioner’s January 10, 2025, and January 12, 2025 comments, that were filed by Petitioner in response to the State of Vermont’s Motion to Stay and Initial Comments filed by Attorney Merrill Bent, purportedly on behalf of the Town of Bennington. Attorney Bent posits that the filings should be stricken because purportedly they involve “ad hominem attacks on members of the public who are not involved in this docket, town officials, and elected officials (who serve their community as volunteers) [and] were neither responsive nor relevant to the matters raised before the PUC.” Motion at 1. Both assertions by Attorney Bent, as explained below, are false.

Attorney Bent further alleges that the filings were made for “an improper purpose in violation of Commission Rule 2.203(C),” without any evidentiary basis or even explaining what the “improper purpose” allegedly is. Motion at 1. That claim by Attorney Bent is false *too*. Then while conceding that the Petitioner’s filings *are* “responsive to the issues raised by the other parties,” Attorney Bent doesn’t want to do any work now to respond to them. As per usual, the motion is short on facts and short on the law.

A. Attorney Bent Is Not Authorized To Speak On Behalf Of The Town of Bennington.

1. Attorney Bent’s Purported Representation And Filings Violate The Vermont Open Meeting Law.

Attorney Bent states that she is acting on behalf of the Town of Bennington in this case. But there was no *public meeting* held by the Select Board that authorized Attorney Bent to file

anything in this case, nor act on behalf of the Town opposing the AHS project. The Town has held a single meeting regarding the Project in this case, at which more than twice the number of people spoke out in favor of the Project than against it.

1 V.S.A. § 312 provides:

Right to attend meetings of public agencies

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. **No resolution, rule, regulation, appointment, or formal action shall be considered binding** except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title.

[Emphasis added.]

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting.

Attorney Bent could only be appointed to act on behalf of the Town in this case after a duly noticed open meeting of the Select Board with her appointment being a duly noticed agenda item. *No such meeting occurred.* Nor did the Planning Commission hold any meeting listing as an agenda item the appointment of Merrill Bent. No duly noticed meeting was held by any public body in Bennington authorizing Merrill Bent to intervene on behalf of the Town.

Likewise, because Attorney Bent's filings in this case have taken definite positions *in opposition* to the Project, those too need to be authorized by the Select Board after a duly noticed open meeting of the Select Board with the AHS project being duly noticed agenda item. *No such meeting occurred.* Because properly noticed meetings never occurred, the public and taxpayers in Bennington were denied their rights to speak under the Open Meeting Law and under the First Amendment. While the landowner for the Project intends to file suit against the Town for violating the Open Meeting Law, for purposes of this case, Attorney Bent's motion to strike should be summarily denied and rejected unless Attorney Bent provides documentary evidence that was the

product of compliance with Vermont's Open Meetings Law that she is authorized to make filings on behalf of the Town and take positions in opposition to the AHS project.¹

2. Attorney Bent's Representation Would Violate The Vermont And New York Rules of Professional Conduct.

Similarly, even if Attorney Bent's filings were properly authorized by the Select Board (which they were not), Attorney Bent's representation would be a violation of multiple rules of the Vermont and New York attorney rules of professional conduct. Attorney Bent is admitted to practice in Vermont and New York, and as such is bound by both sets of rules.

i. Merrill Bent's Purported Representation Of The Town Violates Rule 3.7.

First, unless the Town stipulates that the Town Plan expired on October 6, 2023, Merrill Bent is a key witness and as such is disqualified from representing the Town under Vermont Rules of Professional Conduct 3.7 states:

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

And Rule 3.7 of the New York Rules of Professional Conduct which states:

(a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless:

- (1) the testimony relates solely to an uncontested issue;
- (2) the testimony relates solely to the nature and value of legal services rendered in the matter;
- (3) disqualification of the lawyer would work substantial hardship on the client;
- (4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or
- (5) the testimony is authorized by the tribunal.

(b) A lawyer may not act as advocate before a tribunal in a matter if:

- (1) another lawyer in the lawyer's firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or
- (2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

¹ The Town's purported intervention and filings in this case also constitute a breach of a settlement agreement dated September 14, 2018, between AHS and the Town. AHS intends to file a separate lawsuit against the Town making just that claim.

The Town Plan expired on October 6, 2023, but the story that Town Manager Stu Hurd and a majority of the Select Board have been spinning is that the adoption of the Energy Amendment in 2018 is considered a readoption to the entire Town Plan, which is clearly contrary to the *actual* facts and the law.

Nevertheless Mr. Hurd claims that he and the Select Board have a “legal opinion” to that effect presumably from the Town’s only regular attorney Merrill Bent, a prolific opinion writer. See **Exhibit 1** which is an attached email from Hurd stating: “We believe we have sufficient documentation and a legal opinion supporting our position. *It’s not a lie if one believes what one’s saying.*”

Mr. Hurd and a majority of the Select Board seem to also claim as part of their scheme that the Bennington County Regional Commission (“BCRC”) has accepted the Town’s position. But whether the BCRC “accepts” the Town’s position is statutorily irrelevant, which, *inter alia*, has been confirmed by the general counsel to the grant making entity—ACCD. See **Exhibit 2**.

Attorney Merrill Bent can no longer advise the Select Board on issues related to the Town Plan. She has been implicated by Stu Hurd (*see* **Exhibit 1**) and at a minimum would be a key witness which prevents her representing the Select Board. As a result, under both the Vermont and New York Rule of Professional Conduct 3.7, she is prohibited from representing the Select Board.

Mr. Hurd’s and a majority of the Select Board’s claim also is expressly contradicted by the Select Board’s certification attached as **Exhibit 3**, which correctly certifies that the last Town Plan was put in place in 2015. The certification, however, diverges from the facts when it claims that the 2015 Town Plan was still effective in 2024.²

² All grants through the Vermont Community Development Program (the “VCDP”) require that the municipality certify that it has a duly adopted and has a current municipal plan in effect. On August 26, 2024, Select Board members Sarah Perrin, Jeanne Jenkins, Ed Woods, Tom Haley and Jeanne Conner executed a “Resolution for VCDP Grant Application Authority”, and submitted it to the VCDP in connection with the Town’s planning grant for the Shires Housing Merger. The VCDP is a division within the DHCD, which in turn is a division of the Vermont Agency of Commerce and Community Development (the “ACCD”). The VCDP operates the Community Development Block Grant Program (“CDBG”) of the U.S. Department of Housing and Urban

ii. *Merrill Bent's Purported Representation Of The Town Violates Rule 1.7.*

Attorney Merrill Bent can also no longer advise the members of the Select Board for another reason. On January 13, 2025, in a secret executive session meeting held after the scheduling conference in this case, Merrill Bent imposed a gag order on the members of the Select Board, instructing them not say anything about the Town Plan. Right off the bat, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist.

Vermont Rules of Professional Conduct 1.7 states:

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

New York Rule of Professional Conduct Rule 1.7, which is more restrictive than the Vermont rule states:

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

- (1) the representation will involve the lawyer in representing differing interests; or

Development ("HUD"). VCDP provides CDBG grant funds to municipalities throughout Vermont for housing, economic development and other community development projects to benefit primarily low-to-moderate income persons.

(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

There are multiple reasons why Merrill Bent's purported representation of the Town would violate both Vermont and New York Rule 1.7. *First*, as stated above, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist. *Second*, Bent's gag order plainly violates each Select Board member's First Amendment rights. This gag order followed on the heels of action targeted at two specific Select Board members—Clark and Adams. The majority of the Select Board's efforts to quash Select Board member Clark Adams's various Facebook posts (reflected in the minutes of January 2, 2025) are improper and patently unconstitutional. Government efforts to "dictat[e] the subjects about which persons may speak," *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 784-785, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978), or to suppress protected speech are "presumptively unconstitutional," *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 830, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). And that is so regardless of whether the Government carries out the censorship itself or uses a third party "to accomplish what . . . is constitutionally forbidden." *Norwood v. Harrison*, 413 U. S. 455, 465, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973).

Likewise, Merrill Bent issued a written opinion dated September 4, 2024, which targeted Select Board member Nancy White. Nancy White has constantly questioned the issue of the expiration of the Town Plan. Nancy White contacted the State of Vermont directly regarding a specific grant. Merrill Bent, presumably at the urging of the majority of the Select Board issued a

written opinion targeting White, stating that Nancy White’s “outreach [to the State] exceeded the authority of any single member of the Bennington Selectboard.” Bent’s opinion was a patently unconstitutional use of government funds to chill Nancy White’s First Amendment rights. Some would say that Nancy White had a *duty* to follow her conscience and check with the State on the issues which concerned her. Substantively, Nancy White clearly had a valid basis for that contact, and a valid basis to query whether “the proper federal and or state guidelines have not been followed.” Among other things, of course, without a valid Town Plan, applying for the grant was impermissible.

iii. *Merrill Bent’s Purported Representation Of The Town Violates Rule 1.7 and Rule 3.7 Because Of The Violations Of The Open Meeting Law.*

As discussed above, *either* Merrill Bent went rogue and just intervened in the case because of close personal relationships with opponents of the project, *or* the Open Meeting Law was violated. Either way Merrill Bent is a key witness, and would have conflicting representation interest, including concerns regarding herself becoming a defendant as well as a witness. Those direct conflicts prevent Merrill Bent from representing any party in this case.

B. The Filings Did Not Contain *Ad Hominem* Attacks.

Bent conflates *ad hominem* comments with observations of the credibility of certain individuals. Observations on an individual’s credibility that are based upon evidence are not *ad hominem* attacks, and that is the case here. *See, e.g., Hass & Gottlieb v. Sook Hi Lee*, 55 A.D.3d 433, 434, 866 N.Y.S.2d 72 (N.Y. App. Div. 2008) (the “remarks complained of were not *ad hominem* attacks, but observations of defendant’s credibility.”) And Bent opened the door by raising the issue of estoppel.

1. Observations on Maru and David Griffin’s credibility are based upon evidence and are not *ad hominem* attacks.

As shown in AHS filing dated January 12, 2025, the Griffins failed to disclose assets in the bankruptcy case. There were at least two properties in Florida, the sale documents for which were attached to the AHS filings conclusively establishing the Griffins concealment. Hiding assets can also extend the statute of limitations on debt collection.

In AHS's filing it states: "If Leon and Griffin had no problem with defrauding the federal government through the Bankruptcy Court or creditors, the filing false testimony with the Commission would seem like a walk in the park. And that false testimony served the purposes of the core opponents of the projects and was in large part used as the basis for the Commission to deny the CPG in docket 8454." That is not an *ad hominem* attack because it is based upon incontrovertible evidence—the sale documents that bear David Griffin's signature. AHS's "remarks complained of were not *ad hominem* attacks, but observations of [Griffins] credibility.")

And as AHS stated, the Commission denied the CPG in case 8454 based upon the claim repeated by the Griffins and their core group on the basis that purportedly "the whole facility would be prominently visible from the golf course." *Petition of Apple Hill Solar LLC, Order Adopting Proposal For Decision On Remand And Denying Petition*, Docket 8454 (May 7, 2020) at 37. And when the Griffins sought to repeat that made up claim in case 23-0249, the petitioner sought to depose the purported "owners" of the Mount Anthony Country Club—Maru Leon and David Griffin.

Then Leon and Griffin withdrew from case 23-0249 but only after filing a long-winded tirade reciting false reasons why they were withdrawing—those statements too are relevant to, and undercut, their credibility. Then in subsequent filings, both DPS and the Town regurgitated those false premises for why Leon and Griffin purportedly withdrew. And then likewise, the Commission backed the hearing officer's backing the home team by imposing stringent limitations on petitioner's rights to discovery and due process. Those discovery orders have been appealed to the Superior Court, and the Griffins conduct in both the Bankruptcy proceeding and the long-winded tirade are relevant to that appeal and will be an issue there as well. So too will the conduct of the Town discussed in AHS's prior filings and below.

But there's more to the Griffin credibility story. The discharge received in Case 13-10693 was only for David Griffin and Maru Leon in their individual capacities. But the petition shows that many of the debts listed were actually in the name of the corporation, Down to Earth Golf Course Development, Inc. ("DTE"), the business registrant for the Mount Anthony Country Club.

No discharge was issued to the corporation. No discharge was issued either to the Griffin Family Qualified Domestic Trust, which was a clear third-party beneficiary of many of the debts. Thus, those debts appear to still be valid, still accruing interest and not discharged.

2. The Town.

The AHS filings also reference conduct by various Town personnel related to the expiration of the Town Plan—a key factor in the prior AHS case. As noted in AHS’s filings and in the attached **Exhibit 1**, the Town is using Seinfeld’s George Costanza defense. *See, The Rise of the Costanza Defense*, New York Times (May 6, 2016),³ *i.e.*, “*It’s not a lie if one believes what one’s saying.*” As discussed in AHS’s filings and further below, there is plenty of evidence that whistleblowers have provided to AHS that supports the statements regarding Town personnel.

C. The Town’s Motion Is So Vague That It Must Be Summarily Denied.

Pursuant to Commission Rule 2.204(E)(1)(e), the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter. The Town does not indicate which statements in the Responses it feels are “redundant, immaterial, impertinent, or scandalous”. In fact, the Town does not even reference Rule 2.204(E)(1)(e) at all. For that reason alone, the Motion to Strike should be denied.

In typical postcard fashion, the Town’s Motion to Strike summarily requests that the entirety of the Responses be stricken. The Town refuses to allege with specificity which statements it takes issue with because the Town knows that the devil is in the details. If forced to actually do the work and adhere to the confines of Rule 2.204(E)(1)(e), the Town knows it will have no success with respect to a motion to strike as none of the facts contained in the Responses are “redundant, immaterial, impertinent, or scandalous.” So the Town does what it typically does, just phones it in and makes sweeping vague and ambiguous assertions and expects the other parties to do the work. The Town even concedes that some of Petitioner’s allegations are responsive but refuses to identify which ones those are.

³ <https://www.nytimes.com/2016/05/07/business/dealbook/the-rise-of-the-costanza-defense.html>.

Like all motions, a motion to strike must state with particularity the grounds for seeking the order. “[A] *sweeping, indiscriminate motion to strike, without any explanation as to how or why the targeted paragraphs are immaterial or redundant, does not contain the requisite particularity or otherwise clearly show that an order to strike is warranted.*” *Arias-Zeballos v. Tan*, 2006 U.S. Dist. LEXIS 78884, 2006 WL 3075528, slip op. at 10 (S.D.N.Y. 2006)(Emphasis added.) “A motion to strike must state with particularity the grounds therefor and set forth the nature of relief or type of order sought.” *Credit General Ins. Co. v. Midwest Indem. Corp.* 916 F. Supp. 766, 771 (N.D. Ill. 1996) (citing 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1380 (2d ed. 1990)). Typically, unnecessary evidentiary details in a pleading will not be stricken. *Credit General*, 916 F. Supp. 771. In moving to strike matters as irrelevant, a movant must *clearly show that the matter is outside the issues in the case and is prejudicial.* *Id.* (Emphasis added.) *Cumis Ins. Soc’y Inc. v. Peters*, 983 F. Supp. 787, 798 (N.D. Ill. 1997); *Trust Mark Life Ins. Co. v. Univ. of Chicago Hosps.*, 1996 U.S. Dist. LEXIS 1614, No. 94 C 4692, 1996 WL 68009 at *1 (N.D. Ill. Feb. 14, 1996). The Town has not made any specific arguments as to why certain matters are “redundant, immaterial, impertinent, or scandalous”. They have not identified any paragraphs or pages that they take issue with. In fact, the Town’s assertions are so vague and ambiguous it is difficult for AHS to even respond to the Motion. Notwithstanding, AHS will assume that Bent is referring to matters relating to (i) the Town Plan expiration and the Town’s active conspiracy to cover up the expiration and (ii) the Griffins a/k/a Mount Anthony Country Club. The Griffins have been discussed above.

D. Bent’s Raising Estoppel Opened The Door To AHS’s Statements.

By raising the issue of estoppel Bent has introduced multiple issues on which the AHS’s filings regarding the Griffins and the Town Plan are directly relevant. See, Trepanier v. Getting Organized, 155 Vt. 259, 265-266 (1990). *For one*, the issue must be the same as the one raised in the later action, and, here, the expiration of the Town Plan and the Town’s actions related thereto means the issue *is different*. *Second*, there was not a full and fair opportunity to litigate the issue in the earlier action because, among other things, the PUC excluded relevant evidence, the PUC

decision was based upon evidence not in the record, and the conclusions regarding the Mount Anthony Country Club were not based upon credible evidence. *Third*, applying preclusion in the later action would not be fair. *Trepanier v. Getting Organized*, 155 Vt. 259, 265-266 (1990).

Regardless, even if Bent could meet the base requirements for preclusion (which she cannot), there are many exceptions to preclusion applicable here to which the AHS filings are directly relevant.

Exception 1. *Restatement (Second) of Judgments* §28(2)(b).⁴ Preclusion is not applicable if: the “issue is one of law and [] a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the law.” This exception applies here because, as argued above, the Town Plan has expired and to apply preclusion would surely be inequitable.

Exception 2. *Restatement (Second) of Judgments* §28(3). “A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts.” This exception applies here because, as argued above, the PUC excluded relevant evidence and based its decision on non-credible evidence and evidence not in the record.

Exception 3. *Restatement (Second) of Judgments* §28(5). “There is a clear and convincing need for a new determination of the issue.” This criterion is easily met for all the reasons set forth herein and in AHS’s other filings that Bent seeks to strike.

Exception 4. AHS is entitled to attack the earlier decision when and if other parties assert preclusion. *See, Restatement (Second) of Judgments*, §80 (“When a judgment is relied upon as the basis of a claim or defense in a subsequent action, relief from the judgment may be obtained.”)

The credibility of the Griffins and the Mount Anthony Country Club testimony, and the Town’s actions regarding the Town Plan are clearly relevant to the estoppel issue raised by Bent.

⁴ *See, Trepanier*, 155 Vt. at 265 for the Vermont Supreme Court’s endorsement of the *Restatement (Second) of Judgments* §28.

1. The Town Plan Expiration

The expiration of the Town Plan is relevant because both the Town and DPS raised the issue of estoppel. The project in Case 8454 was denied because it purportedly violated certain provisions of the Town Plan, specifically related to the Rural Conservation District. Now those provisions of the Town Plan no longer apply because there is no Town Plan as the Town Plan expired on October 6, 2023.

The Town bears the burden of establishing the elements of preclusion. *Greenberg v. Bd. of Governors of Fed. Reserve Sys.*, 968 F.2d 164, 170 (2d Cir. 1992).

Pursuant to 24 V.S.A. §4387, the 2015 Bennington Town Plan was set to expire on October 6, 2023. The town plan adoption process is laid out in 24 V.S.A. §4302, and §§4381-4387 and is formidable (due to an intervening change in the requirements of the statute) and will often take years to accomplish. Section 4387(b)(1)(A) mandates that the planning commission “engage in community outreach and involvement in updating the plan”. As the time to begin the process to head off an October 6, 2023, expiration date of the 2015 Town Plan was fast approaching, the Town was actively involved in litigation with Allco and affiliates over the proposed Chelsea Solar project and the AHS project.

Fearing that Allco would insert itself into the now more onerous planning process with respect to any newly proposed Town Plan, certain Select Board and Planning Commission members (together with the town manager and town planner) hatched a scheme to buy more time, hoping that Allco would have given up by the extended schedule.

The way in which the Town attempted to do that was to claim that the 2015 Town Plan had actually been *re-adopted* in 2018 when the Town passed the Energy Amendment, such that the Town Plan would not expire in 2023 but in 2026. The obvious issue with that scheme (besides getting caught) is that the town plan adoption process in 24 V.S.A. §4302, and §§4381-4387 cannot be circumvented and nothing that was required of the Town to *re-adopt* the Town Plan was actually accomplished in 2018.

Among other things, 24 V.S.A. §4387(a) requires that re-adoption take place in accordance with 24 V.S.A. §4385 which requires public notice and two hearings as a condition precedent to duly adopting a new town plan or re-adopting an old one. The Planning Commission never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Planning Commission never voted on a re-adoption of the Town Plan. The Select Board never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Select Board never voted on a re-adoption of the Town Plan. And, of course, the requirement under §4387(b)(1)(A) that the planning commission “engage in community outreach and involvement in updating the plan” was never done because that is exactly what the players were seeking to avoid when they came up with the lie regarding the Town Plan. All that was ever done by the Town of Bennington on January 22, 2018, was pass an amendment to the Town Plan (i.e., the Energy Amendment), which was a process that was hijacked by the core opponents of the Chelsea and AHS projects.

Moreover, 24 V.S.A. §4387(b) requires the Planning Commission to take the following actions if it were adopting a Town Plan (none of which occurred):

- (A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;
- (B) engage in community outreach and involvement in updating the plan;
- (C) consider consistency with the goals established in section 4302 of this title;
- (D) address the required plan elements under section 4382 of this title;
- (E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;
- (F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and
- (G) establish a program and schedule for implementing the plan.

No matter what the Energy Amendment might say, all that was accomplished by the Select Board was an adoption of the *Energy Amendment*.

And documentation provided by whistleblowers proves beyond a shadow of a doubt that the 2018 exercise of adopting the *Energy Amendment* was an *amendment only* and not a *readoption*.

Dated: January 29, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC

By: /s/ Thomas Melone

Thomas Melone

Apple Hill Solar LLC

157 Church Street, 19th Floor

New Haven, CT 06510

Thomas.Melone@AllcoUS.com

212-681-1120

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

EXHIBIT 1

----- Forwarded message -----

From: **Stuart Hurd** <shurd@benningtonvt.org>

Date: Tue, Oct 15, 2024 at 4:44 AM

Subject: RE: Town Website

To: Joey Kulkin <jkulkin71@gmail.com>, Ned <edwardnperkins@gmail.com>

We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying. We're moving on. Enjoy the day.

Stuart A. Hurd

Town Manager

Town of Bennington

205 South Street

PO Box 469

shurd@benningtonvt.org

From: Joey Kulkin <jkulkin71@gmail.com>

Sent: Monday, October 14, 2024 7:02 PM

To: Stuart Hurd <shurd@benningtonvt.org>; Ned <edwardnperkins@gmail.com>

Subject: Re: Town Website

*** This email originated outside your organization. ***

Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Stu, you just lied to the public again about the town plan which expired on 10/6/23.

This time you said the town plan is valid in the eyes of the state.

Please produce communications from the state confirming what you just said. Because it's a lie.

We've got the documents.

You don't.

Thanks!

On Fri, Oct 11, 2024 at 3:22 PM Joey Kulkin <jkulkin71@gmail.com> wrote:

Hi, Stu, someone from your staff replaced the cover page on the state database in recent days but it's still based on a lie.

QUESTIONS:

- On what day did a member of your staff upload the ACCD database with this new cover page?
- Who uploaded it?
- Who authorized this person to make the change?

REQUEST:

EXHIBIT 2

From: "Krieger, Maxwell" <Maxwell.Krieger@vermont.gov>
Date: October 18, 2024 at 4:27:43 PM EDT
To: Ned Perkins <EdwardNPerkins@gmail.com>
Subject: RE: Freedom of Information Act - Public Records Request

Ned,

As a strict caveat, the Department, nor I can offer you legal advice or interpretation of statute. If you are seeking a legal opinion you will need to consult a private attorney.

The most relevant statute is Vermont Title 24, Chapter 117.

From the Department's perspective, the short answer to your question is no. The RPC can provide technical assistance through the municipal planning process, and the RPC must ultimately receive and review the plan for conformance with the requirements of the planning statute and regional planning goals, but the municipality itself must adopt the municipal plan.

Thank you,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

acd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>

Sent: Friday, October 18, 2024 4:17 PM

To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>

Subject: RE: Freedom of Information Act - Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Max,

One more question for you –

Do the statutes authorize a Regional Planning Commission to adopt a Municipal Town Plan on the Municipality's behalf?

Thanks for your help,

Ned

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

From: Krieger, Maxwell [<mailto:Maxwell.Krieger@vermont.gov>]
Sent: Tuesday, October 15, 2024 9:16 AM
To: Ned Perkins
Subject: RE: Freedom of Information Act - Public Records Request

Mr. Perkins,

The Agency is not statutorily tasked with reviewing or approving the content of the plans and bylaws submitted to the database. The Agency is solely tasked with maintaining the database with the submissions from the municipalities and regional planning commissions. The Agency relies upon the submissions and representations of the municipalities and regional planning commissions with regard to evaluating the status of bylaws or plans.

If you have specific questions about the status of a municipal plan or bylaw, the municipality itself and/or the regional planning commission would be the best resources for more information.

Thank you,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>

Sent: Tuesday, October 15, 2024 9:10 AM

To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>

Subject: RE: Freedom of Information Act - Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good Morning Max,

Thank you for getting back to me. I have a quick follow-up question-

Does the Agency of Housing and Community Development formally review and/or approve submissions of Town Plans or Town Plan Amendments from individual towns to the agency?

If so, please supply copies of all documents regarding the review of the Town of Bennington's January 22, 2018 Amended Bennington Town Plan.

Thanks again,

Ned

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

From: Krieger, Maxwell [<mailto:Maxwell.Krieger@vermont.gov>]
Sent: Monday, October 14, 2024 10:51 AM
To: Ned Perkins
Subject: RE: Freedom of Information Act - Public Records Request

Mr. Perkins,

Attached, please find the documents submitted to the Department in 2018. At that time, the documents were sent directly via email to the DHCD Staff Person administering the database, who then uploaded them. The Commissioner did not receive the documents directly.

This concludes the Department's response,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>
Sent: Tuesday, October 8, 2024 5:12 PM
To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>
Subject: Freedom of Information Act - Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Max,

Please supply a copy of the letter and all accompanying documents sent by the Town of Bennington to the Vermont Commissioner of Housing and Community Development conveying the January 22, 2018 Amended Bennington Town Plan, per VSA 4385 which states:

“Copies of newly adopted plans and amendments shall be provided to the regional planning commission and to the Commissioner of Housing and Community Development within 30 days after adoption.”

Thanks,

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)



Virus-free www.avg.com

EXHIBIT 3

VERMONT COMMUNITY DEVELOPMENT PROGRAM RESOLUTION FOR
Grant Application

SINGLE APPLICANT

RESOLUTION FOR VCDP GRANT APPLICATION AUTHORITY

Single Applicant

WHEREAS, the Town _____ of Bennington _____ (hereinafter "Applicant") is applying for a Grant under the Vermont Community Development Program VCDP planning grant (PG) for Shires Housing merger _____; and WHEREAS, it is necessary that an application be made and agreements be entered into with the State of Vermont.

Now, THEREFORE, BE IT RESOLVED as follows:

1. that Applicant possesses the legal authority as defined in the State Act [10 VSA §683(8)] to apply for the grant and to administer the program; and
2. that Applicant apply for a grant under the terms and conditions of said program and agree hereby to enter into Certifications and Assurances there of; and
3. the Applicant has a duly adopted and current Municipal Plan from October 6, 2015 (Date Adopted) and that the project is consistent with said plan; and
4. the Applicant has received documentation from the Regional Planning Commission that the project is consistent with the "Regional Plan; and
5. that Shannon Barsotti _____ is hereby authorized to be Contact Person and as such to provide, on behalf of Applicant, all documents and information necessary for the completion of said application and to provide such coordination as may be necessary for said application; and
6. that (Name) Stuart Hurd _____ Title Bennington Town Manager _____ who is either the Chief Executive Officer (CEO), as defined by 10 VSA §683(8), or is the Town Manager, the City Manager, or the Town Administrator, is hereby designated to serve as the Municipal Authorizing Official (MAO) for the Grants Management On-line System, Intelligrants; and
7. that it is understood that, if the application is funded, the receipt of CDBG funds, as federal funds passed through the State of Vermont, may require that an audit of the Applicant be conducted under the provisions of the Single Audit Act, as amended, and that CDBG funds may be used to fund only a limited portion of the audit cost.

Passed this 26 day of August, 2024.

LEGISLATIVE BODY

The above resolution is a true and correct copy of the resolution as adopted at a meeting of the Legislative Body held on the 26 day of August, 2024, and duly filed in my office.

IN WITNESS WHEREOF, I hereunto set my hand this 26 day of August, 2024.

 Clerk

 Signature

EXHIBIT 3

STATE OF VERMONT
PROFESSIONAL RESPONSIBILTY PROGRAM

In re: Thomas Melone
PRB File No. 120-2025

TOWN OF BENNINGTON'S OBJECTION TO SUBPOENAS TO
DANIEL MONKS, SHANNON BARSOTTI, JEANETTE JENKINS,
AND JAMES SULLIVAN

Pursuant to V.R.C.P. 45(c)(2)(B), the Town of Bennington files and serves this objection to subpoenas duces tecum issued by Attorney Thomas Melone to two town employees (Town Manager Daniel Monks and Community Development Director Shannon Barsotti), a member of the Bennington Selectboard (James Sullivan), and a former member of the Bennington Selectboard (Jeanette Jenkins) (collectively, "Bennington Recipients"). The Town objects on behalf of the Bennington Recipients because the documents sought in the request belong to the Town, not to its individual employees and board members. Further, the requests also implicate claims of privilege which also belong to the Town, not to individual employees and board members. Accordingly, the Town has standing to object to the subpoenas on behalf of the Bennington Recipients. The Bennington Recipients each object in their individual capacity as well.

The subpoenas impose an undue burden on the Bennington Recipients, and also seek material subject to a claim of privilege. Although Rules 45 and 26 allow for broad discovery in matters, limits do exist. Rule 45 requires that "[a] party or an attorney responsible for issuance and service of a subpoena shall take reasonable

steps to avoid imposing undue burden or expense on a person subject to that subpoena.” V.R.C.P. 45(c)(1). The Rule commands that a court quash or modify a subpoena if it “subjects a person to undue burden.” V.R.C.P. 45(c)(3)(A)(iv). In short, a court must quash or modify a subpoena that imposes an undue burden on the recipient.

Subpoenas issued under Rule 45 cannot exceed the permissible scope of discovery set forth in Rule 26, which permits parties discovery upon “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” V.R.C.P. 26(b)(1). “[R]equested information is not relevant to . . . the pending action if the inquiry is based on the party’s mere suspicion or speculation.” *Micro Motion, Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) (“The discovery rules are designed to assist a party to prove a claim it reasonably believes to be viable *without discovery*, not to find out if it has any basis for a claim.”) (emphasis in original).

Additionally, where a subpoena “sweepingly pursues material with little apparent or likely relevance to the subject matter,” it risks being found “overbroad and unreasonable.” *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 51 (S.D.N.Y. 1996). A subpoena that is overbroad on its face and which exceeds the

bounds of fair discovery “falls with Rule 45(c)(3)(A)’s prohibition on subpoenas that subject a witness to ‘undue burden.’” *Id.* In other words, when a subpoena is overly broad on its face, that alone justifies quashing it.

“An evaluation of undue burden requires [a] court to weigh the burden to the subpoenaed party against the value of the information to the serving party.” *Travelers Indem. Co. v. Metro Life Ins. Co.*, 228 F.R.D. 111, 113 (D. Conn. 2005). “Whether a subpoena imposes an ‘undue burden’ depends upon ‘such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.” *Id.* quoting *United States v. Int’l Bus. Mach. Corp.*, 83 F.R.D. 97, 104 (S.D.N.Y. 1979). “[C]ourts give *special weight* to the burden on *non-parties* of producing documents to parties involved in litigation.” *Id.* (emphasis added); see also *Tucker v. American Intern. Group, Inc.*, 281 F.R.D. 85, 92 (D. Conn. 2012) (in balancing burden against need, “courts have considered the fact that discovery is being sought *from a third or non-party*, which weighs against permitting discovery”); *Rossmann v. EN Engineering, LLC*, 467 F. Supp. 3d 586, 590 (N.D. Ill. 2020) (“[C]ourts have consistently held that ‘non-party status is a significant factor to be considered in determining whether the burden imposed by subpoena is undue”).

The subpoenas issued to the Bennington Recipients each contain the same request for documents, directing that the recipient produce

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.¹

In addition to the above-referenced request, the subpoena issued to Mr.

Monks also seeks:

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.

With regard to the request for information relating to the Town Plan, the subpoena is unreasonably broad, and premised on speculation. There is no good faith dispute of fact in the above-captioned proceeding that would require the Town or its employees, non-parties, to respond to the burdensome, sweeping request. The Misconduct Petition alleges that Mr. Melone accused members of the Town of Bennington of a “cover-up conspiracy,” and of committing acts of “forgery” and

¹ The subpoena served on Ms. Barsotti did not include the request for materials relating to the Town Plan.

“counterfeiting,” as well as of filing “false certifications to the state and federal government in violation of criminal statutes,” and “false statements with the [Public Utility Commission].” Compl. ¶¶ 62–64, 115.² The Complaint further alleges that Mr. Melone “never filed a complaint alleging ‘RICO’ violations by the Town of Bennington in any court,” which Mr. Melone admits. Compl. ¶ 64; Answer, ¶ 64. The Complaint alleges that Mr. Melone’s statements to the PUC alleging criminal misconduct relating to the Bennington Town Plan violated Rules of Professional Conduct 3.5(d), 4.3, 4.5, and 8.4(d).

Documents and communications relating to the readoption of the Bennington Town Plan and/or information relating to grants or Coronavirus Relief Act funding will not shed any light on whether Mr. Melone made the statements at issue (which is not in dispute), or on whether his conduct violates the Rules of Professional Conduct. The allegations of misconduct arise from the forum and manner in which Mr. Melone made the statements. Further, Mr. Melone’s subpoenas issued to the Bennington Recipients reveal that he does not and did not have factual support for serious accusations of criminal conduct when he made them to the PUC. He now seeks sweeping discovery from a non-party in hopes that some post-hoc rationalization for his assertions will emerge. Mr. Melone has never articulated a

² There is no legitimate dispute that Mr. Melone made the allegations attributed to him—they were publicly filed with the Vermont Public Utility Commission bearing his signature. Mr. Melone acknowledges that he made the filing in which the assertions appeared (though he inexplicably denies the statements attributed to him even though they are direct quotations from that filing with the immaterial exception that there should have been brackets around “criminal statutes”).

good-faith basis for his claims of a vast criminal conspiracy; rather, he has only made conclusory assertions without any factual support. Even if, arguendo, the Town of Bennington had failed to satisfy all of the procedural requirements of a re-adoption of its Town Plan in 2018, Mr. Melone has never even alluded to any support for reaching the conclusion that public servants are engaging in a vast criminal conspiracy (let alone one that would provide no personal benefit to any of them, nor any benefit to the Town).

The burden on the Bennington Recipients is unquestionable. Mr. Monks and Ms. Barsotti are public servants who work hard every day to keep governmental operations running smoothly in the Town of Bennington. They both already have plenty to do in that regard. Ms. Jenkins and Mr. Sullivan are both members (one current, one former) of the Town Selectboard, giving of their time in public service on a volunteer basis. As a former Selectboard member, Ms. Jenkins does not even have access to the material sought anymore. The Town estimates that, given the number of emails that concern the Town Plan, grants from the Vermont Agency of Commerce and Community Development, and Coronavirus State and Local Fiscal Recovery Funds, responding to the subpoenas would take approximately 50-100 hours of staff time. The Town would also have to engage its attorney to review for claims of privilege.

With regard to Mr. Melone request for documents relating to Attorney Bent's representation of the Town of Bennington in various dockets, the Petition alleges that Mr. Melone alleged that "[A]ttorney Bent's representation [of the Town of

Bennington] would be a violation of multiple rules of the Vermont and New York Rules of Professional Conduct.” Compl. ¶ 65. The Complaint alleges that Mr. Melone never filed a professional responsibility complaint against Attorney Bent for alleged misconduct, which Mr. Melone also admits (nor did he file a motion to disqualify Attorney Bent). Compl. ¶ 102; Answer, ¶ 102. The Complaint alleges that Mr. Melone’s statements relating to Attorney Bent violated Rules of Professional Conduct 3.3(a)(1), 4.4(a), and 8.4(d).

In his request, Mr. Melone seeks documents that are subject to claims of attorney-client privilege. Attorney Bent’s law firm, Woolmington, Campbell, Bent & Stasny, P.C. provides general legal services to the Town, and is listed as the Town’s law firm year after year as an exception to the Town’s Purchasing Policy (see, e.g., 2024 Exceptions to Purchasing Policy, Ex. A hereto (stating that Woolmington, Campbell, Bent & Stasny, P.C. “Provides legal services for all departments not covered by our Property and Casualty”)). The Town’s instructions to its attorney to enter an appearance in a particular matter are privileged communications not subject to any exception.

The subpoenas will subject the Bennington Recipients to an undue burden, and they also plainly seek the production of privileged material with respect to which no exception or waiver applies. The Town and the Bennington Recipients, therefore object to the subpoenas pursuant to V.R.C.P. 45(c)(2)(B).

Dated this 11th day of December 2025.

TOWN OF BENNINGTON, by

/s/ John D. Stasny

John D. Stasny, Esq.

Woolmington, Campbell, Bent & Stasny, P.C.

4900 Main Street, PO Box 2748

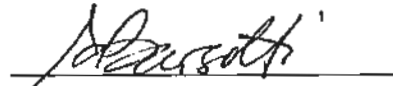
Manchester Ctr., VT 05255

(802) 362-2560

john@greenmtlaw.com



Daniel Monks



Shannon Barsotti

James Sullivan

Jeanette Jenkins

Dated this ____ day of December 2025.

TOWN OF BENNINGTON, by

/s/ John D. Stasny

John D. Stasny, Esq.

Woolmington, Campbell, Bent & Stasny, P.C.

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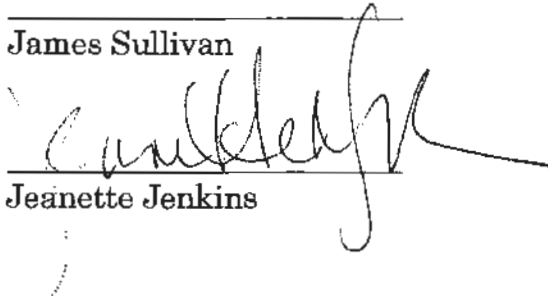
(802) 362-2560

john@greenmtlaw.com

Daniel Monks

Shannon Barsotti

James Sullivan



Jeanette Jenkins

Dated this ____ day of December 2025.

TOWN OF BENNINGTON, by

/s/ John D. Stasny

John D. Stasny, Esq.

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James Sullivan

Jeanette Jenkins

EXHIBIT 4

in I'm looking for...

- Home
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- Notifications
- Me
- For Business
- Recruiter



Carolyn Anderson · 3rd

Chief Compliance Officer and Associate General Counsel at Green Mountain Power Corporation

Rutland, Vermont, United States [Contact info](#)

132 connections

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- [View in Recruiter](#)
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Activity

133 followers

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Carolyn Anderson commented on a post · 1mo
Congratulations. We're so proud of you!

Carolyn Anderson commented on a post · 1mo
Congratulations Joey!

Carolyn Anderson commented on a post · 4mo
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Experience

Associate General Counsel
Green Mountain Power Corporation
2016 - Present · 10 yrs 2 mos

Recommendations

Received [Given](#)

Nothing to see for now

Recommendations that Carolyn receives will appear here.

Interests

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39,859,973 followers

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Technology Futurist, Keynote Speaker, AI Strategist, Disruptive Innovation Expert, NYT Bestselling Author, Polymath, Serial Entrepreneur
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Partner, K Street Consulting

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Anthony Tavormina · 3rd
Partner at Trif & Modugno

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People you may know

From Carolyn's industry

John Veech · 2nd
Chief Executive Officer at Sustainability Partners

[Connect](#)

Anthony Pedroni · 2nd
National Vice President Development at NextEra Energy Resources

[Connect](#)

Michael Goggin · 2nd
Vice President at Grid Strategies

[Connect](#)

Nate Sandvig · 2nd
Energy Infrastructure & Strategy

[Connect](#)

Greer Mendelow · 3rd
Deputy General Counsel, Mergers & Acquisitions at Duke Energy ...

[Message](#)

EXHIBIT 5

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
File No. 25-120

CONFIDENTIAL

MOTION FOR FINDING OF PROBABLE CAUSE

Pursuant to Administrative Order 9, Rule 11(c), Michael F. Hanley, Conflict Disciplinary Counsel, moves for a finding of probable cause in connection with a *Petition of Misconduct* against Thomas Melone.

In the *Petition of Misconduct*,¹ Conflict Disciplinary Counsel alleges that Thomas Melone, an attorney licensed to practice law in Vermont, engaged in misconduct in connection with his efforts to develop solar-electric energy generation facilities in Bennington and in the manner in which he responded when a confidential complaint regarding him was filed with the Professional Responsibility Program.

In brief, the *Petition* alleges that Thomas Melone:

1. Violated Rules 3.1, 3.5(d), 4.5 and 8.4(d) by falsely asserting in the Public Utility Commission that the Town of Bennington, an opponent of Mr. Melone's efforts to develop solar-electric generation facilities in Bennington, was engaged in a "cover-up conspiracy," committed acts of "forgery" and "counterfeiting," "filed "false certifications to the state and federal government in violation of criminal statutes," and filed "false statements with the [Public Utility] Commission" and claimed that the Town and its officials and employees were liable to him or his

¹ The proposed *Petition of Misconduct* is marked as Exhibit 1 and attached.

- business organizations for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c);
2. Violated Rules 4.5 and 8.4(d) on November 11, 2024 by threatening to disclose purported criminal conduct by two other opponents of his projects if they did not change their position and support his efforts to develop solar electric generation facilities in Bennington;
 3. Violated Rules 3.3(a)(1), 3.5(d) and 8.4(d) by commencing site preparation at a proposed solar-electric generation facility site in Bennington in June 2020 without a Certificate of Public Good and by giving “not credible testimony regarding that site preparation in proceedings in the Public Utility Commission, all as set forth in In Re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 2024 Vt. 58, an August 30, 2024 decision of the Vermont Supreme Court;
 4. Violated Rule 3.5(b)(1) and 8.4(d) on March 24, 2025 by sending an ex parte communication to the Chair of the Public Utility Commission;
 5. Violated Rules 3.1, 3.3(a)(1), 4.4(a) and 8.4(d) starting on February 5, 2025 by bringing legal proceedings in the Environmental Division when there was no basis in law to assert that the Environmental Division had subject matter jurisdiction and by using means and methods that had no substantial purpose other than to delay or burden a third person, a developer of a proposed project important to the Town of Bennington, in an effort to force the Town of Bennington to support Mr. Melone’s efforts to obtain a necessary for Certificate of Public Good in connection with his proposed solar-electric generation facilities;

6. Violated Rules 3.3(a)(1), 4.4(a) and 8.4(d) on April 23, 2025 by accusing a lawyer who made a confidential complaint regarding him to the Professional Responsibility Program of mistreating an employee of her law firm, by threatening to sue the Complainant for defamation and at least one other tort and by falsely accusing her of violating the Rules of Professional Conduct;
7. Violated Rule 4.2 and 8.4(d) starting on April 23, 2025 by engaging in direct communications with the Complainant's client, disclosing her confidential complaint to the client, and threatening to sue the client because of the lawyer's complaint; and
8. Violating Rule 8.4(d) by persistently and deliberately violating the Rules of Professional Conduct between June 2020 and at least April 23, 2025 in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court and the Vermont Supreme Court.

Dated: August 18, 2025

/s/Michael F. Hanley

Michael F. Hanley
Conflict Disciplinary Counsel
Plante & Hanley, P.C.
Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

EXHIBIT 1

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Michael Melone
PRB File No. 25-119

PETITION OF MISCONDUCT
Administrative Order 9, Rule 11(D)(1)(b)

The Petition follows a finding of probable cause on _____.

NOTICE TO RESPONDENT: This is a formal *Petition of Misconduct*. Pursuant to Administrative Order 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State Street, Montpelier, VT 05609, with a copy to Conflict Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

The Facts

Thomas Melone and his Various Business Organizations

1. Thomas Melone is a lawyer.
2. Thomas Melone has been a lawyer for more than 40 years.
3. Thomas Melone is licensed to practice law in Vermont.
4. Thomas Melone is also licensed to practice law in California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut.
5. Thomas Melone is the sole owner of at least 85 business organizations.
6. Many, or most, of Thomas Melone's business organizations are involved in some manner in renewable energy.
7. Business organizations owned by Thomas Melone are organized under the laws of, at least, Vermont, Connecticut, Indiana, Massachusetts, Minnesota and Delaware.

8. Thomas Melone is the sole owner of PLH Vineyard Sky, LLC (“PLH”), a Florida business organization.
9. Thomas Melone is the sole owner of Vineyard Sky Allco, Ltd. (“Vineyard Sky”), a Florida business organization.
10. Vineyard Sky is the sole owner of Allco Finance, Ltd. (“Allco”), a Florida business organization.
11. Allco is the sole owner of Apple Hill Solar, LLC (“Apple Hill”), a Vermont business organization.
12. Allco is the sole owner of Chelsea Solar, LLC (“Chelsea”), a Vermont business organization.
13. Thomas Melone controls and manages PLH, Vineyard Sky, Allco, Apple Hill and Chelsea.

**Thomas Melone’s Efforts to Develop
Two Solar-Electric Generation Facilities In Bennington**

14. For more than a decade, Thomas Melone, PLH, Vineyard Sky, Allco, Apple Hill and Chelsea have been involved in efforts to develop solar-electric energy generation facilities on adjacent parcels on Willow Road (Chelsea) and Apple Hill Road (Apple Hill) in Bennington.
15. In 2013 and 2014, Apple Hill and Chelsea entered into two Standard Offer Contracts.
16. Standard Offer Contracts exist pursuant to 30 V.S.A. § 8005(a) apart of Vermont’s Sustainably Priced Energy Enterprise Development (SPEED) Program. 30 V.S.A. §§ 8001, 8005, 8005a.

17. The Vermont Legislature created the SPEED Program to promote the rapid deployment of small renewable generation. 30 V.S.A. § 8005(a).
18. Under the SPEED Program, Vermont distribution utilities, the companies that own and maintain the wires, poles and transformers that deliver electricity from the transmission grid to homes and businesses, must buy renewable power from an eligible renewable electric energy generator at a specified price for a specified period of time.
19. To be eligible for the SPEED program, a project's proposed "plant capacity" cannot exceed 2.2 megawatts. 30 V.S.A. § 8005a(b).
20. The 2.2 megawatt limits serves the Legislature's goal of providing support and incentives for renewable energy plants of small and moderate size distributed across the state's electric grid. 3 V.S.A. § 8001(a)(7).
21. 30 V.S.A. § 248 mandates that a project with a Standard Offer Contract must have a Certificate of Public Good (sometimes called a CPG) from the Public Utility Commission (sometimes called the PUC) before beginning site preparation, before constructing a generation facility and before selling electricity.
22. Chelsea applied for a Certificate of Public Good.
23. The Public Utility Commission denied Chelsea's petition.
24. In 2021, the Vermont Supreme Court affirmed the Public Utility Commission's denial of Chelsea's petition for a Certificate of Public Good. In re Petition of Chelsea Solar LLC, 2021 VT 27. ("We affirm the PUC's determination that the Willow Road and Apple Hill Facilities are a single plant under 30 V.S.A. § 8002(14)(14)(2014)")
25. Apple Hill applied for the statutorily required Certificate of Public Good by filing a

- petition with the Public Utility Commission.
26. The Town of Bennington and neighbors of the Apple Hill facility intervened in the proceedings in the Public Utility Commission.
 27. The Town of Bennington opposed Apple Hill's petition on the grounds that it violated the Town Plan.
 28. Sometime later, the Town Selectboard changed its position and voted "not to oppose Apple Hill" In re Peition of Apple Hill Solar LLC, 2019 VT 64, ¶ 6.
 29. In 2018, the Public Utility Commission granted Apple Hill's petition for a Certificate of Public Good.
 30. Apple Hill's neighbors appealed the Public Utility Commission's grant of the Certificate of Public Good for Apple Hill to the Vermont Supreme Court.
 31. In 2019, the Vermont Supreme Court reversed in part and remanded for further proceedings. Among other things, the Court found that:

The selectboard's decision not to oppose the project as violating the Town Plan, on which the PUC heavily relied, does not necessarily mean anything. A decision not to oppose a project or assert that it violates the Town Plan does not mean the project comports with the Plan, or even that the Town has concluded that the project comports with the Plan. In fact, as the PUC recognized, the Town repeatedly emphasized in its response to petitioner's post-technical hearing brief and proposed findings that "[t]he Town has taken no position on the project overall compliance with the Town Plan." The Town could have any number of reasons for choosing not to oppose the project on these grounds, including conservation of its time and resources. That decision in no way supported the PUC's conclusion that the Town took the position that the project complied with the Town Plan.

In re Apple Hill Solar LLC, 2019 VT 64, ¶ 30.

32. After the remand, the Public Utility Commission denied Apple Hill's request for a Certificate of Public Good.
33. Apple Hill appealed.
34. In 2021, the Vermont Supreme Court reversed and remanded to the Public Utility Commission. In re Apple Hill Solar LLC, 2021 VT 69.
35. On remand, the Public Utility Commission again denied Apple Hill's petition for a Certificate of Public Good.
36. Apple Hill appealed again.
37. In 2023, the Vermont Supreme Court unanimously affirmed the decision of the Public Utility Commission. In re Petition of Apple Hill Solar LLC, 2023 VT 57, 311 A.3d 117, *motion for reargument denied*, Dec. 12, 2023, *motion to stay mandate denied*, Dec. 19, 2023.
38. In 2024, Apple Hill filed a new petition for a Certificate of Public Good in the Public Utility Commission.
39. At present, that petition is still pending.
40. Apple Hill's most recent petition is opposed by the Public Service Department, which has moved to dismiss on the grounds of collateral estoppel.
41. As of the filing of this *Petition For Misconduct*, neither Apple Hill nor Chelsea have a Certificate of Public Good.

**Thomas Melone Has Acted as Counsel
For His Business Organizations in Vermont**

42. Thomas Melone, and his son, Michael Melone, also a lawyer and also licensed to practice

in Vermont, have represented Thomas Melone's companies in a large number of legal proceedings in Vermont.

43. Thomas Melone has appeared on behalf of his various business organization on many occasions in the Civil and Environmental Divisions of the Vermont Superior Court, the Public Utilities Commission, the Vermont Supreme Court and the United States District Court for the District of Vermont.
44. In addition, Thomas Melone has represented his companies in appeals from the United States District Court for the District of Vermont to the United States Court of Appeals for the Second Circuit and in a *Petition for Writ of Certiorari* from the Vermont Supreme Court to the United States Supreme Court.
45. In addition to serving as an attorney for his various Vermont business organizations, Thomas Melone has testified under oath as a witness in proceedings in the Public Utility Commission.

Thomas Melone's Communications with ML and DG

46. ML and DG were opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good.
47. At some point before May 3, 2024, ML and DG filed under the Bankruptcy Act for protection from their creditors.
48. In an email to ML and DG dated May 3, 2024, Thomas Melone said that he had discovered "property [that] does not seem to have been declared on Schedule A to the bankruptcy petition."
49. In a bankruptcy case, Schedule A/B is the document where bankrupts list all real and all

personal property. Schedule A focuses on real estate, while Schedule B covers everything else, including personal belongings and financial assets.

50. Thomas Melone attached to his May 3, 2024 email a copy of a deed that conveyed real property in Florida from DG to a Florida limited liability company.

51. In the May 3, 2024 email, Thomas Melone said “I do want you to be aware that we will be asking about it in your depositions.”

52. ML and DG withdrew from the proceedings in the Public Utility Commission.

53. Nonetheless, in an email dated November 20, 2024 to ML and DG, Mr. Melone said:

I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar.

As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice.

The Town is repeating those reasons in their filings.

...

As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court.

I think the only way that the various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you.

Please let me know if you are willing to do that.

54. ML and DG did not “send letters to the PUC, the Planning Commission and the Select

Board supporting both projects.”

55. On January 12, 2025, Thomas Melone filed “Further Comments” in the proceedings in the Public Utility Commission regarding Apple Hill’s application for a Certificate of Public Good accusing ML and DG of “defrauding the federal government” and defrauding ML and DG’s creditors.

Thomas Melon’s Site Preparation Without a Certificate of Public Good and His “Not Credible” Testimony in the Public Utility Commission

56. On August 30, 2024, in In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 2024 VT 58, the Vermont Supreme Court affirmed the Public Utilities Commission’s imposition of a \$5,000 fine on various business organizations owned and controlled by Thomas Melone.
57. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation “developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease.”
58. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that “the PUC also found developer’s claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC.”
59. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that “the PUC concluded that developer’s failure to comply with its regulatory

obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers.”

60. After an unsuccessful *Petition for Writ of Certiorari* to the United States Supreme Court, at least one of the business organizations owned and controlled by Thomas Melone paid the \$5,000 fine.

Thomas Melone’s Filings in the Public Utility Commission

61. On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill’s application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active “cover-up conspiracy” and committed acts of “forgery,” engaged in “counterfeiting,” filed “false certifications to the state and federal government in violation of criminal statutes” and filed at least one “false statement with the [Public Utility] Commission.”
62. Thomas Melone told the Public Utility Commission that he was “finalizing” a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c).
63. A RICO complaint must describe “predicate acts,” specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions. “Predicate acts” are the building blocks of a RICO claim and must be linked to a criminal “enterprise” to constitute a RICO violation.
64. Mr. Melone never filed a complaint alleging “RICO” violations by the Town of

Bennington in any court.

65. On January 29, 2025, Thomas Melone alleged to the Public Utility Commission, but not to the Professional Responsibility Program, that “attorney Bent’s representation [of the Town of Bennington] would be a violation of multiple rules of the Vermont and New York attorney Rules of Professional Conduct.”

Thomas Melone’s Email to Public Utility Commission Chair McNamara

66. On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy.
67. In his March 24, 2025 email, Thomas Melone criticized Public Utility Commission Chair Ed McNamara as well as the Public Utility Commission.
68. In the March 24, 2025 email, Mr. Melone asserted that the Public Utility Commission had “weaponized and expanded” and “applied *retroactively*” [emphasis in original] what he described as the “single-plant rule” in order to deny a Certificate of Public Good to Chelsea.
69. Thomas Melone went on to say that the Public Utility Commission had made a “demonstrably *false claim*” [emphasis in original] with respect to Apple Hill and Chelsea.
70. He asserted that “[w]hat appears to matter to the PUC is political connections.”
71. He asserted that “when the “single-plant” rule became an obstacle for Global Foundries’ solarization of its campus, the PUC ditched the rule for them”
72. He then said: “The PUC’s dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco’s due process and equal protection rights, is a paradigm of

arbitrariness, and is leading to even more litigation.”

73. He then told the Legislative committees:

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

74. On the same day, Thomas Melone sent a copy of his March 24, 2025 email to Public Utility Commission Chair Ed McNamara.

75. Thomas Melone did not send a copy of his March 24, 2025 email to any of the other parties in the proceedings involving Apple Hill’s applications for a Certificate of Public Good.

76. On April 21, 2025, the Clerk of the Public Utility Commission issued a memorandum seeking comments on whether Mr. Melone’s March 24, 2025 email violated the PUC’s rule against ex parte communications.

77. Thomas Melone asserted that the Commission’s ex parte rule violated his First Amendment rights.

78. On June 17, 2025, the Public Utility Commission ruled that Thomas Melone had violated the PUC’s prohibition against ex parte communications with the Commission but declined to impose sanctions.

Thomas Melone’s Opposition to the Bennington High Project

79. On January 28, 2025, the Bennington Select Board authorized the Town of Bennington to enter into a contract with Hale Resources, LLC regarding the development of the former

Bennington High School.

80. On February 25, 2025, Thomas Melone, knowing that the redevelopment of the former high school was a priority for the Town, and while acting as counsel for one of his business organizations, PLH, appealed Bennington's decision to enter into a contract with the developer to the Environmental Division of the Vermont Superior Court.
81. On February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction in that the appeal did not involve the granting or denial of a permit allowing land development to occur, a prerequisite for subject matter jurisdiction under 24 V.S.A. § 4471.
82. On February 28, 2025 the Environmental Division issued an entry order stating: "the court believes it lacks subject matter jurisdiction over this appeal and is prepared to dismiss the appeal sua sponte," but gave PLH until March 3, 2025 to file a response to the Bennington's *Motion to Dismiss*.
83. PLH filed at least one pleading opposing the Bennington's *Motion to Dismiss* for lack of subject matter jurisdiction.
84. On March 6, 2025, the Environmental Division dismissed PLH's appeal on the grounds that the court lacked subject matter jurisdiction.
85. At the time Thomas Malone caused PLH to appeal to the Environmental Division, Thomas Melone knew, or should have known, that the Environmental Division lacked subject matter jurisdiction.
86. Thomas Malone caused PLH to appeal the Environmental Division's dismissal of PLH's appeal to the Vermont Supreme Court.

87. Thomas Malone caused PLH to file suit against the Town of Bennington in the Vermont Superior Court, Civil Division, Chittenden Unit, alleging that Bennington's contract with the Bennington High developer was "municipal waste."
88. Thomas Melone and Michael Melone told agents and employees of the Town Bennington that PLH would withdraw the appeal from the dismissal of its action in the Environmental Division, withdraw the allegation of "municipal waste," and would not oppose the Bennington High project if the Town of Bennington withdrew its opposition to Apple Hill's petition for a Certificate of Public Good.

**Merrill Bent's Complaint to the Professional Responsibility Program
Regarding Thomas Melone**

89. In March 2025, the Professional Responsibility Program received a written complaint from a Vermont attorney, Merrill Bent.
90. Ms. Bent alleged that both Thomas Melone and Michael Melone had, on multiple occasions, violated the Vermont Rules of Professional Conduct.
91. Ms. Bent said she had learned of the violations of the Rules while representing the Town of Bennington in (a) its opposition to Apple Hill's and Chelsea's applications for Certificates of Public Good and (b) efforts to develop the former Bennington High School.
92. In her complaint, Ms. Bent said she acted pursuant to her obligations under Rule 8.3 of the Vermont Rules of Professional Conduct.
93. Rule 8.3(a) mandates a report to the Professional Responsibility Program when a lawyer "knows that another lawyer has committed a violation of the Rules of Professional

Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.”

94. Screening Counsel Andrew R. Strauss reviewed Ms. Bent's report and informed Thomas Melone:

In my judgment, the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions. Therefore, pursuant to Rule 12.C of Administrative Order 9 [of the Vermont Supreme Court], I am referring the complaint to Disciplinary Counsel Jon T. Alexander.

Thomas Melone's Reply to Ms. Bent's Complaint

95. On April 23, 2025, Thomas Melone wrote a letter to Screening Counsel Strauss, and said “Attorney Bent's allegations are actionable defamation.” Thomas Moore went on to say “the allegations in the complaint are not only meritless, but actionable defamation per se.”
96. Thomas Melone then said “Bent's accusation is also actionable as a claim for false light.”
97. Thomas Melone told Screening Counsel Strauss that he had heard that a paralegal who had been employed by Ms. Bent's firm had been “verbally accosted by “[Merrill Bent].” (Brackets in original.)
98. Thomas Melone's statements suggested or implied that Ms. Bent had treated at least one employee of her law firm improperly.
99. Thomas Melone then told screening counsel Strauss “I do not have direct information as to which of the four partners [in Ms. Bent's firm] was accused of abusive behaviors.”
100. Thomas Melone did not tell Mr. Strauss why he had included the allegation that Ms. Bent had “verbally accosted” a female employee.
101. In his April 23, 2025 letter, Thomas Melone told Screening Counsel Strauss that Vermont

Rule of Professional Conduct 3.7 “prohibited [Ms. Bent] from representing the Bennington Select Board.”

102. Thomas Melone has never filed a complaint against Ms. Bent with the Professional Responsibility Program.

Thomas Melone’s Communications With Ms. Bent’s Clients

103. On April 23, 2025, at a time when Ms. Bent represented the Town of Bennington, and Thomas Melone knew that Ms. Bent represented the Town of Bennington, Thomas Melone sent the following email to Ms. Bent and various elected officials and employees of the Town:

Attached you will find the response that I submitted to the Professional Responsibility Board in response to the ethics complaint against me. I am now finalizing the defamation suit which I expect will be able to be filed next week. See excerpt attached as well.

104. Thomas Melone attached not only his April 23, 2025 letter to Screening Counsel Strauss, but also included what he called an “excerpt” from a “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights.”
105. Thomas Melone was the author of the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights.”
106. The “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” listed both Ms. Bent and the Town of Bennington as defendants.
107. Thomas Melone told the recipients of the email that he would file the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” in the United States District Court for the District of Vermont.

108. The “excerpt” from the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” also stated:

Plaintiff alleges that Bent filed the PRB Complaint on behalf of the Town of Bennington.

109. The “excerpt” from Thomas Melone’s “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” does not disclose how he came to the conclusion that Ms. Bent filed her complaint “on behalf of the Town of Bennington.”

110. At the time Thomas Melone sent the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights,” no official, agent or employee of the Town of Bennington, other than Ms. Bent, was aware that Ms. Bent had filed a confidential complaint with the Professional Responsibility Program.

111. When asked by Ms. Bent to stop communicating with officials, agents and employees of the Town of Bennington, Thomas Melone refused to do so.

112. In emails to Mr. Bent, Thomas Melone asserted that he had the right to communicate with Bennington officials and employees because of the First Amendment right to petition the government for the redress of grievances.

113. On multiple dates in 2025, Thomas Melone sent additional emails to Bennington officials and employees.

Count I

Thomas Melone’s Claims in the Public Utility Commission that the Town of Bennington and its Officials, Agents and Employees Engaged in Criminal Conduct Violation of Rules 3.5(d), 4.3, 4.5 and 8.4(d)

114. Conflict Disciplinary Counsel restates paragraphs 1 through 113.

115. Thomas Melone’s claims in filings in the Public Utility Commission that officials and

agents of the Town of Bennington were engaged in a “cover-up conspiracy,” committed acts of “forgery” and “counterfeiting,” filed “false certifications to the state and federal government in violation of criminal statutes,” and filed “false statements with the [Public Utility] Commission” and Thomas Melone’s claim that the Town and its officials and employees were liable to him or his business organization for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c) violated:

- a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;
- b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone’s statements were false statements of law and fact;
- c) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies’ applications for Certificates of Public Good; and
- d) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Count II
Thomas Melone’s Communications with ML and DG
Violation of Rules 4.5 and 8.4(d)

116. Conflict Disciplinary Counsel restates paragraphs 1 through 113.

117. In his communications with ML and DG, Thomas Melone violated:

- a) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies applications for Certificate of

Public Goods; and

- b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

COUNT III

Thomas Melone 's Site Preparation Without a Certificate of Public Good and His "Not Credible" Testimony in the Public Utility Commission Violation of Rules 3.5(d), 4.3 and 8.4(d)

- 118. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
- 119. In his company's site preparation without a Certificate of Public Good and his "not credible" testimony in the Public Utility Commission, Thomas Melone violated:
 - a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;
 - b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of fact and law; and
 - c) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Count IV

Thomas Melone's March 24, 2025 Email to Public Utility Commission Chair Ed McNamara Violation of Rule 3.5(b)(1)

- 120. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
- 121. Thomas Melone's March 24, 2025 email to Public Utility Commission Chair Ed McNamara violated:
 - a) Rule 3.5(b)(1) in that it was an ex parte communication with a person

acting in a judicial or quasi-judicial capacity; and

- b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

Count V

**Thomas Melone's Conduct With Respect to the Bennington High Project
Violation of Rules 3.1, 3.3(a)(1), 4.4(a) and 8.4(d)**

- 122. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
- 123. In the manner and means Thomas Melone used in his opposition to the Bennington High Project, Thomas Melone violated:
 - a) Rule 3.1 in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter;
 - b) Rule 3.3(a)(1) in that Thomas Melone demonstrated a lack of candor to both the Environmental Division and the Vermont Supreme Court by making false statements of law regarding the subject matter jurisdiction of the Environmental Division;
 - c) Rule 4.4(a) in that Thomas Melone used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer; and
 - d) Rule 8.4(d) in that Thomas Melone's conduct was conduct prejudicial to the administration of justice.

Count VI

**Thomas Melone's Statements to Screening Counsel Strauss with Respect to
Merrill Bent's Complaint to the Professional Responsibility Program
Violation of Rules of Professional Conduct 3.3(a)(1), 4.4(a) and 8.4(d)**

124. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
125. Thomas Melone's claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation *per se*, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct violated:
- a) Rule 3.3(a)(1) in that he showed a lack of candor toward the Professional Responsibility Program by making a false statements of law, specifically that Ms. Bent was liable for defamation *per se*, when he knew or should have known that Rule 12 of The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness; and
 - b) Rule 4.4(a) in that they showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent; and
 - c) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness, Ms. Bent.

Count VII
Thomas Melone's Email to Officials and Employees of the Town of Bennington
Violation of Rules 4.2 and 8.4(d)

126. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
127. Thomas Melone knew or should have known that Administrative Order 9 expressly provides that proceedings in the Professional Responsibility Board are confidential until such time as a Hearing Panel makes a finding of probable cause.
128. Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel.
129. While Rule 4.2 generally protects represented government entities from unconsented contacts by opposing counsel, there is an important exception to that "no contact" rule arising from the constitutional right to petition the government and the derivative public policy of ensuring a citizen's right of access to government decision makers. As a result, Rule 4.2 permits a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have the authority to take or to recommend action in that matter, provided that the sole purpose of the lawyer's communication is to address a policy issue, including settling the controversy.
130. Thomas Melone's communications with officials and employees of the Town of Bennington violated:
 - a) Rule 4.2 in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility

Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint; and

- b) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness in proceeding before the Professional Responsibility Program, Ms. Bent.

Count VIII
Thomas Melone's Persistent and Deliberate
Violations of The Rules of Professional Conduct
Violation of Rule 8.4(d)

131. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
132. Over course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct and persistently induced his son, Michael Melone, to violate the Rules of Professional Conduct.
133. The Vermont Supreme Court stated in In Re James Weston Wright, 131 Vt. 473 (1973), that when there is a "consistent pattern . . . emerging from a series of several transactions, it seems clear that what might be in a single instance only poor judgment sans evil intent or direct motive becomes a condemnable course of conduct amounting to ethical unfitness"
134. This *Petition of Misconduct* show a consistent pattern emerging from several events of intentional misconduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

Dated: _____, 2025

Michael F. Hanley
Conflict Disciplinary Counsel
Plante & Hanley, P.C.
Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
File No. 25-120

CONFIDENTIAL

**MEMORANDUM IN SUPPORT OF
*MOTION FOR FINDING OF PROBABLE CAUSE***

Administration Order 9, Rule 11(c) requires that before filing formal disciplinary charges, Conflict Discipline Counsel must obtain a finding of probable cause from a Hearing Panel. If this Hearing Panel finds probable cause to believe that a violation or violations of the Vermont Rules of Professional Conduct occurred, Conflict Disciplinary Counsel will present formal charges to a different Hearing Panel.

Probable cause in the Professional Responsibility Program is defined as reasonable grounds to believe that an attorney has violated the Vermont Rules Professional Conduct. A finding of probable cause does not require proof beyond a reasonable doubt, and does not require proof of a violation by clear and convincing evidence. “Stripped of all gloss and technicalities, ‘probable clause’ is less certainty than proof, but more than suspicion of possibility.” Peterson v. State, 379 A.2d 164, 166 (Md. 1977).

The *Motion for Finding of Probable Cause*, the proposed *Petition of Misconduct* (Exhibit A to the *Motion*) and the *Affidavit of the Conflict Disciplinary Counsel* all show that there is substantially more than a mere suspicion of the possibility that between June 2020 and, at a minimum, April 23, 2025, Thomas Melone, an attorney licensed to practice law in Vermont, violated Vermont Rules of Professional Conduct 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5 and 8.4(d) in legal proceedings connection with his efforts to develop solar-electric energy generation

facilities in Bennington and in the manner in which he responded when a confidential complaint regarding him was filed with the Professional Responsibility Program.

Dated: August 18, 2025

/s/Michael F. Hanley
Michael F. Hanley
Conflict Disciplinary Counsel
Plante & Hanley, P.C.
Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
PRB File No. 25-120

CONFIDENTIAL

**AFFIDAVIT OF MICHAEL F. HANLEY,
CONFLICT DISCIPLINARY COUNSEL**


Michael F. Hanley, Conflict Disciplinary Counsel, being sworn to tell the truth, states:

1. I am Conflict Disciplinary Counsel in this matter having been appointed on May 20, 2025.
2. I have been actively investigating this matter since my appointment.
3. Thomas Melone is licensed to practice law in Vermont and has been a lawyer for approximately 40 years.
4. Thomas Melone is the sole owner of approximately 85 business organizations.
5. Between 2013 and 2025, various business organizations solely owned by Thomas Melone, and represented by Thomas Melone and his son, also a lawyer licensed to practice in Vermont, have been engaged in efforts to develop at least two solar-electric generation facilities in Bennington.
6. Thomas Melone's efforts to obtain statutorily required Certificates of Public Good for these facilities from the Public Utilities Commission generated considerable opposition from various individuals and from the Town of Bennington.
7. Thomas Melone's actions in connection with the proposed solar-electric generation facilities resulted in a confidential complaint to the Professional Responsibility Program.
8. I interviewed the Complainant on multiple occasions.

9. I interviewed the Respondent and his son on multiple occasions.
10. I obtained, catalogued and read hundreds and hundreds of pages of documents provided by both the Complainant, the Respondent and others, including but not limited to:
 - a. A very large number of emails prepared and sent by the Respondent;
 - b. A very large number of pleadings prepared and filed by the Respondent;
 - c. A very large number of rulings and decisions issued by the Public Utility Commission, the Vermont Superior Court Civil Division, the Vermont Superior Court Environmental Division, the Vermont Supreme Court, the United States District Court for the District of Vermont, the United States Court of Appeals for the Second Circuit and at least one other circuit; and
 - d. One pleading filed by the Respondent in the United States Supreme Court.
11. I expect to prove by clear and convincing evidence that on multiple occasions over a period of years the Respondent Thomas Melone violated rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d) of the Vermont Rules of Professional Conduct by:
 - a. Filings in the Public Utility Commission claiming that officials and agents of the Town of Bennington were engaged in a “cover-up conspiracy,” committed acts of “forgery” and “counterfeiting,” filed “false certifications to the state and federal government” in violation of the criminal statutes that made them liable to his business organizations and/or him for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(a);
 - b. Threatening to disclose purported criminal conduct by two other opponents if they did not support his companies’ applications for Certificates of Public Good;

- c. Commencing site preparation for at least one of the proposed facilities in Bennington without a Certificate of Public Good from the Public Utility Commission;
- d. Giving “not credible” testimony in the Public Utility Commission;
- e. Attempting to have an ex parte communication with the Chair of the Public Utilities Commission;
- f. Bringing legal proceedings when there was no basis in law of for those proceedings;
- g. Threatening to sue the Complainant when she made a privileged, confidential complaint to the Professional Responsibility Program;
- h. Disclosing the Complainant’s confidential complaint to the Complainant’s client and its officers and agents;
- i. Directly communicating with and threatening to sue the Complainant’s client and its officers and agents on account of the Complainant’s privileged, confidential complaint to the Professional Responsibility Program; and
- j. Engaging in a persistent and deliberate violations of the Rules.

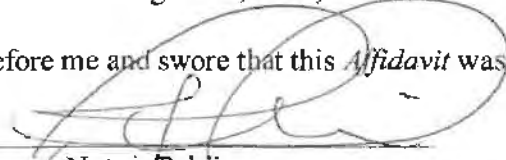
August 15, 2025



Michael F. Hanley

STATE OF VERMONT
WINDSOR COUNTY, SS

On August 15, 2025, Michael F. Hanley, a person known to me, personally appeared before me and swore that this *Affidavit* was true.



Notary Public
My Commission Expires:

PAUL J. PERKINS
 Notary Public, State of Vermont
 Commission # 157.0010074
 My Commission Expires January 31, 2027

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
File No. 25-120

NOTICE OF PROBABLE CAUSE DECISION

The Probable Cause Hearing Panel, consisting of _____, Chair,
_____ and _____, having reviewed the *Motion for
Finding of Probable Cause*, the proposed *Petition of Misconduct*, the *Affidavit of the Michael F.
Hanley, Conflict Disciplinary Counsel*, and the *Memorandum of Law*, find:

_____ No probable cause;

_____ Probable cause for violation of Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5 and
8.4(d).

Dated this ____ day of _____, 2025.

Chair, Probable Cause Hearing Panel

4

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
File No. 25-120

NOTICE OF PROBABLE CAUSE DECISION

The Probable Cause Hearing Panel, consisting of Ronald A. Shems, Chair, Elizabeth Kruska and Laura Bozarth, having reviewed the Motion for *Finding of Probable Cause*, the proposed *Petition of Misconduct*, the *Affidavit of the Michael F. Hanley, Conflict Disciplinary Counsel*, and the *Memorandum of Law*, find:

No probable cause;

Probable cause for violation of Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5 and 8.4(d).

Dated this 4th day of September 2025.



Chair, Probable Cause Hearing Panel

EXHIBIT 6

PLANTE & HANLEY, P.C.
LAWYERS
POST OFFICE BOX 708
WHITE RIVER JUNCTION, VERMONT 05001-0708

PETER P. PLANTE (1920-1996)
MICHAEL F. HANLEY*
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*Admitted in VT, NH and ME
†Admitted in VT and NH

September 26, 2025

Professional Responsibility Program
Merrick Grutchfield, Program Administrator
109 State Street
Montpelier, VT 05609-0701

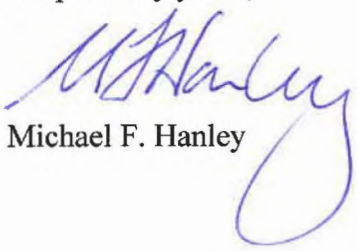
BY FIRST CLASS U.S. MAIL AND EMAIL (merrick.grutchfield@vermont.gov)

In Re: Thomas Melone; PRB File No. 25-120

Dear Merrick

I enclose the *Petition of Misconduct* and my *Certificate of Service*.

Respectfully yours,



Michael F. Hanley

MFH/shg
Enclosures

cc: Thomas M. Melone (via U.S. Mail and email)

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
PRB File No. 25-120

PETITION OF MISCONDUCT
Administrative Order 9, Rule 11(D)(1)(b)

The Petition follows a finding of probable cause on September 4, 2025.

NOTICE TO RESPONDENT: This is a formal *Petition of Misconduct*. Pursuant to Administrative Order 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State Street, Montpelier, VT 05609, with a copy to Conflict Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

The Facts

Thomas Melone and his Various Business Organizations

1. Thomas Melone is a lawyer.
2. Thomas Melone has been a lawyer for more than 40 years.
3. Thomas Melone is licensed to practice law in Vermont.
4. Thomas Melone is also licensed to practice law in California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut.
5. Thomas Melone is the sole owner of at least 85 business organizations.
6. Many, or most, of Thomas Melone's business organizations are involved in some manner in renewable energy.
7. Business organizations owned by Thomas Melone are organized under the laws of, at least, Vermont, Connecticut, Indiana, Massachusetts, Minnesota and Delaware.

8. Thomas Melone is the sole owner of PLH Vineyard Sky, LLC (“PLH”), a Florida business organization.
9. Thomas Melone is the sole owner of Vineyard Sky Allco, Ltd. (“Vineyard Sky”), a Florida business organization.
10. Vineyard Sky is the sole owner of Allco Finance, Ltd. (“Allco”), a Florida business organization.
11. Allco is the sole owner of Apple Hill Solar, LLC (“Apple Hill”), a Vermont business organization.
12. Allco is the sole owner of Chelsea Solar, LLC (“Chelsea”), a Vermont business organization.
13. Thomas Melone controls and manages PLH, Vineyard Sky, Allco, Apple Hill and Chelsea.

**Thomas Melone’s Efforts to Develop
Two Solar-Electric Generation Facilities In Bennington**

14. For more than a decade, Thomas Melone, PLH, Vineyard Sky, Allco, Apple Hill and Chelsea have been involved in efforts to develop solar-electric energy generation facilities on adjacent parcels on Willow Road (Chelsea) and Apple Hill Road (Apple Hill) in Bennington.
15. In 2013 and 2014, Apple Hill and Chelsea entered into two Standard Offer Contracts.
16. Standard Offer Contracts exist pursuant to 30 V.S.A. § 8005(a) apart of Vermont’s Sustainably Priced Energy Enterprise Development (SPEED) Program. 30 V.S.A. §§ 8001, 8005, 8005a.

17. The Vermont Legislature created the SPEED Program to promote the rapid deployment of small renewable generation. 30 V.S.A. § 8005(a).
18. Under the SPEED Program, Vermont distribution utilities, the companies that own and maintain the wires, poles and transformers that deliver electricity from the transmission grid to homes and businesses, must buy renewable power from an eligible renewable electric energy generator at a specified price for a specified period of time.
19. To be eligible for the SPEED program, a project's proposed "plant capacity" cannot exceed 2.2 megawatts. 30 V.S.A. § 8005a(b).
20. The 2.2 megawatt limits serves the Legislature's goal of providing support and incentives for renewable energy plants of small and moderate size distributed across the state's electric grid. 3 V.S.A. § 8001(a)(7).
21. 30 V.S.A. § 248 mandates that a project with a Standard Offer Contract must have a Certificate of Public Good (sometimes called a CPG) from the Public Utility Commission (sometimes called the PUC) before beginning site preparation, before constructing a generation facility and before selling electricity.
22. Chelsea applied for a Certificate of Public Good.
23. The Public Utility Commission denied Chelsea's petition.
24. In 2021, the Vermont Supreme Court affirmed the Public Utility Commission's denial of Chelsea's petition for a Certificate of Public Good. In re Petition of Chelsea Solar LLC, 2021 VT 27. ("We affirm the PUC's determination that the Willow Road and Apple Hill Facilities are a single plant under 30 V.S.A. § 8002(14)(14)(2014)")
25. Apple Hill applied for the statutorily required Certificate of Public Good by filing a

petition with the Public Utility Commission.

26. The Town of Bennington and neighbors of the Apple Hill facility intervened in the proceedings in the Public Utility Commission.
27. The Town of Bennington opposed Apple Hill's petition on the grounds that it violated the Town Plan.
28. Sometime later, the Town Selectboard changed its position and voted "not to oppose Apple Hill" In re Peition of Apple Hill Solar LLC, 2019 VT 64, ¶ 6.
29. In 2018, the Public Utility Commission granted Apple Hill's petition for a Certificate of Public Good.
30. Apple Hill's neighbors appealed the Public Utility Commission's grant of the Certificate of Public Good for Apple Hill to the Vermont Supreme Court.
31. In 2019, the Vermont Supreme Court reversed in part and remanded for further proceedings. Among other things, the Court found that:

The selectboard's decision not to oppose the project as violating the Town Plan, on which the PUC heavily relied, does not necessarily mean anything. A decision not to oppose a project or assert that it violates the Town Plan does not mean the project comports with the Plan, or even that the Town has concluded that the project comports with the Plan. In fact, as the PUC recognized, the Town repeatedly emphasized in its response to petitioner's post-technical hearing brief and proposed findings that "[t]he Town has taken no position on the project overall compliance with the Town Plan." The Town could have any number of reasons for choosing not to oppose the project on these grounds, including conservation of its time and resources. That decision in no way supported the PUC's conclusion that the Town took the position that the project complied with the Town Plan.

In re Apple Hill Solar LLC, 2019 VT 64, ¶ 30.

32. After the remand, the Public Utility Commission denied Apple Hill's request for a Certificate of Public Good.
33. Apple Hill appealed.
34. In 2021, the Vermont Supreme Court reversed and remanded to the Public Utility Commission. In re Apple Hill Solar LLC, 2021 VT 69.
35. On remand, the Public Utility Commission again denied Apple Hill's petition for a Certificate of Public Good.
36. Apple Hill appealed again.
37. In 2023, the Vermont Supreme Court unanimously affirmed the decision of the Public Utility Commission. In re Petition of Apple Hill Solar LLC, 2023 VT 57, 311 A.3d 117, *motion for reargument denied*, Dec. 12, 2023, *motion to stay mandate denied*, Dec. 19, 2023.
38. In 2024, Apple Hill filed a new petition for a Certificate of Public Good in the Public Utility Commission.
39. At present, that petition is still pending.
40. Apple Hill's most recent petition is opposed by the Public Service Department, which has moved to dismiss on the grounds of collateral estoppel.
41. As of the filing of this *Petition For Misconduct*, neither Apple Hill nor Chelsea have a Certificate of Public Good.

**Thomas Melone Has Acted as Counsel
For His Business Organizations in Vermont**

42. Thomas Melone, and his son, Michael Melone, also a lawyer and also licensed to practice

in Vermont, have represented Thomas Melone's companies in a large number of legal proceedings in Vermont.

43. Thomas Melone has appeared on behalf of his various business organization on many occasions in the Civil and Environmental Divisions of the Vermont Superior Court, the Public Utilities Commission, the Vermont Supreme Court and the United States District Court for the District of Vermont.
44. In addition, Thomas Melone has represented his companies in appeals from the United States District Court for the District of Vermont to the United States Court of Appeals for the Second Circuit and in a *Petition for Writ of Certiorari* from the Vermont Supreme Court to the United States Supreme Court.
45. In addition to serving as an attorney for his various Vermont business organizations, Thomas Melone has testified under oath as a witness in proceedings in the Public Utility Commission.

Thomas Melone's Communications with ML and DG

46. ML and DG were opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good.
47. At some point before May 3, 2024, ML and DG filed under the Bankruptcy Act for protection from their creditors.
48. In an email to ML and DG dated May 3, 2024, Thomas Melone said that he had discovered "property [that] does not seem to have been declared on Schedule A to the bankruptcy petition."
49. In a bankruptcy case, Schedule A/B is the document where bankrupts list all real and all

personal property. Schedule A focuses on real estate, while Schedule B covers everything else, including personal belongings and financial assets.

50. Thomas Melone attached to his May 3, 2024 email a copy of a deed that conveyed real property in Florida from DG to a Florida limited liability company.

51. In the May 3, 2024 email, Thomas Melone said “I do want you to be aware that we will be asking about it in your depositions.”

52. ML and DG withdrew from the proceedings in the Public Utility Commission.

53. Nonetheless, in an email dated November 20, 2024 to ML and DG, Mr. Melone said:

I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar.

As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice.

The Town is repeating those reasons in their filings.

...

As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court.

I think the only way that the various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you.

Please let me know if you are willing to do that.

54. ML and DG did not “send letters to the PUC, the Planning Commission and the Select

Board supporting both projects.”

55. On January 12, 2025, Thomas Melone filed “Further Comments” in the proceedings in the Public Utility Commission regarding Apple Hill’s application for a Certificate of Public Good accusing ML and DG of “defrauding the federal government” and defrauding ML and DG’s creditors.

Thomas Melon’s Site Preparation Without a Certificate of Public Good and His “Not Credible” Testimony in the Public Utility Commission

56. On August 30, 2024, in In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 2024 VT 58, the Vermont Supreme Court affirmed the Public Utilities Commission’s imposition of a \$5,000 fine on various business organizations owned and controlled by Thomas Melone.
57. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation “developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease.”
58. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that “the PUC also found developer’s claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC.”
59. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that “the PUC concluded that developer’s failure to comply with its regulatory

obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers.”

60. After an unsuccessful *Petition for Writ of Certiorari* to the United States Supreme Court, at least one of the business organizations owned and controlled by Thomas Melone paid the \$5,000 fine.

Thomas Melone’s Filings in the Public Utility Commission

61. On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill’s application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active “cover-up conspiracy” and committed acts of “forgery,” engaged in “counterfeiting,” filed “false certifications to the state and federal government in violation of criminal statutes” and filed at least one “false statement with the [Public Utility] Commission.”
62. Thomas Melone told the Public Utility Commission that he was “finalizing” a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c).
63. A RICO complaint must describe “predicate acts,” specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions. “Predicate acts” are the building blocks of a RICO claim and must be linked to a criminal “enterprise” to constitute a RICO violation.
64. Mr. Melone never filed a complaint alleging “RICO” violations by the Town of

Bennington in any court.

65. On January 29, 2025, Thomas Melone alleged to the Public Utility Commission, but not to the Professional Responsibility Program, that “attorney Bent’s representation [of the Town of Bennington] would be a violation of multiple rules of the Vermont and New York attorney Rules of Professional Conduct.”

Thomas Melone’s Email to Public Utility Commission Chair McNamara

66. On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy.
67. In his March 24, 2025 email, Thomas Melone criticized Public Utility Commission Chair Ed McNamara as well as the Public Utility Commission.
68. In the March 24, 2025 email, Mr. Melone asserted that the Public Utility Commission had “weaponized and expanded” and “applied *retroactively*” [emphasis in original] what he described as the “single-plant rule” in order to deny a Certificate of Public Good to Chelsea.
69. Thomas Melone went on to say that the Public Utility Commission had made a “demonstrably *false claim*” [emphasis in original] with respect to Apple Hill and Chelsea.
70. He asserted that “[w]hat appears to matter to the PUC is political connections.”
71. He asserted that “when the “single-plant” rule became an obstacle for Global Foundries’ solarization of its campus, the PUC ditched the rule for them”
72. He then said: “The PUC’s dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco’s due process and equal protection rights, is a paradigm of

arbitrariness, and is leading to even more litigation.”

73. He then told the Legislative committees:

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

74. On the same day, Thomas Melone sent a copy of his March 24, 2025 email to Public Utility Commission Chair Ed McNamara.

75. Thomas Melone did not send a copy of his March 24, 2025 email to any of the other parties in the proceedings involving Apple Hill’s applications for a Certificate of Public Good.

76. On April 21, 2025, the Clerk of the Public Utility Commission issued a memorandum seeking comments on whether Mr. Melone’s March 24, 2025 email violated the PUC’s rule against ex parte communications.

77. Thomas Melone asserted that the Commission’s ex parte rule violated his First Amendment rights.

78. On June 17, 2025, the Public Utility Commission ruled that Thomas Melone had violated the PUC’s prohibition against ex parte communications with the Commission but declined to impose sanctions.

Thomas Melone’s Opposition to the Bennington High Project

79. On January 28, 2025, the Bennington Select Board authorized the Town of Bennington to enter into a contract with Hale Resources, LLC regarding the development of the former

Bennington High School.

80. On February 25, 2025, Thomas Melone, knowing that the redevelopment of the former high school was a priority for the Town, and while acting as counsel for one of his business organizations, PLH, appealed Bennington's decision to enter into a contract with the developer to the Environmental Division of the Vermont Superior Court.
81. On February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction in that the appeal did not involve the granting or denial of a permit allowing land development to occur, a prerequisite for subject matter jurisdiction under 24 V.S.A. § 4471.
82. On February 28, 2025 the Environmental Division issued an entry order stating: "the court believes it lacks subject matter jurisdiction over this appeal and is prepared to dismiss the appeal sua sponte," but gave PLH until March 3, 2025 to file a response to the Bennington's *Motion to Dismiss*.
83. PLH filed at least one pleading opposing the Bennington's *Motion to Dismiss* for lack of subject matter jurisdiction.
84. On March 6, 2025, the Environmental Division dismissed PLH's appeal on the grounds that the court lacked subject matter jurisdiction.
85. At the time Thomas Malone caused PLH to appeal to the Environmental Division, Thomas Melone knew, or should have known, that the Environmental Division lacked subject matter jurisdiction.
86. Thomas Malone caused PLH to appeal the Environmental Division's dismissal of PLH's appeal to the Vermont Supreme Court.

87. Thomas Malone caused PLH to file suit against the Town of Bennington in the Vermont Superior Court, Civil Division, Chittenden Unit, alleging that Bennington's contract with the Bennington High developer was "municipal waste."
88. Thomas Melone and Michael Melone told agents and employees of the Town Bennington that PLH would withdraw the appeal from the dismissal of its action in the Environmental Division, withdraw the allegation of "municipal waste," and would not oppose the Bennington High project if the Town of Bennington withdrew its opposition to Apple Hill's petition for a Certificate of Public Good.

**Merrill Bent's Complaint to the Professional Responsibility Program
Regarding Thomas Melone**

89. In March 2025, the Professional Responsibility Program received a written complaint from a Vermont attorney, Merrill Bent.
90. Ms. Bent alleged that both Thomas Melone and Michael Melone had, on multiple occasions, violated the Vermont Rules of Professional Conduct.
91. Ms. Bent said she had learned of the violations of the Rules while representing the Town of Bennington in (a) its opposition to Apple Hill's and Chelsea's applications for Certificates of Public Good and (b) efforts to develop the former Bennington High School.
92. In her complaint, Ms. Bent said she acted pursuant to her obligations under Rule 8.3 of the Vermont Rules of Professional Conduct.
93. Rule 8.3(a) mandates a report to the Professional Responsibility Program when a lawyer "knows that another lawyer has committed a violation of the Rules of Professional

Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.”

94. Screening Counsel Andrew R. Strauss reviewed Ms. Bent's report and informed Thomas Melone:

In my judgment, the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions. Therefore, pursuant to Rule 12.C of Administrative Order 9 [of the Vermont Supreme Court], I am referring the complaint to Disciplinary Counsel Jon T. Alexander.

Thomas Melone's Reply to Ms. Bent's Complaint

95. On April 23, 2025, Thomas Melone wrote a letter to Screening Counsel Strauss, and said “Attorney Bent's allegations are actionable defamation.” Thomas Moore went on to say “the allegations in the complaint are not only meritless, but actionable defamation per se.”
96. Thomas Melone then said “Bent's accusation is also actionable as a claim for false light.”
97. Thomas Melone told Screening Counsel Strauss that he had heard that a paralegal who had been employed by Ms. Bent's firm had been “verbally accosted by “[Merrill Bent].” (Brackets in original.)
98. Thomas Melone's statements suggested or implied that Ms. Bent had treated at least one employee of her law firm improperly.
99. Thomas Melone then told screening counsel Strauss “I do not have direct information as to which of the four partners [in Ms. Bent's firm] was accused of abusive behaviors.”
100. Thomas Melone did not tell Mr. Strauss why he had included the allegation that Ms. Bent had “verbally accosted” a female employee.
101. In his April 23, 2025 letter, Thomas Melone told Screening Counsel Strauss that Vermont

Rule of Professional Conduct 3.7 “prohibited [Ms. Bent] from representing the Bennington Select Board.”

102. Thomas Melone has never filed a complaint against Ms. Bent with the Professional Responsibility Program.

Thomas Melone’s Communications With Ms. Bent’s Clients

103. On April 23, 2025, at a time when Ms. Bent represented the Town of Bennington, and Thomas Melone knew that Ms. Bent represented the Town of Bennington, Thomas Melone sent the following email to Ms. Bent and various elected officials and employees of the Town:

Attached you will find the response that I submitted to the Professional Responsibility Board in response to the ethics complaint against me. I am now finalizing the defamation suit which I expect will be able to be filed next week. See excerpt attached as well.

104. Thomas Melone attached not only his April 23, 2025 letter to Screening Counsel Strauss, but also included what he called an “excerpt” from a “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights.”
105. Thomas Melone was the author of the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights.”
106. The “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” listed both Ms. Bent and the Town of Bennington as defendants.
107. Thomas Melone told the recipients of the email that he would file the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” in the United States District Court for the District of Vermont.

108. The “excerpt” from the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” also stated:

Plaintiff alleges that Bent filed the PRB Complaint on behalf of the Town of Bennington.

109. The “excerpt” from Thomas Melone’s “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights” does not disclose how he came to the conclusion that Ms. Bent filed her complaint “on behalf of the Town of Bennington.”

110. At the time Thomas Melone sent the “Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights,” no official, agent or employee of the Town of Bennington, other than Ms. Bent, was aware that Ms. Bent had filed a confidential complaint with the Professional Responsibility Program.

111. When asked by Ms. Bent to stop communicating with officials, agents and employees of the Town of Bennington, Thomas Melone refused to do so.

112. In emails to Mr. Bent, Thomas Melone asserted that he had the right to communicate with Bennington officials and employees because of the First Amendment right to petition the government for the redress of grievances.

113. On multiple dates in 2025, Thomas Melone sent additional emails to Bennington officials and employees.

Count I

Thomas Melone’s Claims in the Public Utility Commission that the Town of Bennington and its Officials, Agents and Employees Engaged in Criminal Conduct Violation of Rules 3.5(d), 4.3, 4.5 and 8.4(d)

114. Conflict Disciplinary Counsel restates paragraphs 1 through 113.

115. Thomas Melone’s claims in filings in the Public Utility Commission that officials and

agents of the Town of Bennington were engaged in a “cover-up conspiracy,” committed acts of “forgery” and “counterfeiting, ” filed “false certifications to the state and federal government in violation of criminal statutes,” and filed “false statements with the [Public Utility] Commission” and Thomas Melone’s claim that the Town and its officials and employees were liable to him or his business organization for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c) violated:

- a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;
- b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone’s statements were **false statements of law and fact**;
- c) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies’ applications for Certificates of Public Good; and
- d) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Count II
Thomas Melone’s Communications with ML and DG
Violation of Rules 4.5 and 8.4(d)

116. Conflict Disciplinary Counsel restates paragraphs 1 through 113.

117. In his communications with ML and DG, Thomas Melone violated:

- a) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies applications for Certificate of

Public Goods; and

- b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

COUNT III

Thomas Melone 's Site Preparation Without a Certificate of Public Good and His "Not Credible" Testimony in the Public Utility Commission Violation of Rules 3.5(d), 4.3 and 8.4(d)

- 118. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
- 119. In his company's site preparation without a Certificate of Public Good and his "not credible" testimony in the Public Utility Commission, Thomas Melone violated:
 - a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;
 - b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of fact and law; and
 - c) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Count IV

Thomas Melone's March 24, 2025 Email to Public Utility Commission Chair Ed McNamara Violation of Rule 3.5(b)(1)

- 120. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
- 121. Thomas Melone's March 24, 2025 email to Public Utility Commission Chair Ed McNamara violated:
 - a) Rule 3.5(b)(1) in that it was an ex parte communication with a person

acting in a judicial or quasi-judicial capacity; and

- b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

Count V

**Thomas Melone's Conduct With Respect to the Bennington High Project
Violation of Rules 3.1, 3.3(a)(1), 4.4(a) and 8.4(d)**

- 122. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
- 123. In the manner and means Thomas Melone used in his opposition to the Bennington High Project, Thomas Melone violated:
 - a) Rule 3.1 in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter;
 - b) Rule 3.3(a)(1) in that Thomas Melone demonstrated a lack of candor to both the Environmental Division and the Vermont Supreme Court by making false statements of law regarding the subject matter jurisdiction of the Environmental Division;
 - c) Rule 4.4(a) in that Thomas Melone used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer; and
 - d) Rule 8.4(d) in that Thomas Melone's conduct was conduct prejudicial to the administration of justice.

Count VI

**Thomas Melone's Statements to Screening Counsel Strauss with Respect to
Merrill Bent's Complaint to the Professional Responsibility Program
Violation of Rules of Professional Conduct 3.3(a)(1), 4.4(a) and 8.4(d)**

124. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
125. Thomas Melone's claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation *per se*, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct violated:
- a) Rule 3.3(a)(1) in that he showed a lack of candor toward the Professional Responsibility Program by making a false statements of law, specifically that Ms. Bent was liable for defamation *per se*, when he knew or should have known that Rule 12 of The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness; and
 - b) Rule 4.4(a) in that they showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent; and
 - c) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness, Ms. Bent.

Count VII
Thomas Melone's Email to Officials and Employees of the Town of Bennington
Violation of Rules 4.2 and 8.4(d)

126. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
127. Thomas Melone knew or should have known that Administrative Order 9 expressly provides that proceedings in the Professional Responsibility Board are confidential until such time as a Hearing Panel makes a finding of probable cause.
128. Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel.
129. While Rule 4.2 generally protects represented government entities from unconsented contacts by opposing counsel, there is an important exception to that "no contact" rule arising from the constitutional right to petition the government and the derivative public policy of ensuring a citizen's right of access to government decision makers. As a result, Rule 4.2 permits a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have the authority to take or to recommend action in that matter, provided that the sole purpose of the lawyer's communication is to address a policy issue, including settling the controversy.
130. Thomas Melone's communications with officials and employees of the Town of Bennington violated:
 - a) Rule 4.2 in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility

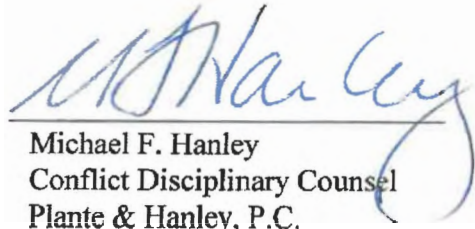
Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint; and

- b) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness in proceeding before the Professional Responsibility Program, Ms. Bent.

Count VIII
Thomas Melone's Persistent and Deliberate
Violations of The Rules of Professional Conduct
Violation of Rule 8.4(d)

131. Conflict Disciplinary Counsel restates paragraphs 1 through 113.
132. Over course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct and persistently induced his son, Michael Melone, to violate the Rules of Professional Conduct.
133. The Vermont Supreme Court stated in In Re James Weston Wright, 131 Vt. 473 (1973), that when there is a "consistent pattern . . . emerging from a series of several transactions, it seems clear that what might be in a single instance only poor judgment sans evil intent or direct motive becomes a condemnable course of conduct amounting to ethical unfitness"
134. This *Petition of Misconduct* show a consistent pattern emerging from several events of intentional misconduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

Dated: September 4, 2025

A handwritten signature in blue ink, appearing to read "M. Hanley", is written over a horizontal line.

Michael F. Hanley
Conflict Disciplinary Counsel
Plante & Hanley, P.C.
Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Thomas Melone
PRB File No. 25-120

CERTIFICATE OF SERVICE

I certify that on September 26, 2025, following a finding of probable cause, I filed a Petition of Misconduct regarding Thomas M. Melone with the Professional Responsibility Program by depositing the same in the United States Mail, postage prepaid, First Class, addressed to:

Merrick Grutchfield, Program Administrator
109 State Street
Montpelier, VT 05609-0701

and also by sending the same to her via email at:

merrick.grutchfield@vermont.gov

with copies to the Respondent via United States Mail, postage prepaid, First Class, addressed to:

Thomas M. Melone
157 Church Street, 19th floor
New Haven, CT 06510

the address shown on his last licensing statement and by email to:

Thomas.Melone@gmail.com

Dated: September 26, 2025

/s/Michael F. Hanley
Michael F. Hanley
Conflict Disciplinary Counsel

EXHIBIT 7

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re Thomas Melone
PRB No. 120-2025

**CONFLICT DISCIPLINARY COUNSEL’S REPLY TO
THOMAS MELONE’S “RESPONSE” TO CONFLICT DISCIPLINARY COUNSEL’S
MOTION FOR THE RECUSAL OF THE HEARING PANEL CHAIR**

In the Respondent’s “Response” to Conflict Disciplinary Counsel’s motion requesting the
recusal of the Hearing Panel Chair Thomas Melone:

- Misstates what Conflict Disciplinary Counsel said in the motion requesting Chair Brill’s recusal;
- makes a number of inaccurate statements about the nature of the disciplinary proceedings in Vermont, the role of the Professional Responsibility Board and its Chair, the role of Conflict Disciplinary Counsel and the role of the Hearing Panel;
- asserts a number of legal conclusions that are without foundation or merit;
and
- asks for relief which has no basis in fact or law.

Hearing Panel Chair Brill should recuse herself, a new Chair should be appointed, Mr. Melone should stop obstructing these proceedings and honor his duty to cooperate with the disciplinary process, and the Hearing Panel should issue orders which lead to the prompt resolution of the charges of professional misconduct.

MEMORANDUM

I. Conflict Disciplinary Counsel Did Not Allege That Hearing Panel Chair Brill Violated the Code of Judicial Conduct.

Contrary to Mr. Melone's claims, Conflict Disciplinary Counsel has **not** alleged that Hearing Panel Chair Brill violated the Vermont Code of Judicial Conduct.

Under Administrative Order 9, Rule 14(d), a hearing panel member must disqualify herself if a "judge, similarly situated, would be required to do so under the Vermont Code of Judicial Conduct." Under Rule 1.2 of that Code, a judge must disqualify herself to avoid "the appearance of impropriety." Conflict Disciplinary Counsel only asserts that some might question whether Chair Brill attempted to investigate facts independently and, as a result, in order to avoid even a hint of controversy, Ms. Brill should recuse herself as Chair of the Hearing Panel.

Conflict Disciplinary Counsel does not assert or admit, and denies, that Chair Brill caused any injury, harm or prejudice to Mr. Melone.

II. Mr. Melone's Statements Regarding the Attorney Discipline Process in Vermont Are Inaccurate.

Unlike the situation in some states, the Vermont Constitution gives the Vermont Supreme Court the right and the duty to regulate the practice of law in Vermont.

Under A.O. 9, the Professional Responsibility Board manages the Professional Responsibility Program created by the Vermont Supreme Court to assist it in the regulation of the bar. The Board enacts policies with respect to that program. The Professional Responsibility Board is an administrative, not an adjudicative, body.

Disciplinary Counsel and Conflict Disciplinary Counsel are supervised by the Board. Disciplinary Counsel and Conflict Disciplinary Counsel regularly report to the Board. What

Disciplinary Counsel and Conflict Disciplinary Counsel say in their reports to the Board are subject to the attorney-client and work product privileges.

The Professional Responsibility Board and its Chair have no role in the adjudication of petitions of misconduct. While the Chair of the Professional Responsibility Board appoints the members of hearing panels, the Board and its Chair do not supervise hearing panels. The findings of fact, the conclusions of law and the recommendations of a hearing panel are **not** subject to review by the Board. However, the findings of fact, the conclusions of law and the recommendations of a hearing panel with respect to sanctions are subject to review by the Vermont Supreme Court, which is free to reject or accept those findings, conclusions and recommendations. Of course, the internal proceedings of a hearing panel are subject to the judicial privilege.

A review of the attorney discipline decisions of the Vermont Supreme Court shows that it is not uncommon for the Court to reject the sanction recommendations of hearing panels, albeit while thanking those panels for their work in helping the Court to fulfill its constitutional duty to govern the practice of law in Vermont. See, for example, In Re Watts, 2024 VT 48.

III. Mr. Melone’s Requests for Relief, Not Contained in a Motion, Have No Basis in Fact or Law.

Mr. Melone’s statement that “a mistrial must be declared” is without merit. The Hearing Panel has not conducted a trial or hearing. There cannot be a mistrial before a trial starts.

Mr. Melone’s statement that “the case [must be] re-started (*i.e.*, begun anew)” is without merit. The Hearing Panel has heard no evidence and made no findings of fact or conclusions of law. There is nothing to restart.

Mr. Melone's statement that "the petition must be dismissed" is without merit. Both the Hearing Panel and the Vermont Supreme Court have denied multiple motions to dismiss by Mr. Melone. Indeed, no reasonable person would assert that if the factual allegations of the *Petition of Misconduct* are true, Mr. Melone did not violate the *Rules of Professional Conduct*.¹

IV. Whether Conflict Disciplinary Counsel Was Properly Appointed by the Chair of the Professional Responsibility Board, and Whether the Chair Has the Authority to Appoint Conflict Disciplinary Counsel, Is Not Related to Whether Mr. Melone Engaged in Professional Misconduct.

Mr. Melone has objected at every point in these proceedings. He has objected to the appointment of Conflict Disciplinary Counsel in this case. He has challenged the authority of the Professional Responsibility Board to enact policies on what to do when Disciplinary Counsel has a conflict of interest, suggesting that if Disciplinary Counsel has a conflict regarding a particular case the disciplinary process cannot proceed, even if a lawyer is guilty of substantial misconduct.

Conflict Disciplinary Counsel would have no objection if the Hearing Panel were to order either the presentation of affidavits or an evidentiary hearing regarding my appointment. Both I and Professional Responsibility Board Chair Anderson would state, under oath, that:

- Disciplinary Counsel Jon Alexander thought he had a conflict of interest;
- Chair Anderson asked me to serve as Conflict Disciplinary Counsel;
- I agreed to do so;

¹ Mr. Melone's repeated assertion that the *Petition of Misconduct* must be dismissed because he has a constitutional right to violate the *Rules of Professional Conduct* is irrational hyperbole. While the Constitution places some limits on a state's regulation of the speech of lawyers, Mr. Melone's claim that the Constitution bars all regulation of his speech as a lawyer is not supported by any of the cases he cites. Multiple decisions of the United States Supreme Court make clear that the protection afforded to professional speech is much less than the protection afforded to political or artistic speech.

- Chair Anderson asked the Program Administrator, Merrick Grutchfield, to prepare a letter memorializing my appointment; and
- Ms. Grutchfield prepared the letter and sent it to me.

Whether the letter Ms. Grutchfield prepared says what Mr. Melone claims it must say is beside the point. Chair Anderson appointed me as Conflict Disciplinary Counsel, and I agreed to serve.

Whether A.O. 9 authorizes the Professional Responsibility Board to enact a policy giving its Chair the authority to appoint Conflict Disciplinary Counsel is beyond the scope of these proceedings. A.O. 9 gives the Professional Responsibility Board the power to enact policies, and the Board enacted a policy giving its Chair the authority to appoint Conflict Disciplinary Counsel when Disciplinary Counsel has a conflict of interest. Any arguments Mr. Melone seeks to make regarding the validity of either A.O. 9 or Board policies enacted pursuant to A.O. 9 should be addressed to the Supreme Court at the appropriate time. The Hearing Panel has an important role in this case, but it does not extend to telling the Supreme Court what it can, and cannot, do in the Court's administrative orders.

V. A.O. 9 Requires That Disciplinary Proceedings Be Prompt.

A.O. 9 mandates the prompt resolution of disciplinary proceedings. The Petition of Misconduct was filed on September 20, 2025, 136 days ago. During that time Mr. Melone has filed hundreds pages of pleadings with the Hearing Panel and the Vermont Supreme Court, issued a substantial number of subpoenas to third parties, demanded that non-parties “meet and confer” with him regarding his subpoenas and threatened to initiate proceedings in federal court, but failed to file an answer. Mr. Melone's filings repeat the same baseless arguments again and again. Mr. Melone has obstructed these proceedings and blatantly violated his obligation to

cooperate with the disciplinary process. The Hearing Panel should not be distracted by Mr. Melone's antics and should ensure that these proceedings are promptly concluded.

VI. Conclusion

Hearing Panel Chair Brill should recuse herself, a new Hearing Panel Chair should be appointed, and the Hearing Panel should conduct a scheduling hearing. At, or shortly after, the scheduling hearing, the Hearing Panel should issue orders regarding motion practice, discovery and the date of the hearing on the merits, all designed to bring this matter to a conclusion. If, as he has threatened, Mr. Melone initiates proceedings in federal court, absent orders to the contrary from a federal court or the Vermont Supreme Court, the Hearing Panel should proceed with an adjudication on the merits.

Dated: February 11, 2026

/s/ Michael F. Hanley
Michael F. Hanley
Conflict Disciplinary Counsel
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Post Office Box 708
White River Junction, VT 05001
802-295-3151, Ext. 102
mfhanley@plantehanley.com

EXHIBIT 8

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

PLH VINEYARD SKY LLC and APPLE
HILL SOLAR LLC,

Plaintiffs,

v.

TOWN OF BENNINGTON

Defendant

Case No. 2:25-cv-469

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES PLH Vineyard Sky LLC (“PLH”) and Apple Hill Solar LLC (“Apple Hill” or “AHS”, and collectively with PLH, the “Plaintiffs”) by way of complaint against the Town of Bennington (the “Town”) which respectfully files this petition for declaratory relief.

NATURE OF THE ACTION

1. On October 6, 2015, the Town of Bennington by action of the Select Board adopted a Town Plan (the “2015 Town Plan”). Under 24 V.S.A. §4387(a), the 2015 Bennington Town Plan was set to expire after 8 years on October 6, 2023. Under 24 V.S.A. §4385, a municipality can amend its town plan at any time, however, under 24 V.S.A. §4385(d) an amendment to a plan does not affect or extend the plan’s expiration date. Under 24 V.S.A. §4387(b)(1), a municipality may readopt an entire town plan that has expired or about to expire; provided that the Town satisfies a number of requirements including, *inter alia*, certain notice requirements and that the planning commission reviews and updates the information on which the plan is based. In 2016, Vermont House Bill 367 was passed into law and modified 4 V.S.A. §4387(b) by adding several other requirements for a municipality to readopt a town plan, including more extensive public

jurisdiction which is given, than to usurp that which is not given.” *Cohens v. Virginia*, 19 U.S. 264, 404 (1821). This Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because of diversity of citizenship under 28 U.S.C. §1332 and the amount in controversy exceeds \$75,000.

9. The Court is empowered to grant declaratory relief by 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

10. This Court has personal jurisdiction over Defendant because the Defendant resides in Vermont and conducts its activities in the District of Vermont.

11. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2) because a substantial part of the events giving rise to this action occurred in the District of Vermont.

FACTS APPLICABLE TO ALL COUNTS

I. The Town Plan Expiration

12. Pursuant to 24 V.S.A. §4387, the 2015 Bennington Town Plan was set to expire on October 6, 2023.

13. Rather than engage in community outreach and involvement in updating the 2015 Town Plan as required by statute, the Town opted to try to buy itself several more years. The story that Defendant has been telling regarding the status of its town plan is simple on its face: the Defendant claims that the Town Plan was re-adopted on January 22, 2018 (i.e., 5 whole years before expiration), when the Town adopted an amendment to the Town Plan by adopting an enhanced energy element (the “Energy Amendment”) and sought from the Bennington County Regional Commission (the “BCRC”) (i) Act 174 certification of the Energy Amendment and (ii) approval of its Energy Amendment under 24 V.S.A. §4350.

20. 24 V.S.A. §4350 requires a regional planning commission to review the planning process of its members (the “Planning Process”). *See* 24 V.S.A. §4350(a)(1). During the period of time when a municipal Planning Process is confirmed, the municipality shall be eligible to receive additional funds from the municipal and regional planning fund, among other benefits. *See* 24 V.S.A. §4350(d)(4). In order to obtain or retain confirmation of the Planning Process, a municipality must have an approved plan. *See* 24 V.S.A. §4350(b)(1). A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. *Id.* Once the Defendant approved the Energy Amendment on January 24, 2018, it sought BCRC approval of the Energy Amendment under 24 V.S.A. §4350 (see **Exhibit 2**). This is the same process that Bennington followed under 24 V.S.A. §4350 for two subsequent amendments as well (see **Exhibit 3** hereto).

21. As set forth on **Exhibit 2**, on January 24, 2018, the Town sought confirmation from the BCRC (i) that the Energy Amendment met the energy planning standards (24 V.S.A. §4352) of Act 174 and (ii) approval of the 2015 Town Plan as amended by the Energy Amendment under 24 V.S.A. §4350. In response to the request, the BCRC issued a “Certificate of Energy Compliance” on March 15, 2018, and nothing else (see **Exhibit 4** hereto). In other words, not only did the BCRC not approve a newly adopted Town Plan (because there was none), the BCRC did not even approve the 2015 Town Plan as amended by the Energy Amendment. There was no BCRC approval under 24 V.S.A. §4350 in the wake of the Energy Amendment.

22. Regardless, in a throwback to the television series *Seinfeld*, when a citizen of Bennington challenged Town manager Stu Hurd’s claim that the Town Plan didn’t expire in 2023, Mr. Hurd said: “*It’s not a lie if one believes what one’s saying.*” (See **Exhibit 5** hereto)

C. Why the Town’s Position Trips at the Starting Gate.

23. 24 V.S.A. §4387(a) requires that re-adoption take place in accordance with 24 V.S.A. §4385 which requires public notice and two hearings as a condition precedent to duly adopting a new town plan or re-adopting an old one. The Bennington Planning Commission never issued a public notice concerning a public hearing on a “re-adoption” of the Town Plan. The Planning Commission never voted on a re-adoption of the Town Plan. The Select Board never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Select Board never voted on a re-adoption of the Town Plan. And, of course, the requirement under §4387(b)(1)(A) that the planning commission “engage in community outreach and involvement in updating the plan” was never done. All that was ever done by the Town of Bennington on January 22, 2018, was pass an amendment to the Town Plan (i.e., the Energy Amendment).

24. No matter how comprehensive the Energy Amendment, none of the statutory requirements to re-adopt the Town Plan were satisfied. Likewise, no matter how comprehensive the Energy Amendment might have been, the BCRC has no authority to determine that the action taken by the Town is actually a re-adoption of the Town Plan rather than an amendment thereto. Under 24 V.S.A. § 4345b(e), the BCRC has no authority to perform essential legislative functions, the power to re-adopt the Town Plan being one of those essential legislative functions. The process of re-adoption cannot be short circuited by the BCRC, even if the Town asks them to short circuit it. There is no end-around the requirements of 24 V.S.A. §4385.

25. Neither the Town nor the BCRC has the authority to circumvent the requirements of (i) 24 V.S.A. §4387(a), which requires public notice and hearings on any re-adoption and (ii) 24 V.S.A. §4387(b) which requires the Planning Commission to take the following actions (none of which occurred):

- (A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;

- (B) engage in community outreach and involvement in updating the plan;
- (C) consider consistency with the goals established in section 4302 of this title;
- (D) address the required plan elements under section 4382 of this title;
- (E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;
- (F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and
- (G) establish a program and schedule for implementing the plan.

26. No matter how comprehensive the Energy Amendment might have been, all that was accomplished by the Select Board on that date was an adoption of the Energy Amendment. That is made abundantly clear by (1) the public notices sent out in advance of the January 8, 2018, and January 22, 2018, Select Board hearings on the Energy Amendment (the “SB Energy Amendment Hearings”) (see **Exhibit 6** hereto), (2) the transcripts of the SB Energy Amendment Hearings (see **Exhibit 7** hereto), (3) the minutes of the SB Energy Amendment Hearings (**Exhibit 8** hereto), (4) the Agendas for the SB Energy Amendment Hearings (see **Exhibit 9** hereto), (5) the public notice sent out in advance of the Planning Commission meeting on October 16, 2017 discussing the Energy Amendment (the “PC Energy Amendment Hearing”) (see **Exhibit 10** hereto), (6) the minutes for the PC Energy Amendment Hearing (see **Exhibit 11** hereto), (8) the Agenda for the PC Energy Amendment Hearing (see **Exhibit 12** hereto), (7) the Memorandum from the Planning Commission to the Select Board submitting the Energy Amendment for approval (see **Exhibit 13** hereto) and (8) the Certificate of Energy Compliance issued by the Bennington County Regional Commission (“BCRC”) on January 22, 2018 (see **Exhibit 4** hereto).

27. One of the most telling pieces of evidence is the Act 174 Review Tool discussed above as it encapsulates the Act 174 certification process before the BCRC. The Act 174 Review Tool was filled out by, and submitted by, the Town to the BCRC in order to receive confirmation of energy compliance under Act 174. In response to the question in the Act 174 Review Tool

“Has your plan been duly adopted and approved from confirmation according to 24 V.S.A. §4350?”, the Town responded:

The Town of Bennington’s enhanced energy element was adopted as an amendment to the Bennington Town Plan on Monday, January 22, 2018. A draft plan was published in November 2017 and ___ public meetings were duly warned and held in ___ 2018 prior to adoption. The Bennington Town Plan (“Town Plan”) was originally adopted on October 6, 2015. The town has requested that the BCRC confirm its plan as amended at the commission’s next meeting on March 15, 2018. (emphasis added)

There is no mystery as to what happened on January 22, 2018, because the Town explicitly stated what happened when it went before the BCRC seeking Act 174 certification. The Town only ever sent the Energy Amendment to the BCRC to review (see **Exhibit 2** hereto) and the BCRC only ever issued the Certificate of Energy Compliance (see **Exhibit 4** hereto).

28. Perhaps just as telling as Act 174 Review Tool is a quick review of the Agency of Commerce and Community Development’s website which includes a link to their “plan and bylaw database.”³ 24 V.S.A. § 4385(c) requires that copies of newly adopted plans and amendments shall be provided to the Commissioner of Housing and Community Development within 30 days of adoption. The 2010 Bennington Town Plan is there. The 2015 Bennington Town Plan is there. But the only thing that is there for 2018 is a copy of the Energy Amendment (see **Exhibit 14** hereto). Obviously if the Town Plan had been readopted in 2018, the Town would have uploaded the entire Town Plan **as required by law**. In fact, the Town as recently as August 26, 2024, was still submitting official documents and certifications to the State indicating a Town Plan adoption

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https://outside.vermont.gov/agency/ACCD/bylaws/Bylaws%20and%20Plans%20Approved/Forms/Group%20by%20Municipality.aspx?_gl=1*d1esa6*_ga*MTQzMTIxMTk2MC4xNzZmMjQzNzI5*_ga_V9WQH77KLW*MTc0NTU5MjUwNy42My4wLjE3NDU1OTI1MTMuMC4wLjA

date of October 6, 2015 (see **Exhibit 15** hereto). Clearly, if the Town Plan had been readopted in 2018, the Town would have stated as much in its certifications to the State.

29. As each of the aforementioned Exhibits makes clear, the Town Plan was not re-adopted on January 22, 2018, it was simply amended by the passage of the Energy Amendment. If it was the intent to re-adopt the Town Plan, then the Town would have been required to hold public hearings on exactly that pursuant to 24 V.S.A. §4385(a). As the evidence clearly shows, the public hearings that were held were limited to the passage of the Energy Amendment and there was not **a single** mention of re-adoption of the Town Plan at any of them. If the Town sought to re-adopt the 2015 Town Plan, it would also have to abide by the procedures set forth in 24 V.S.A. §4387(b), which requires, among other things, the Planning Commission to review and update **all of the information** on which the plan is based (not just information concerning the Energy Amendment) and consider the criteria set forth in §4387(b)(1)(A) through (G) listed above, none of which occurred.⁴

30. As the evidence clearly indicates, the passage of the Energy Amendment was exactly that, the approval of an amendment to the Town Plan. As §4385(d) makes abundantly clear, “An amendment to a plan does not affect or extend the plan’s expiration date.” As such, the Town Plan expired on October 6, 2023.

⁴ One of the requirements under §4387(b)(1)(A) is that the planning commission “engage in community outreach and involvement in updating the plan”. On October 23, 2023, the Town Select Board adopted a resolution approving a Municipal Planning Grant Application from the DHCD in the amount of \$26,500 to hire consultants to aid the BCRC in a comprehensive update of the Town Plan. Tellingly, this process did not occur prior to the adoption of the Energy Amendment.

II. Why the Expiration of the Bennington Town Plan Matters to Plaintiffs.

31. Plaintiff Apple Hill Solar LLC (“AHS”) filed its petition for a CPG with the PUC on November 26, 2024, which is when there was no valid Town Plan in effect. The petition is docketed as Case No. 24-3517-PET. That AHS petition was filed as a result of a prior denial of a CPG in docket no. 8454 that resulted *solely* from a purported inconsistency of the solar project with the Bennington Town Plan. In other words, but for that purported inconsistency, AHS would have been issued a CPG for its solar project. This Court issuing the requested declaratory relief will significantly increase the likelihood that the Plaintiffs’ Apple Hill solar project will obtain a CPG and will be built. The Plaintiffs would have decreased costs, increased likelihood of the project being built, a decrease in the risk of losses to Plaintiffs, and increased opportunities.

32. The value of Plaintiffs’ two-megawatt solar project and the costs and losses that are at issue far exceed \$75,000.

33. The Town has taken final definitive positions which stand as an obstacle to the prize that Plaintiffs seek: a CPG. There are no more steps needed to make Plaintiffs’ claims ripe. All requested relief involves issues where the Defendant has taken a definitive position regarding how its purported Town Plan zoning restrictions apply to the project site and Plaintiff’s solar project. Each such definitive position taken by the Defendant stands in the way of Plaintiffs’ land being used for solar, and the land and personal property not diminishing or losing some or all of its value. The Second Circuit’s opinion in *Allco Finance Ltd. v. Klee*, 861 F.3d 82 (2d Cir. 2017) (“*Klee*”) and its recent opinion in *Allco Finance Ltd. v. Roisman*, No. 22-2276, 2023 U.S. App. LEXIS 18179 *14-15, 2023 WL 4571965 (2d Cir. July 18, 2023) (“*Roisman*”) establishes that Plaintiffs have standing here and that Article III’s requirements are met. As here, the plaintiffs in both *Klee* and *Roisman* sought declaratory and injunctive relief challenging a decision or policy of a

governmental entity. At issue in those two cases were energy contracts, which the Second Circuit described as the ultimate prize that plaintiffs sought. Notably in both of those cases even if the plaintiffs obtained the relief they sought from the federal district court, there was no guarantee they would obtain the ultimate prize.⁵ But because, as here, the government's policy stood as an obstacle to the prize plaintiffs sought, the plaintiffs had standing to challenge it. *See, Klee* at 95, fn. 10, *Roisman* at *14-15. Here, the prize that Plaintiffs seek is a CPG under 30 V.S.A. §248. Just as in *Klee* and *Roisman*, it is the Defendant's claim and its definitive position that the Town Plan did not expire on October 6, 2023, that stand as an obstacle in the Plaintiffs' way.

CAUSES OF ACTION

COUNT I

DECLARATORY JUDGMENT THAT THE 2015 TOWN PLAN WAS NOT RE-ADOPTED ON JANUARY 22, 2018 AND EXPIRED ON OCTOBER 6, 2023.

34. Plaintiffs repeat and re-allege the allegations contained in each and every preceding paragraph of this Complaint.

35. As set forth above, there is an actual, present controversy concerning whether the 2015 Town Plan has expired.

36. The unconverted evidence concerning the approval process of the Energy Amendment submitted by the Plaintiffs confirms that the only action taken by the Town Select

⁵ Success in achieving a Plaintiffs' ultimate goal, here a CPG, has never been a requirement of Article III standing and redressability. *See, e.g., discussed infra, Clinton v. City of New York*, 524 U.S. 417, 433 n. 22 (1998); *Natural Resources Defense Council, Inc. v. FDA*, 710 F.3d 71, 81 (2d Cir. 2013); *Ne. Fla. Chapter, Associated Gen. Contractors of Am. v. Jacksonville*, 508 U.S. 656, 666 (1993)); *FEC v. Akins*, 524 U.S. 11, 25 (1998); *Utah v. Evans*, 536 U.S. 452, 464, 122 S. Ct. 2191 (2002); *Winding Creek Solar LLC v. Peterman*, 932 F.3d 861 (9th Cir. 2019). *Winding Creek* is another Allco-related case.

Board on January 22, 2018, was to adopt the Energy Amendment. There was no re-adoption of the Town Plan.

37. For the reasons stated herein, Plaintiff asks for a declaratory judgment that the 2015 Town Plan expired on October 6, 2023.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter Judgment against the Defendant as follows:

- a. That this Court grant judgment in favor of Plaintiffs and against Defendant;
- b. That this Court issue the declaration requested herein by Plaintiffs;
- c. That the Plaintiffs be granted such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: May 2, 2025

Respectfully submitted,

/s/Michael Melone

Michael Melone

Allco Renewable Energy Inc.

157 Church Street, 19th floor

New Haven, CT 06510

Phone: (212) 681-6974

Email: mjmelone@AllcoUS.com

Attorney for Plaintiffs

PLAINTIFFS' INDEX OF EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>
1	Vermont Department of Public Service Act 174 Review Tool
2	Town Email Request to BCRC For Energy Amendment Approval
3	BCRC Approval of Bolio and SVC Amendments to Town Plan
4	BCRC Certificate of Energy Compliance
5	Stuart Hurd Email 10-15-24
6	Public Notice of Select Board Hearings on Energy Amendment
7	Transcript of the Select Board Hearings on Energy Amendment
8	Minutes of the Select Board Hearings on Energy Amendment
9	Agenda of the Select Board Hearings on Energy Amendment
10	Public Notice of the Planning Commission Hearing on Energy Amendment
11	Minutes of the Planning Commission Hearing on Energy Amendment
12	Agenda of the Planning Commission Hearing on Energy Amendment
13	Memorandum from Planning Commission to Select Board Regarding Submission of Energy Amendment
14	Screenshot of Agency of Commerce and Community Development Plan and Bylaw Database
15	Town Resolution to Agency of Commerce and Community Development, August 26, 2024

EXHIBIT 1

Energy Planning Standards for Municipal Plans

Instructions

Before proceeding, please review the requirements of Parts I and II below, as well as the Overview document. Submitting a Municipal Plan for review under the standards below is entirely voluntary, as enabled under [Act 174](#), the Energy Development Improvement Act of 2016. If a Municipal Plan meets the standards, it will be given an affirmative “determination of energy compliance,” and will be given “substantial deference” in the Public Service Board’s review of whether an energy project meets the orderly development criterion in the Section 248 process. Specifically, with respect to an in-state electric generation facility, the Board:

[S]hall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. In this subdivision (C), “substantial deference” means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. The term shall not include consideration of whether the determination of energy compliance should or should not have been affirmative under 24 V.S.A. § 4352.

Municipal Plans should be submitted by the municipality’s legislative body to the Regional Planning Commission (RPC) if the Regional Plan has received an affirmative determination of energy compliance. If a Regional Plan has not received such a determination, until July 1, 2018¹, a municipality may submit its adopted and approved Municipal Plan to the Department of Public Service (DPS) for a determination of energy compliance (determination), along with the completed checklist below. After a Municipal Plan and completed checklist have been submitted to the RPC (or DPS), the RPC or DPS will schedule a public hearing noticed at least 15 days in advance by direct mail to the requesting municipal legislative body, on the RPC or DPS website, and in a newspaper of general publication in the municipality. The RPC or DPS shall issue a determination in writing within two months of the receipt of a request. If the determination is negative, the RPC or DPS shall state the reasons for the denial in writing and, if appropriate, suggest acceptable modifications. Submissions for a new determination following a negative determination shall receive a new determination within 45 days.

The plans that Municipalities submit must:

- Be adopted
- Be confirmed under 24 V.S.A. § 4350
- Include an energy element that has the same components as described in 24 V.S.A. § 4348a(a)(3)
- Be consistent with state energy policy (described below), in the manner described in 24 V.S.A. § 4302(f)(1)
- Meet all standards for issuing a determination of energy compliance (see below)

¹ These standards will be revised after July 1, 2018 to reflect that Municipal Plans should be submitted only to the Regional Planning Commissions – which will all have had an opportunity to seek a determination of energy compliance – from that point forward.

Municipalities are encouraged to consult with their reviewer (either their RPC or DPS) before undertaking the process of plan adoption, which may help in identifying any deficiencies or inconsistencies with the standards or other requirements that would be more difficult to remedy after a plan has gone through the formal adoption process.

The state’s Comprehensive Energy Plan (CEP) is revised on a 6-year basis. When the next CEP is published in 2022, it will include a revised set of standards, as well as Recommendations that are customized to regions and municipalities. The Recommendations that accompany this initial set of Standards represent a subset of recommendations from the 2016 CEP, which were not written with regions and municipalities specifically in mind. A Guidance document – which is expected to evolve as best practices from regions and municipalities emerge – will be published shortly after the Standards are issued. It will serve as the warehouse for relevant recommendations from the 2016 CEP, links to data sources, instructions on conducting analysis and mapping, and sample language/best practices. Once issued and until the 2022 CEP is published, this Guidance document will supplant the Recommendations document.

Affirmative determinations last for the life cycle of a revision of the Municipal Plan, and Municipal Plans that are submitted after the 2022 CEP is issued will be expected to meet the Standards that are issued at that time. Municipalities are encouraged to consult with their RPC or DPS regarding interim amendments that might affect any of the standards below, to discuss whether a new review is triggered.

If you wish to submit your Municipal Plan to your RPC or to DPS for a determination, please read closely the specific instructions at the start of each section below, and attach your Municipal Plan to this checklist.

Determination requests to an RPC (and any other questions) should be submitted to your RPC’s designated contact. Determination requests to DPS until July 1, 2018 – and only for municipalities whose Regions’ plans have not received an affirmative determination – should be submitted to: PSD.PlanningStandards@vermont.gov.

Part I: Applicant Information		
The plan being submitted for review is a:	<input checked="" type="checkbox"/> Municipal Plan in a region whose regional plan has received an affirmative determination of energy compliance from the Commissioner of Public Service Please submit these plans to your RPC	<input type="checkbox"/> Municipal Plan in a region whose regional plan has <u>not</u> received a determination of energy compliance Until July 1, 2018, please submit these to the DPS. After July 1, 2018, this option ceases to exist.
Applicant:	Town of Bennington	
Contact person:	Dan Monks, Planning Director	
Contact information:	dmonks@benningtonvt.org	
Received by: Click here to enter text.	Date: Click here to enter text.	

Part II: Determination Standards Checklist

The checklist below will be used to evaluate your plan's consistency with statutory requirements under Act 174, including the requirement to be adopted and approved, contain an enhanced energy element, be consistent with state energy policy, and meet a set of standards designed to ensure consistency with state energy goals and policies.

Please review and attach your plan (or adopted energy element/plan, along with supporting documentation) and self-evaluate whether it contains the following components. Use the Notes column to briefly describe how your plan is consistent with the standard, including relevant page references (you may include additional pages to expand upon Notes). If you feel a standard is not relevant or attainable, please check N/A where it is available and use the Notes column to describe the situation, explaining why the standard is not relevant or attainable, and indicate what measures your municipality is taking instead to mitigate any adverse effects of not making substantial progress toward this standard. If N/A is not made available, the standard must be met (unless the instructions for that standard indicate otherwise) and checked "Yes" in order to receive an affirmative determination. There is no penalty for checking (or limit on the number of times you may check) N/A where it is available, as long as a reasonable justification is provided in the Notes column.

Plan Adoption Requirement

Act 174 requires that municipal plans be adopted and approved in order to qualify for a determination of energy compliance. In the near term, it is likely municipalities will revise and submit isolated energy plans or elements, particularly due to long planning cycles. Therefore, the plan adoption requirement can be met through an amendment to an existing plan in the form of an energy element or energy plan, as long as the amendment or plan itself is duly adopted as part of the municipal plan and incorporated by reference or appended to the underlying, full plan (i.e., is officially "in" the municipal plan), as well as approved for confirmation with the region. If this route is chosen, the municipality should also attach the planning commission report required for plan amendments under 24 V.S.A. § 4384, which should address the internal consistency of the energy plan/element with other related elements of the underlying plan (particularly Transportation and Land Use), and/or whether the energy plan/element supersedes language in those other elements. Standards 1 and 2 below must be answered in the affirmative in order for a plan to receive an affirmative determination of energy compliance.

<p>1. Has your plan been duly adopted and approved for confirmation according to <u>24 V.S.A. § 4350</u>?</p>	<p><input checked="" type="checkbox"/> Yes. Adoption date: January 22, 2018 Confirmation date: See notes</p>	<p><input type="checkbox"/> No</p> <p>The Town of Bennington's enhanced energy element was adopted as an amendment to the Bennington Town Plan on Monday, January 22, 2018. A draft plan was published in November 2017 and __ public meetings were duly warned and held in ____ 2018 prior to adoption. The Bennington Town Plan ("Town Plan") was originally adopted on October 6, 2015.</p> <p>The town has requested that the BCRC</p>
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		confirm its plan as amended at the commission's next meeting on March 15, 2018.
2. Is a copy of the plan (or adopted energy element/plan, along with underlying plan and planning commission report addressing consistency of energy element/plan with other elements of underlying plan) attached to this checklist?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No Notes: This Act 174 standards checklist is accompanied by three appendices: Appendix A: The amended Town Plan, with the enhanced energy element integrated as Chapter 8: Energy Chapter (pages 97-125); Appendix B: Municipal Plan Review Tool regarding the Town Plan's consistency with state goals and statorily required elements, completed by BCRC staff; Appendix C: Findings of staff review for Act 171 compliance.

Energy Element Requirement

To obtain a determination of energy compliance, Act 174 requires municipalities to include an "energy element" that contains the same components described in 24 V.S.A. § 4348a(a)(3), which was revised through Act 174 to explicitly address energy across all sectors and to identify potential and unsuitable areas for siting renewable energy resources:

An energy element, which may include an analysis of resources, needs, scarcities, costs, and problems within the region across all energy sectors, including electric, thermal, and transportation; a statement of policy on the conservation and efficient use of energy and the development and siting of renewable energy resources; a statement of policy on patterns and densities of land use likely to result in conservation of energy; and an identification of potential areas for the development and siting of renewable energy resources and areas that are unsuitable for siting those resources or particular categories or sizes of those resources.

<p>The standards below are generally organized to integrate each component of the enhanced energy element with related determination standards that evaluate the plan's consistency with state goals and policies. Energy element components are identified in bolded text.</p> <p>While municipalities may choose to primarily address energy used for heating, transportation, and electricity in the required energy element, they may also choose to address some of these components in related plan elements (e.g., Transportation and Land Use) and should indicate as much in the Notes column. To the extent an energy element is designed to comprehensively address energy, it should be complementary to and reference other relevant plan elements.</p>		
<p>3. Does the plan contain an energy element, that contains the same components described in 24 V.S.A. § 4348a(a)(3)? <i>Individual components of the energy element will be evaluated through the standards below.</i></p>	<p><input checked="" type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p> <p>Page: Chapter 8: Energy Chapter (pg 97-125) of the Town Plan</p> <p>Notes: The Town Plan contains an enhanced energy element (Chapter 8) that specifically addresses requirements for Act 174 compliance including detailed discussions of current and future energy use, strategies and policies to meet future energy goals, and renewable energy production. Other chapters in the Town Plan dealing with land use, transportation, and community facilities provide further details on the concepts and strategies outlined in the energy element. The town's comprehensive energy strategies and policies are outlined in pages 113 to 125.</p> <p>In addition, chapters of the Town Plan covering land use, housing, and transportation provide more specific policies encouraging conservation and efficient use of energy, expanding renewable energy use, and reducing reliance on fossil fuels.</p>

<p>Consistency with State Goals and Policies Requirement</p> <p>Act 174 states that regional and municipal plans must be consistent with the following state goals and policies:</p> <ul style="list-style-type: none"> • Greenhouse gas reduction goals under 10 V.S.A. § 578(a) (50% from 1990 levels by 2028; 75% by 2050) • The 25 x 25 goal for renewable energy under 10 V.S.A. § 580 (25% in-state renewables supply for all energy uses by 2025) • Building efficiency goals under 10 V.S.A. § 581 (25% of homes – or 80,000 units – made efficient by 2020)
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- State energy policy under [30 V.S.A. § 202a](#) and the recommendations for regional and municipal planning pertaining to the efficient use of energy and the siting and development of renewable energy resources contained in the [State energy plans](#) adopted pursuant to [30 V.S.A. §§ 202](#) and [202b](#)
- The distributed renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard under [30 V.S.A. §§ 8004](#) and [8005](#)

The standards in the checklist below will be used to determine whether a plan is consistent with these goals and policies. The standards are broken out by category. *Analysis and Targets* standards address how energy analyses are done within plans, and whether targets are established for energy conservation, efficiency, fuel switching, and use of renewable energy across sectors. *Pathways (Implementation Actions)* standards address the identification of actions to achieve the targets. *Mapping* standards address the identification of suitable and unsuitable areas for the development of renewable energy.

Municipalities may choose to incorporate the information necessary to meet the standards in their energy elements, and/or in other sections of their plans (many transportation items may fit best in the Transportation chapters of plans, for instance). However, plans must be internally consistent, and applicants should cross-reference wherever possible.

Analysis and Targets Standards

For the *Analysis & Targets* determination standards below, municipalities will be provided with analyses and targets derived from regional analyses and targets no later than April 30, 2017 (and likely much sooner). Municipalities may choose to rely on these “municipalized” analyses and targets to meet the standards in this section. Municipalities which elect to use the analysis and targets provided by a region will be presumed to have met the standards in this section. Alternatively, municipalities may develop their own custom analyses and targets or supplement the analyses and targets provided by the regions with specific local data; if this option is chosen, the analysis and targets must include all of the same components and meet the standards required of regions, as described below.

For municipalities that choose to undertake their own analysis and target-setting (and for regions), DPS is providing a guidance document to explain the expected level of detail in and data sources and methodologies available for meeting the standards (including areas where it is understood data at the municipal level is unavailable, and therefore not expected). Note that standards 5A-4E are all derived directly from requirements in Act 174 (with minor modifications to make them feasible) and must be met affirmatively in order for a municipal plan to receive an affirmative determination of energy compliance.

Targets set by regions and municipalities should be aligned with state energy policy (see the goals and policies listed above). Where targets (and efforts to reach them) depart significantly from state energy goals and policies, an explanation for how the plan otherwise achieves the intent of the state goal or policy should be provided. The guidance document also offers additional clarification on alignment with state goals and policies.

The analysis items below are intended to provide regions and municipalities with an overview of their current energy use, and with a sense of the trajectories and pace of change needed to meet targets, which can be translated into concrete actions in the *Pathways* standards below. Targets provide regions and municipalities with milestones or checkpoints along the way toward a path of meeting 90% of their total energy needs with renewable energy, and can be

<p>compared with the potential renewable energy generation from areas identified as potentially suitable in the <i>Mapping</i> standards exercise below to give regions and municipalities a sense of their ability to accommodate renewable energy that would meet their needs.</p>		
<p>4. Does your plan's energy element contain an analysis of resources, needs, scarcities, costs, and problems within the municipality across all energy sectors (electric, thermal, transportation)?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>Page: 97-112 Notes: The Energy Chapter of the Town Plan discusses current energy use and projected future needs in sections 8.1 and 8.2.</p>
<p>5. Does your plan contain an analysis that addresses A-E below, either as provided by your Regional Planning Commission or as developed by your municipality? <i>Municipalities may meet this standard by using the analysis and targets provided by their regions, or by developing their own analyses and targets. If using the analysis & targets provided by your region, please answer "Yes-Region" and skip ahead to #6. If developing a custom analysis, please answer "Yes-Custom" and address 5A-5E separately, below.</i></p>	<input checked="" type="checkbox"/> Yes-Region <input type="checkbox"/> No <input type="checkbox"/> Yes-Custom	<p>Page: 98-112 Paragraph #: Click here to enter text. Notes: The town used analyses prepared by the Bennington County Regional Commission (BCRC). Analysis is distributed accordingly: Transportation (municipal pg 105) (personal and commercial/industrial pg 109-111), Heating (residential pg 98-101) (municipal pg 103-104, 106-107) (commercial/ industrial pg 101-102, 107-109), Electric (residential pg 99-100, 110-112) (municipal pg 103-107) (commercial/ industrial 101-102) (renewable electricity generation pg 112)</p>
<p>A. Does the plan estimate current energy use across transportation, heating, and electric sectors?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Page: Click here to enter text. Paragraph #: Click here to enter text. Notes: Click here to enter text.</p>
<p>B. Does the plan establish 2025, 2035, and 2050 targets for thermal and electric efficiency improvements, and use of renewable energy for transportation, heating, and electricity?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Page: Click here to enter text. Paragraph #: Click here to enter text. Notes: Click here to enter text.</p>
<p>C. Does the plan evaluate the amount of thermal-sector conservation, efficiency, and conversion to alternative heating fuels needed to achieve these targets?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Page: Click here to enter text. Paragraph #: Click here to enter text. Notes: Click here to enter text.</p>
<p>D. Does the plan evaluate transportation system changes and land use strategies needed to achieve these targets?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Page: Click here to enter text. Paragraph #: Click here to enter text. Notes: Click here to enter text.</p>
<p>E. Does the plan evaluate electric-sector conservation and efficiency needed to achieve these targets?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>Page: Click here to enter text. Paragraph #: Click here to enter text. Notes: Click here to enter text.</p>

Pathways (Implementation Actions) Standards

This section examines whether plans meet the Act 174 expectation that they include pathways and recommended actions to achieve the targets identified through the *Analysis and Targets* section of the Standards (above). Plans are expected to include or otherwise address all of the pathways (implementation actions) below; some actions may not be applicable or equally relevant to all applicants (small vs. large municipalities, for instance), in which case N/A may be checked (if available) and the justification provided in the Notes column. There is no penalty for choosing N/A one or more times, as long as a reasonable justification is provided in the Notes column, preferably including an explanation of how the plan alternatively achieves attainment of the targets should be included. If N/A is not provided as an option, the standard must be met, and “Yes” must be checked, in order for the plan to meet the requirements for a determination (unless the instructions particular to that standard indicate otherwise).

DPS will be issuing a guidance document in the near term providing potential implementation actions derived from the Comprehensive Energy Plan (relevant formal Recommendations as well as opportunities not specifically called out as Recommendations), from recent regional and municipal plans, and from other sources. The guidance document will be revised after the regions have compiled best practices from early municipalities pursuing energy planning to seek a determination of energy compliance, in the summer of 2017.

For the time being, we offer potential implementation action options for consideration as italicized text under each standard. Plans are encouraged to promote as diverse a portfolio of approaches as possible in each sector, or if not, to explain why they take a more targeted approach. Implementation actions may fit best in a holistic discussion contained within a plan’s energy element, though cross-referencing to other relevant plan elements is also acceptable.

Municipalities must demonstrate a commitment to achieving each standard in both policies and implementation measures in clear, action-oriented language.

<p>6. Does your plan’s energy element contain a statement of policy on the conservation and efficient use of energy?</p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Page: 97; 113-117 Paragraph #: Click here to enter text. Notes: The Energy Chapter opens with a review of the town’s four energy goals, the second of which is “the promotion of energy conservation and efficiency in residential, commercial, and industrial structures and operations” (pg 97). Specific policies promoting the conservation and efficient use of energy are contained in section 8.3 of the Energy Chapter, pages 113-117.</p>
<p>A. Does the plan encourage conservation by individuals and organizations? <i>(Actions could include educational activities and events such as convening or sponsoring weatherization workshops, establishing local energy committees, encouraging the use of existing utility and other efficiency and conservation programs and funding sources, etc.)</i></p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Page: Pages 113 - 116 Paragraph #: Click here to enter text. Notes: See policies 3, 6, 7, 8, 9, 10 (pg 113), 11, 15, 16, 17, 18, 19 (pg 114), 20, 21, 22, 23, 24, 26, 27, 28, 30 (pg 115), 34, 36, 37, 38 (pg 116). Policies include supporting high-</p>

		<p>density mixed-use development within the designated growth center such as the Putnam Block Redevelopment, promoting building assessments and endorsing local programs that provide resources for homeowners and rental properties about building efficiency, encouraging businesses to pursue energy audits and upgrade to LED lighting, raising awareness of public transportation and carpooling options locally including school bus use, maintaining and developing more bike and pedestrian pathways according to Complete Streets principles, and requiring that new developments include EV charging stations and accommodate public transportation stops.</p>
<p>B. Does the plan promote efficient buildings? <i>(Actions could include promoting compliance with residential and commercial building energy standards for new construction and existing buildings, including additions, alterations, renovations and repairs; promoting the implementation of residential and commercial building efficiency ratings and labeling; considering adoption of stretch codes, etc.)</i></p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Page: Pages 113, 114, 116 of the Energy Chapter and pages 56-57, 59 of the Housing Chapter Paragraph #: Click here to enter text. Notes: See policies 5, 6, 7, 8, 9 (pg 113), 11, 13, 14 (pg 114), 31, 32, 35 (pg 116). Policies include providing information on and verifying compliance with Residential and Commercial Building Energy Standards and similar assessment programs, locally promoting and facilitating programs of Efficiency VT, BROCC, and NWWVT for building weatherization and financial assistance, and completing energy audits and improvements in all municipal buildings and schools.</p> <p>The Housing chapter notes that the town should require new development conform to VT Residential Building Energy Standards,</p>

		<p>Notes: See policies 1, 4 (pg 113), 14 (pg 114), 15 (pg 115), 39, 40, 41 (pg 116). Policies include reestablishing its municipal energy committee, planning all new development so that it takes advantage of solar energy, encouraging new commercial development to use the 'Stretch Codes' mandated through Act 250, supporting a more robust local food and agriculture system, and planning for a smart grid system through cooperation with GMP and VELCO as they build out grid infrastructure and by integrating future advanced storage capacity for locally-produced electricity.</p>
<p>7. Does your plan's energy element contain a statement of policy on reducing transportation energy demand and single-occupancy vehicle use, and encouraging use of renewable or lower-emission energy sources for transportation?</p>	<p><input checked="" type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p> <p>Page: Page 115 and 116 Paragraph #: Click here to enter text. Notes: Specific policies aimed at reducing total transportation energy use and encouraging more efficient transportation systems and behaviors are contained in section 8.3 of the Energy Chapter, on page 115.</p>
<p>A. Does the plan encourage increased use of public transit? <i>(Actions could include participation in efforts to identify and develop new public transit routes, promote full utilization of existing routes, integrate park-and-rides with transit routes, etc.)</i></p>	<p><input checked="" type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Page: 115 of the Energy Chapter, and pages 66, 74-75 of the Transportation Chapter Paragraph #: Click here to enter text. Notes: See policies 22, 24, and 29. Policies include working with GMCN to encourage greater use of their public transit network, supporting expansion of intercity bus travel opportunities such as the shuttle service to the Rensselaer Amtrak station and other local stops and transfer locations, and requiring new developments to provide a location for a public transportation stop.</p>

		<p>The Transportation Chapter notes that extensive downtown parking space is not appropriate, thereby encouraging alternative modes of transportation to the dense center of town. A section on Public Transportation and Intercity Bus Travel encourages continuation of existing transit routes and their improvement with better bus stop shelters, benches, and signs.</p>
<p>B. Does the plan promote a shift away from single-occupancy vehicle trips, through strategies appropriate to the municipality? <i>(Actions could include rideshare, vanpool, car-sharing initiatives; efforts to develop or increase park-and-rides; enhancement of options such as rail and telecommuting; education; intergovernmental cooperation; etc.)</i></p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Page: 115 of the Energy Chapter and pages 71-72 of the Transportation Chapter Paragraph #: Click here to enter text. Notes: See policies 22, 23, 24, 28, and 29. Policies include those listed in 7A, encouraging greater use of school buses and walking and biking to schools, and promoting the Go Vermont website and the 'Way to Go' alternative commuting programs to raise awareness of carpooling in the area.</p> <p>The Transportation Chapter recommends town support for rail line maintenance due to the possibility of future passenger rail returning to the region. The chapter supports an Amtrack shuttle service to the Rensselaer Train Station, which was recently established.</p>
<p>C. Does the plan promote a shift away from gas/diesel vehicles to electric or other non-fossil fuel transportation options through strategies appropriate to the municipality? <i>(Actions could include promoting the installation of electric vehicle charging infrastructure, providing education and outreach to potential users, supporting non-fossil fuel vehicle availability through outreach to vehicle dealers, etc.)</i></p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Page: 115 and 116 of the Energy Chapter and pages 60 and 77 of the Transportation Chapter Paragraph #: Click here to enter text. Notes: See policies 26, 27, 29 (pg 115), and 43 (pg 116). Policies include promoting Drive Electric Vermont and other resources to encourage EV use, contacting local auto</p>

		<p>dealers to supply plug-in and full EVs, installing EV charging stations in public parking lots and encouraging business owners to do so as well, requiring that new development provide EV charging stations, and supporting efforts to develop cost-effective liquid biofuel production especially at farms to supplement their own fuel use.</p> <p>The Transportation Chapter notes that current roadway design and infrastructure must consider the eventual transformation of the transportation sector away from fossil fuels and toward electric vehicles. Transportation Policy #22 promotes the utilization of alternative fuel vehicles in the transportation system.</p>
<p>D. Does the plan facilitate the development of walking and biking infrastructure through strategies appropriate to the municipality? <i>(Actions could include studying, planning for, seeking funding for, or implementing improvements that encourage safe and convenient walking and biking; adopting a "Complete Streets" policy, etc.)</i></p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>	<p>Page: 115 of the Energy Chapter and pages 67-71 and 75-77 of the Transportation Chapter Paragraph #: Click here to enter text. Notes: See policies 20, 21, and 23 (pg 115). Policies include maintaining and amplifying off-road bicycle and pedestrian pathways, incorporating Complete Streets principles whenever possible, and modifying existing roadways to be safer for bicycle and pedestrian users, and encouraging walking and biking to schools.</p> <p>Transportation Chapter sections on Traffic Calming, Pedestrian and Bicycle Transportation, and the Bennington Pathway System discuss the need to plan for and expand sidewalks and crosswalks, bike lanes</p>

			and paved shoulders, multi-use pathways, and traffic calming devices in areas of high demand. Priority areas are highlighted and strategic street design principles identified.
E. Does the plan demonstrate the municipality's leadership by example with respect to the efficiency of municipal transportation? <i>(Actions could include purchasing energy efficient municipal and fleet vehicles when practicable, installing electric vehicle charging infrastructure, etc.)</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A	Page: 115 and 116 Paragraph #: Click here to enter text. Notes: See policies 27 (pg 115), 32, and 33 (pg 116). Policies include installing EV charging stations at public parking lots, considering a demonstration project with liquid biofuels for some town equipment, and considering the purchase of more fuel efficient vehicles for all departments – but in particular the police department, which may benefit from new anti-idling technologies.
F. Other (please use the notes section to describe additional approaches that your municipality is taking)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> N/A	Page: 115 Paragraph #: Click here to enter text. Notes: See policy 25 (pg 115). This policy calls for participating in rail planning projects to promote commercial and industrial development that could use rail for freight shipment. This policy also supports transportation budget expenditures to maintain and upgrade rail infrastructure.
8. Does your plan's energy element contain a statement of policy on patterns and densities of land use likely to result in conservation of energy?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Page: Page 113 Paragraph #: Click here to enter text. Notes: Specific policies calling for dense and mixed-use settlement patterns are contained in section 8.3 of the Energy Chapter, on page 113.
A. Does the plan include land use policies (and descriptions of current and future land use categories) that demonstrate a commitment to reducing sprawl and minimizing low-density development? <i>(Actions could include adopting limited sewer service areas, maximum building sizes along highways, policies or zoning that require design features</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Page: Page 113 of Energy Chapter and pages 17-26 of the Land Use Chapter Paragraph #: Click here to enter text. Notes: See policies 2 and 3 (pg 113) in the Energy Chapter. Policies include

<p><i>that minimize the characteristics of strip development [multiple stories, parking lot to the side or back of the store], and requirements that development in those areas be connected by means other than roads and cars; adopting a capital budget and program that furthers land use and transportation policies; etc.)</i></p>		<p>implementing land use policies that high-density mixed-use develop in the designated growth center and low density development that does not require intensive services in rural areas, and actively supporting investments in the downtown and surrounding neighborhoods – especially projects that bring housing, essential businesses, and employment into the walkable town center.</p> <p>The Land Use Chapter of the Town Plan emphasizes the role that the designated Growth Center and Urban Growth Boundary will play in concentrating new development in the downtown, minimizing strip development to make mixed uses and alternative transportation options more viable. Smart growth principles, mixed use zoning, and development design guidelines characterize the land use districts where future commercial and multi-unit residences are permitted. The Town Plan recommends that the town consider use of form-based code to simplify their regulations while maintaining the same goals for dense, mixed-use development.</p>
<p>B. Does the plan strongly prioritize development in compact, mixed-use centers when physically feasible and appropriate to the use of the development, or identify steps to make such compact development more feasible? <i>(Actions could include participating in the state designation program, such as obtaining state designated village centers, downtowns, neighborhoods, new town centers, or growth centers; exploration of water or sewage solutions that enable compact development; etc.)</i></p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> N/A</p>	<p>Page: Page 113 in the Energy Chapter Paragraph #: Click here to enter text. Notes: See policies 2 and 3 (pg 113) in the Energy Chapter. Policies include those listed in 8B.</p> <p>See also reponse to 8A, such as the use of a state-designated Growth Center</p>

<p>C. Other (please use the notes section to describe additional approaches that your municipality is taking)</p>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	<p>Page: Click here to enter text. Paragraph #: Click here to enter text. Notes: Click here to enter text.</p>
<p>9. Does your plan's energy element contain a statement of policy on the development and siting of renewable energy resources?</p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Notes: Specific policies on the support for and siting of renewable energy facilities are contained in section 8.3 of the Energy Chapter, on pages 113 - 117.</p>
<p>A. Does the plan evaluate (estimates of or actual) generation from existing renewable energy generation in the municipality? <i>Municipalities should be able to obtain this information from their regions.</i></p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Page: Page 112 Paragraph #: Click here to enter text. Notes: The Energy Chapter report that there is about 360 kW capacity hydroelectric in the town and 3 MW solar capacity in small private and moderate-sized commercial photovoltaic systems. The plan refers readers to the online resource 'Community Energy Dashboard' for up-to-date generation statistics and locations.</p>
<p>B. Does the plan analyze generation potential, through the mapping exercise (see <i>Mapping</i> standards, below), to determine potential from preferred and potentially suitable areas in the municipality? <i>Municipalities should be able to obtain this information from their regions.</i></p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Page: Pages 117-120, 122, 124, and 125 Paragraph #: Click here to enter text. Notes: Potential hydroelectric capacity is discussed on page 117 and mapped on page 118. Map analysis shows that as much as 430 kW of additional hydroelectric is possible and town policy supports development of this potential.</p> <p>Wind potential is discussed on pages 117 and 118. Wind development is limited by several factors, but some smaller-scale wind turbines may be appropriate in areas that do not violate state noise and environmental regulations.</p> <p>The potential solar generation mapping analysis is discussed in pages 119-120 and</p>

EXHIBIT 2

Dan Monks

From: Dan Monks
Sent: Wednesday, January 24, 2018 3:49 PM
To: Jim Sullivan (jsullivan@bcrcvt.org)
Subject: Amended Town Plan
Attachments: 2018 Bennington Energy Plan - final.pdf

Hello Jim:

Please see attached amended Energy Section of the Bennington Town Plan. In accordance with 24 VSA Section 4385(c), the Town of Bennington is providing the Bennington County Regional Commission with a copy of the newly adopted amended Energy Section (Chapter 8) of the Bennington Town Plan.

In addition, the Town of Bennington requests approval by BCRC of the amended Town Plan under the provisions of 24 VSA Section 4350.

Finally, the Town of Bennington requests that BCRC determine that the amended Town Plan meets the energy planning standards (24 VSA Section 4352) of Act 174 of 2016.

Please confirm that you have received this e-mail and the attached Town Plan. Also, please Let me know when the required public hearings for approval of the Town Plan under Section 4350 and Act 174 are scheduled.

Thanks,

Dan

Daniel Monks
Assistant Town Manager
& Planning Director
Town of Bennington
802-447-9708
[**dmonks@benningtonvt.org**](mailto:dmonks@benningtonvt.org)

Please note that this email message, along with any response or reply, may be considered public record, and thus, may be subject to disclosure under the Vermont Public Records Law.

EXHIBIT 3



Bennington County Regional Commission

111 SOUTH STREET • SUITE 203 • BENNINGTON, VERMONT 05201 • (802) 442-0713 OR 442-0682 • FAX (802) 442-0439
July 11, 2022

Daniel Monks, Assistant Town Manager
205 South Street
P.O. Box 469
Bennington, VT 05201

Re: Town Plan Amendment – Continuation of BCRC Plan Approval

Dear Mr. Monks,

The Town of Bennington recently adopted an amendment to the Bennington Town Plan that modifies the boundaries of two adjacent land use districts involving property on the former campus of Southern Vermont College (SVC), along with minor changes to related land development guidelines. This amendment provides the basis for amendments to the Town’s Land Use and Development Regulations, which are intended to implement the Plan. A portion of the former SVC campus is now included in the adjacent district that allows for various institutional and professional uses, with specific site planning and design guidelines.

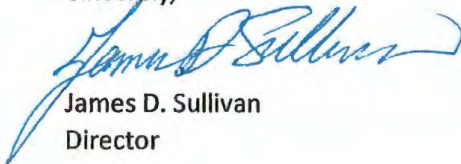
The Bennington County Regional Commission has reviewed the Town Plan amendment in the context of 24 V.S.A. Section 4350 and has determined that the changes do not affect the basis for the BCRC’s previous approval of that Town Plan (approved by the BCRC on March 15, 2018) based findings that the Plan, as amended:

- (A) is consistent with the goals established in 24 V.S.A. Section 4302;
- (B) is compatible with its Regional Plan;
- (C) is compatible with approved plans of other municipalities in the region; and
- (D) contains all the elements included in subdivisions 24 V.S.A. Section 4382(a)(1)-(12).

Therefore, the Town Plan, which remains in effect through its expiration date of January 22, 2026, will continue to be documented as approved by the BCRC and thus support the determination that the Town’s planning process remains confirmed under 24 V.S.A. Section 4350.

Let me know if you have any questions about this determination. Thank you.

Sincerely,



James D. Sullivan
Director





Bennington County Regional Commission

210 SOUTH STREET • SUITE 6 • BENNINGTON, VERMONT 05201 • (802) 442-0713

September 20, 2024

Daniel Monks, Assistant Town Manager
205 South Street
P.O. Box 469
Bennington, VT 05201
dmonks@benningtonvt.org

Re: Town Plan Amendment – Continuation of Plan Approval

Dear Mr. Monks:

Recently, the Town of Bennington adopted an amendment to the *Bennington Town Plan* that modifies the boundaries of two adjacent land use districts. This amendment provides the basis for amendments to the *Bennington Land Use and Development Regulations*, which are intended to implement the plan. Two adjacent parcels on North Branch Street were reclassified from Industrial to Village Residential allowing for residential development on approximately six acres.

The Bennington County Regional Commission (BCRC) has reviewed the town plan amendment in the context of 24 V.S.A. Section 4350 and by a vote of commissioners on September 19, 2024 has affirmed Bennington's plan and planning process. Hence, the minor amendment does not affect the BCRC's previous approval that the *Bennington Town Plan* (adopted January 22, 2018) is compliant with statutory requirements. In short, the BCRC found that the plan, as amended on June 24, 2024:

- (A) is consistent with the goals established in 24 V.S.A. Section 4302;
- (B) is compatible with the regional plan
- (C) is compatible with the approved plans of other municipalities in the region; and
- (D) contains all the elements included in subdivisions 24 V.S.A. Section 4382(a)(1)-(12).

Therefore, the Bennington Town Plan, which remains in effect through its expiration date of January 22, 2026, will continue to be documented as approved by the BCRC and Bennington's planning process remains confirmed pursuant to 24 V.S.A. Section 4350.

Please let me know if you have any questions about this determination.

Sincerely,

A handwritten signature in black ink, appearing to read "William Colvin". The signature is fluid and cursive, with the first name "William" and last name "Colvin" clearly distinguishable.

William Colvin
Director

EXHIBIT 4



Bennington County Regional Commission

111 SOUTH STREET • SUITE 203 • BENNINGTON, VERMONT 05201 • (802) 442-0713 OR 442-0682 • FAX (802) 442-0439

CERTIFICATE OF ENERGY COMPLIANCE Bennington Town Plan

On this 15th day of March, 2018, by vote of the Bennington County Regional Commission, it was determined that the Bennington Town Plan, as amended and adopted by the Town of Bennington on January 22, 2018, complies with the energy planning requirements set forth in 24 V.S.A. Section 4352.

A handwritten signature in blue ink, which appears to read "Janet M. Hurley", is written over a horizontal line.

Janet Hurley, Chair

Bennington County Regional Commission

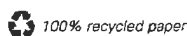


EXHIBIT 5

----- Forwarded message -----

From: Stuart Hurd <shurd@benningtonvt.org>

Date: Tue, Oct 15, 2024 at 4:44 AM

Subject: RE: Town Website

To: Joey Kulkin <jkulkin71@gmail.com>, Ned <edwardnperkins@gmail.com>

We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying. We're moving on. Enjoy the day.

Stuart A. Hurd

Town Manager

Town of Bennington

205 South Street

PO Box 469

shurd@benningtonvt.org

From: Joey Kulkin <jkulkin71@gmail.com>

Sent: Monday, October 14, 2024 7:02 PM

To: Stuart Hurd <shurd@benningtonvt.org>; Ned <edwardnperkins@gmail.com>

Subject: Re: Town Website

*** This email originated outside your organization. ***

Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Stu, you just lied to the public again about the town plan which expired on 10/6/23.

This time you said the town plan is valid in the eyes of the state.

Please produce communications from the state confirming what you just said. Because it's a lie.

We've got the documents.

You don't.

Thanks!

On Fri, Oct 11, 2024 at 3:22 PM Joey Kulkin <jkulkin71@gmail.com> wrote:

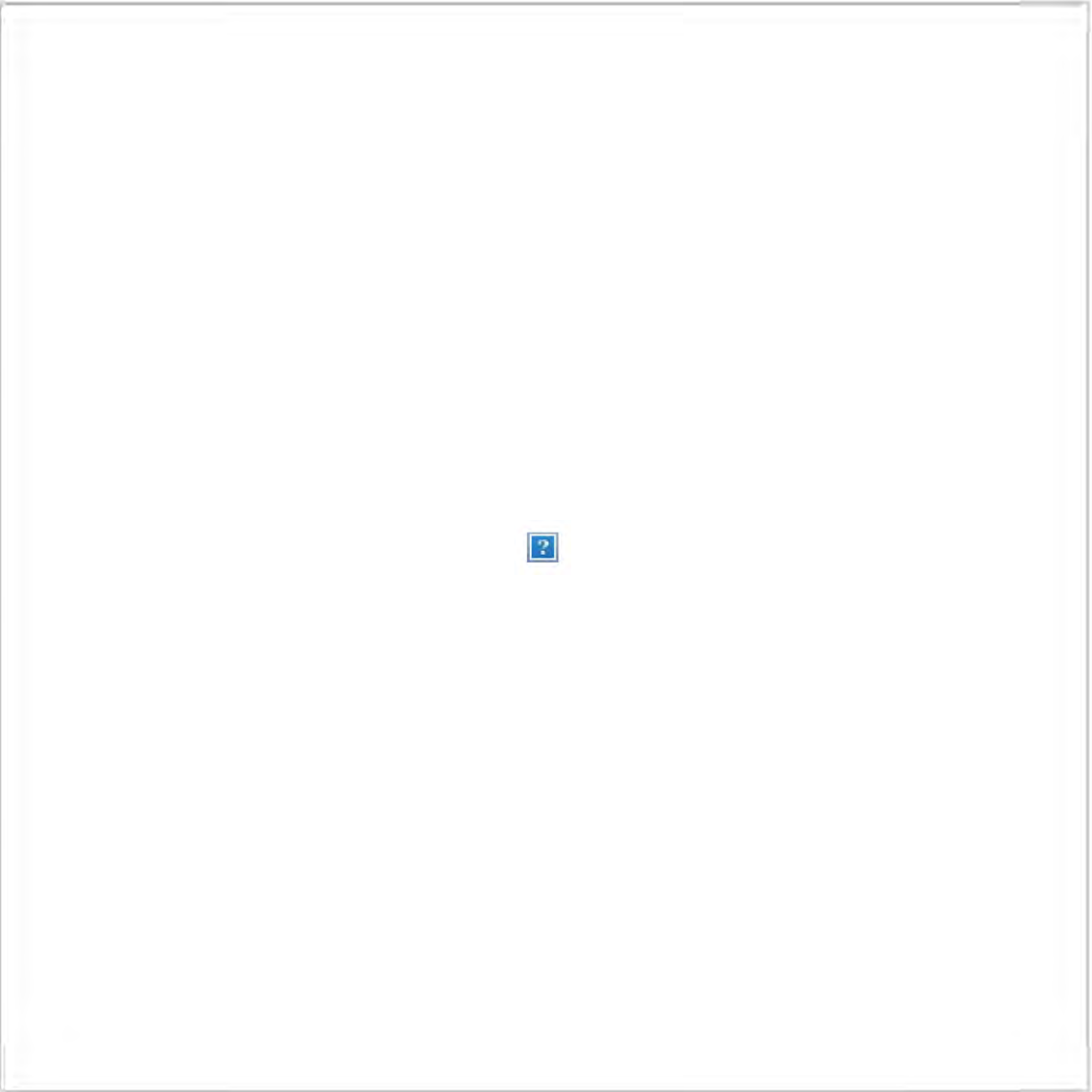
Hi, Stu, someone from your staff replaced the cover page on the state database in recent days but it's still based on a lie.

QUESTIONS:

- On what day did a member of your staff upload the ACCD database with this new cover page?
- Who uploaded it?
- Who authorized this person to make the change?

REQUEST:

- Please provide email authorization by you to the member of staff who uploaded this new (and false) cover page.



On Wed, Oct 9, 2024 at 10:57 AM Stuart Hurd <shurd@benningtonvt.org> wrote:

The Plan is valid until 2026. Have a great day.

Stuart A. Hurd

Town Manager

Town of Bennington

205 South Street

PO Box 469

shurd@benningtonvt.org

From: Joey Kulkin <jkulkin71@gmail.com>

Sent: Wednesday, October 9, 2024 10:38 AM

To: Stuart Hurd <shurd@benningtonvt.org>; Ned <edwardnperkins@gmail.com>

Subject: Re: Town Website

*** This email originated outside your organization. ***

Do not click links or open attachments unless you recognize the sender and know the content is safe.

I was wrong: the photo is from the SVSU meeting dealing with Shaftsbury Elementary.

See, it's not hard to admit wrongdoing.

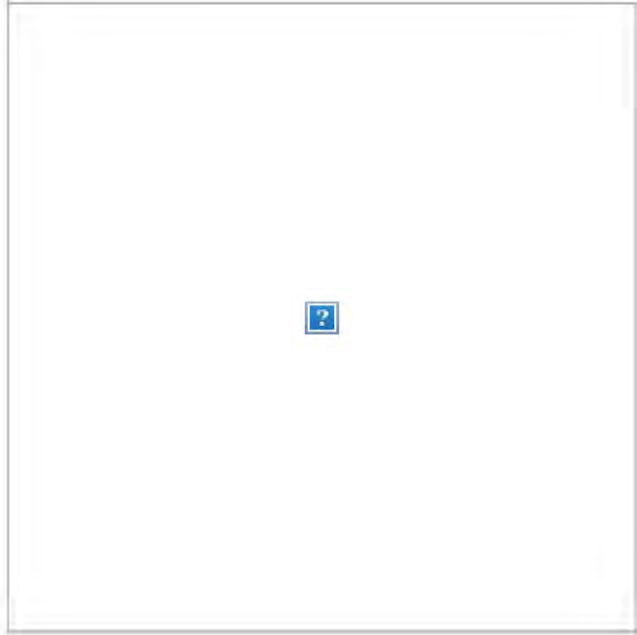
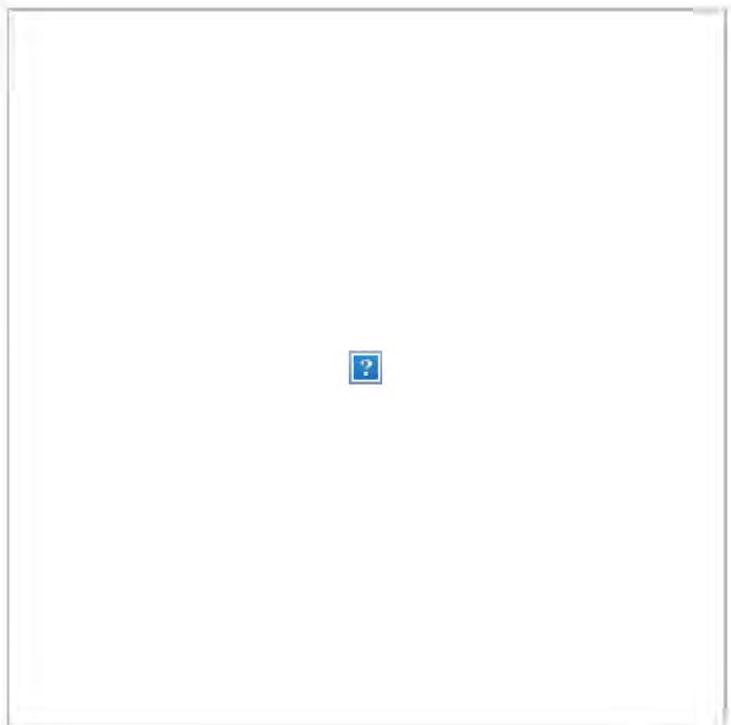
That's all you had to do with the Town Plan but it's too late for simple apologies.

On Wed, Oct 9, 2024 at 10:10 AM Joey Kulkin <jkulkin71@gmail.com> wrote:

Hi, Stu,

I have a few questions ...

Last week several people went to the town website and saw that the cover page of the adopted 2015 town plan was changed.



This was done without an official action of the Select Board and the citizens of Bennington definitely didn't know about it.

Questions:

1, On what day was the cover page changed?

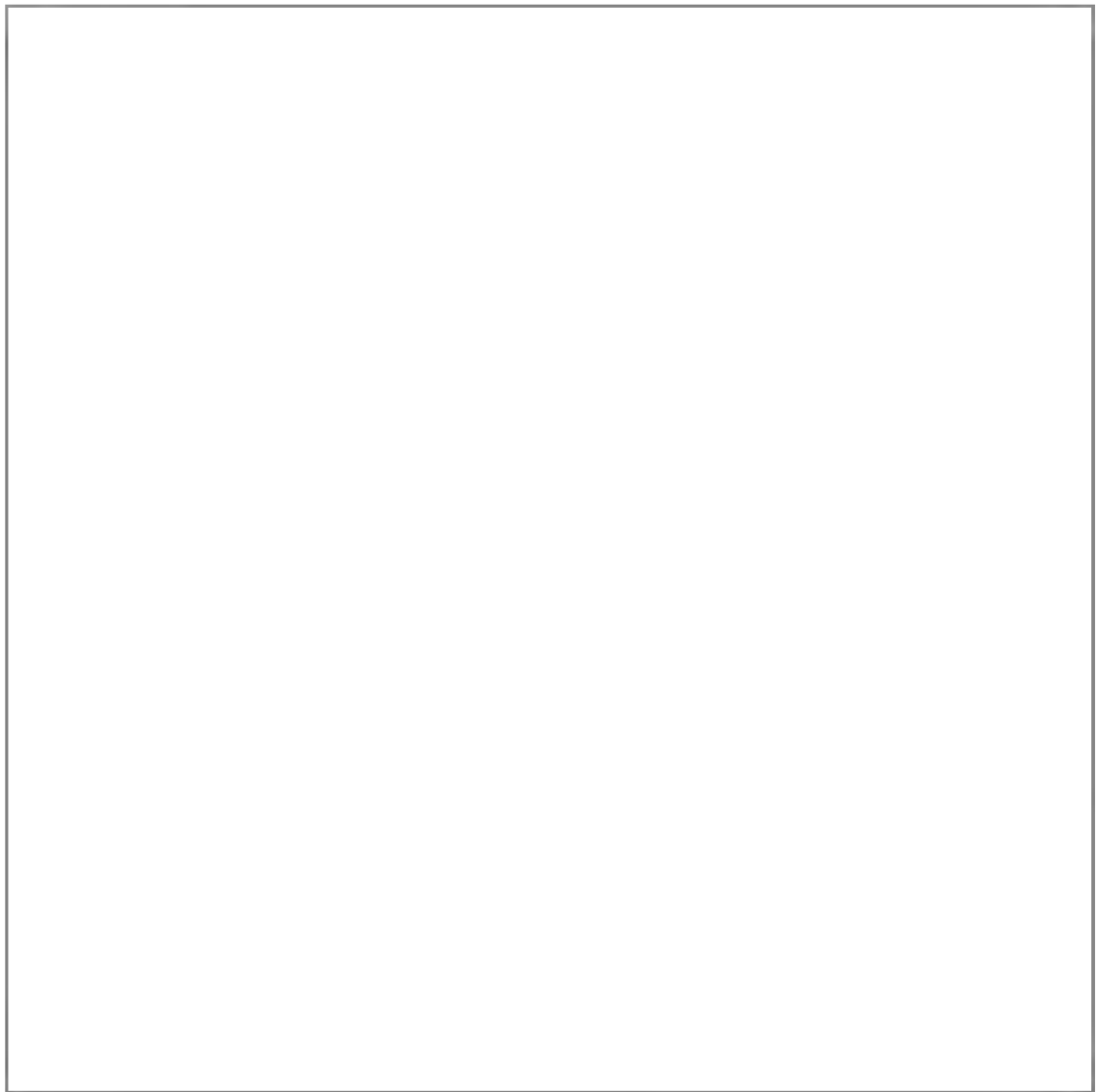
- 2, Who went into the system and uploaded the new cover page?
- 3, Who gave authorization to upload the new cover page?
- 4, Please send over the email giving authorization to upload the new cover page.

Thank you,

Joey

This was the Shaftsbury Select Board meeting last night.

Just wait till the people of Bennington wake up, and it's happening.



CONFIDENTIALITY/DISCLOSURE NOTICE: This message is intended for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any printing, copying, dissemination, distribution, disclosure or forwarding of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and delete it from your system. Please note that this email message, along with any response or reply, may be considered public record, and thus, subject to disclosure under the Vermont Public Records Law (1 V.S.A. §§ 315-320).

CONFIDENTIALITY/DISCLOSURE NOTICE: This message is intended for the use of the individual or entity to which it is addressed and may contain information that is confidential, privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any printing, copying, dissemination, distribution, disclosure or forwarding of this communication is strictly prohibited. If you have received this communication in error, please contact the sender immediately and delete it from your system. Please note that this email message, along with any response or reply, may be considered public record, and thus, subject to disclosure under the Vermont Public Records

Law (1 V.S.A. §§ 315-320).

EXHIBIT 6

Classifieds

To place your ad,
call 1-800-234-7404



Weekend Edition | Saturday & Sunday, November 18 - 19, 2017 | The Bennington Banner | BenningtonBanner.com

NOTICE OF TAX SALE

The resident and non-resident owners, lienholders and mortgagees of property in the Town of Pownal, in the County of Bennington and State of Vermont, are hereby notified that the 2016-2017 and 2016-2017 taxes assessed by such Town remain, either in whole or in part, unpaid on the following described property, to wit:

It being all and the same lands and premises conveyed to 1, John S. Pries and James Woodcock, both now deceased by Decree of Distribution of the District of Bennington Mobile Court in the Estate of Mary Woodcock, dated August 13, 1992 and recorded on August 24, 1992 in Book 77 at Page 64 of the Pownal Land Records, (E911 address: Hidden Valley Road; Parcel #083-12)

And pursuant to 32 V.S.A. Section 5254, such property will be sold at public auction at the Pownal Town Office, a public place located on Center Street in the Town of Pownal, on the 6th day of December, 2017, at 10:00 o'clock in the morning, as shall be requisite to discharge such taxes with costs, unless previously paid.

Dated at Pownal, Vermont this 2nd day of November, 2017.

ELLEN STROHMAIER,
Collector of Delinquent Taxes
11/04/17, 11/11/17, 11/18/17

NOTICE OF TAX SALE

The resident and non-resident owners, lienholders and mortgagees of property in the Town of Pownal, in the County of Bennington and State of Vermont, are hereby notified that the 2016-2017 taxes and sewer usage fees assessed by such Town for 2015-2016 and 2016-2017 remain, either in whole or in part, unpaid on the following described property, to wit:

It being all and the same lands and premises conveyed to Edna Mary Hurley Tanner (now Edna M. Bentley) (now deceased) and Norman Lawrence Bentley (now deceased) by Quitclaim Deed of Laura B. Hurley, dated July 20, 1977 and recorded on July 20, 1977 in Book 73 at Page 114 of the Pownal Land Records, together with the 28' x 52' 1996 Titan New England Mobile Home Serial Number 19963281484 situated thereon, conveyed to Edna Bentley and Norman Bentley by Vermont Mobile Home Bill of Sale of Independent Mobile Homes, dated February 27, 1996, and recorded on March 8, 1996 in Book 103 at Page 535 of

the Pownal Land Records, (E911 address: 3081 Route 348; Parcel #348-02-1)

And pursuant to 32 V.S.A. Section 5254, such property will be sold at public auction at the Pownal Town Office, a public place located on Center Street in the Town of Pownal, on the 6th day of December, 2017, at 10:00 o'clock in the morning, as shall be requisite to discharge such taxes with costs, unless previously paid.

Dated at Pownal, Vermont this 2nd day of November, 2017.

ELLEN STROHMAIER,
Collector of Delinquent Taxes
11/04/17, 11/11/17, 11/18/17

NOTICE OF TAX SALE

The resident and non-resident owners, lienholders and mortgagees of property in the Town of Pownal, in the County of Bennington and State of Vermont, are hereby notified that the 2016-2017 taxes and sewer usage fees assessed by such Town for 2015-2016 and 2016-2017 remain, either in whole or in part, unpaid on the following described property, to wit:

It being all and the same lands and premises conveyed to Robert C. Hurley by Warranty Deed of Eric Lloyd, dated September 24, 2002 and recorded on November 12, 2002 in Book 127 at Page 261 of the Pownal Land Records, (E911 address: 3085 Route 348; Parcel #348-73)

And pursuant to 32 V.S.A. Section 5254, such property will be sold at public auction at the Pownal Town Office, a public place located on Center Street in the Town of Pownal, on the 6th day of December, 2017, at 10:00 o'clock in the morning, as shall be requisite to discharge such taxes with costs, unless previously paid.

Dated at Pownal, Vermont this 2nd day of November, 2017.

ELLEN STROHMAIER,
Collector of Delinquent Taxes
11/04/17, 11/11/17, 11/18/17

SELECT BOARD

NOTICE OF PUBLIC HEARINGS AND AMENDMENT TO BENNINGTON TOWN PLAN

The Bennington Select Board will conduct Public Hearings on January 8, 2018 at 6:00 PM and on January 22, 2018 at 6:00 PM at the Bennington Fire Facility, 3rd Floor Assembly Room, 130 River Street, Bennington, Vermont for the purpose of adopting an amended Energy section of the Bennington Town Plan.

A. STATEMENT OF PURPOSE:
The purpose of the amended Energy section of the Bennington Town Plan is to further the goal of a sustainable energy future in a manner that minimizes environmental impacts and supports the local economy.

B. AREA COVERED
The proposed amendment to the Town Plan impacts all areas of the Town of Bennington.

C. SECTIONS OF PROPOSED AMENDMENT
I. Introduction, II. Energy Use in Bennington, and III. Energy Conservation, Efficiency, and Renewable Energy Strategies.

D. WHERE THE FULL AMENDMENT MAY BE EXAMINED:
Copies of the full text of the proposed amendment to the Bennington Town Plan, and accompanying report, are available for examination at the Bennington Town Office at 205 South Street, in Bennington, Vermont.

Thomas Jacobs, Chairperson,
Town of Bennington Select Board
11/16/17

3 BR Ranch, 2 car garage



Enclosed porch \$180,000
477 CORRY ROAD
HOME FOR SALE
OPEN SUNDAY 1 - 3 PM
802-447-3552

BENNINGTON, 1 bedroom, 1st floor W/D hook ups. No smoking/pets \$700/month. 802-447-1853.

BENNINGTON, 1 BR, W/D, heat, and hot water included. \$600/mo & up. No smoking. No pets. Call 802-346-2776

Bennington, 3br, 2ba, \$1,400/mo. Call for details 802-768-0885

NEW AD TODAY

BENNINGTON, Chisel, in town efficiency. \$695. 802-678-0768

COLONIAL BARRIERS BY OLD BENNINGTON 1-2 BDR, CARPORTS, SMALL PETS WELCOME 413-682-8885

POWELL, Newly renovated 2 bdrn cottage. Reference and security required. \$695/month. 802-768-0885

BENNINGTON, Lovely, older 4 BR, 2 BA house. Several options for office and/or residential. Handicap accessible. Excellent location. Available December. 802-448-8885.



IT'S THE CONVENIENCE that keeps people coming back to the great deals found in the classifieds.

BBA Advancement Office seeking part-time Annual Fund Coordinator

The Advancement Office at Burr and Burton Academy is seeking a part-time employee to fill the position of Annual Fund Coordinator. The job responsibilities include coordination of and solicitation for the Corporate Sponsorship program, the Employee Appeal, the Parent Fund outreach and general support for all Annual Fund activities. In addition, this position helps support the Parent Association meetings, works with the Senior Class to establish a relationship with the school before graduating, works with the Parent Association Gala committee to secure sponsorships, and helps to coordinate the production of the Annual Appreciation report at the close of the fiscal year. Other duties such as attendance at donor-focused events are expected, which includes occasional weekend and evening work. Must be able to drive. The position is approximately 20 hours per week, and a flexible schedule is possible. Looking for a candidate who is team oriented, outgoing, creative and willing to work hard to meet the fundraising goals of the school.

Please send your resume to Cynthia Galt, Director of Advancement, PO Box 688, Manchester, VT 05254 or by email to cgalt@burrburton.org.

QC Technician 2nd Shift

Taconic, a global leader in the manufacturing of PTFE coated fiberglass fabric, belts and tapes is seeking a Quality Control Technician.

Responsible for collection, testing, data management and reporting of test data for Industrial Products and Advanced Dielectric production samples, as well as general test equipment maintenance.

HS diploma or equivalent experience. Must have good attention to detail with ability to understand and interpret product specifications, work instructions and drawings. Ability to operate and understand dimensional, electrical and mechanical test equipment such as micrometer, two fluid cell, peel tester, FSR, strip line testing equipment, tensile tester, dielectric tester, weight scales, etc. Basic math skills and computer familiarity necessary, with the ability to work with spreadsheets a must. Ability to work with chemicals is required. Should have a fundamental understanding of Taconic's product line and be able to

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**SELECT BOARD
NOTICE OF PUBLIC HEARINGS
AMENDMENT TO
BENNINGTON TOWN PLAN**

The Bennington Select Board will conduct Public Hearings on January 8, 2018 at 6:00 PM and on January 22, 2018 at 6:00 PM at the Bennington Fire Facility, 3rd Floor Assembly Room, 130 River Street, Bennington, Vermont for the purpose of adopting an amended Energy section of the Bennington Town Plan.

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B. AREA COVERED

The proposed amendment to the Town Plan impacts all areas of the Town of Bennington.

C. SECTIONS OF PROPOSED AMENDMENT

I. Introduction, II. Energy Use in Bennington, and III. Energy Conservation, Efficiency, and Renewable Energy Strategies

D. WHERE THE FULL AMENDMENT MAY BE EXAMINED:

Copies of the full text of the proposed amendment to the Bennington Town Plan, and accompanying report, are available for examination at the Bennington Town Office at 205 South Street, in Bennington, Vermont.

Thomas Jacobs, Chairperson,
Town of Bennington Select Board
11/18/17

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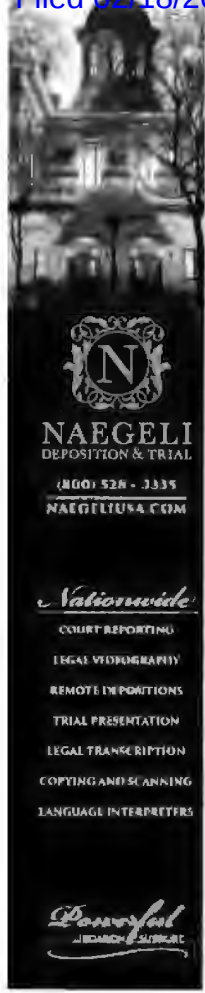
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TOWN OF BENNINGTON, VERMONT
BENNINGTON SELECT BOARD MEETING
JANUARY 22, 2018

TRANSCRIPT OF
BENNINGTON SELECT BOARD MEETING

HELD ON
MONDAY, JANUARY 22, 2018

HELD AT
BENNINGTON FIRE HOUSE
130 RIVER STREET
BENNINGTON, VERMONT 05201

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1	BENNINGTON SELECT BOARD PARTICIPANTS
2	January 22, 2018
3	
4	DONALD CAMPBELL, Acting Board Chair (for Thomas
5	Jacobs)
6	NANCY LIVELY, Board Secretary
7	STUART HURD, Town Manager
8	DAN MONKS, Assistant Town Manger
9	CHAD GORDON
10	JEANNIE JENKINS
11	JIM CARROLL
12	CARSON THURBER
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1	TRANSCRIPT OF
2	BENNINGTON SELECT BOARD MEETING
3	HELD ON
4	MONDAY, JANUARY 22, 2018
5	
6	MR. CAMPBELL: Good evening. Welcome to
7	the Bennington Select Board meeting, the January
8	22nd Select Board meeting. I'm not Tom Jacobs. I'm
9	Donald Campbell. I'm standing in for him for the
10	night. He's off at some lovely warm place, so let's
11	not think about him tonight. But I would like to
12	ask the Board to introduce themselves. And Jeanne,
13	would you please start?
14	MS. CONNER: Good evening. I'm Jeanne
15	Conner.
16	MR. THURBER: Good evening, Carson
17	Thurber.
18	MR. CARROLL: I'm Jim Carroll.
19	MS. JENKINS: Hello, I'm Jeannie Jenkins.
20	MR. GORDON: Good evening, Chad Gordon.
21	MS. LIVELY: Nancy Lively, Secretary.
22	MR. CAMPBELL: And Nancy Lively with her
23	own
24	microphone tonight.
25	MS. LIVELY: I know.

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1 MR. CAMPBELL: Feel free to speak up
2 tonight. Before we start, I'd love to have the
3 Pledge of Allegiance. Jeanne,
4 I pledge allegiance to the flag of the United States
5 of America, and to the republic for which it stands,
6 one Nation under God, indivisible, with liberty and
7 justice for all.

8 MR. CAMPBELL: Okay. Thank you. I'm
9 maybe not the same orderly guy that Tom is, so we're
10 going to -- I'm going to ask the Board if we would
11 immediately be willing to switch the agenda up a
12 little bit. We have one of our illustrious
13 politicians in the house. Mary has to get north,
14 and the weather is -- is terrible. The weather
15 forecast is terrible. I'm sorry you have to drive
16 it all, but I would love to ask the Board if we
17 could take a vote on moving the public hearing for
18 the Bennington Town Plan Amendment to the first
19 order of business.

20 MR. THURBER: So moved.

21 MR. HURD: Second.

22 MR. CAMPBELL: Okay. And all in favor?

23 ALL BOARD MEMBERS: Aye.

24 MR. CAMPBELL: Okay. So that meeting is
25 warned for six o'clock, although it's on the agenda

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1 for 6:40. And maybe, Jeanne, you could remind me at
2 6:40, but if anybody comes in after 6:40 and wants
3 to speak on the matter, we should let them because
4 we've posted the agenda for 6:40. But so, everybody
5 ready to make a quick sit-through? There's --
6 there's probably not too much that needs to be done
7 here. This is the second of two required hearings.

8 Dan, do you have any updates for us
9 that you'd like to give us, please?

10 DAN UNKNOWN: I don't have any updates,
11 but just to remind everybody, this is the second of
12 two required hearings for the Town Plan Amendment.
13 It's the energy section. So after this evening, you
14 folks can close the public hearing, and then you
15 have several actions that are open to you. You
16 could choose to adopt it as is. You could choose to
17 reject it. You could choose to make changes and
18 have two more public hearings. After appropriately
19 posting, you could send it back to the Planning
20 Commission to -- for more review and come back up
21 through the hearing process. Or you could simply
22 wait a few weeks or months, as long as you work back
23 within a year to make a decision upon it. So it's
24 really up to you folks. I do know that there are
25 some -- there were some public comments presented by

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1 Alcoa that you folks may want to review legal advice
2 upon before making a decision but other than that,
3 you folks, obviously, are free to make any decision
4 after this public hearing that you feel is
5 appropriate.

6 MR. CAMPBELL: Okay. So, did you have a
7 chance to speak with our Town attorney?

8 DAN MONKS: I did and actually I just
9 received their advice, which is, perhaps you haven't
10 turned it over yet, on your, in front of you.

11 MR. CAMPBELL: Ah.

12 DAN MONKS: So it just came in at about
13 4:45 this evening. So, I haven't even had a chance
14 to read it thoroughly.

15 MR. CAMPBELL: Seven pages?

16 MR. CARROLL: There's a summary at the
17 end.

18 MR. CAMPBELL: Okay. Anything else that
19 -- any new information or anything else you'd like
20 to add?

21 DAN MONKS: No new information. I see
22 lots of familiar faces here, most of whom I've
23 spoken previously on -- in favor of the amendment.
24 So I don't know if there's any new faces here this
25 evening who would like to speak on it. But I do see

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1 lots of familiar faces who have -- who've supported
2 this throughout.

3 MR. CAMPBELL: Yeah. And hopefully the
4 Board remembers that this -- this -- this plan was
5 created by three then Select Board members, along
6 with a number of community members and Morris' help,
7 so. I guess thank you, Dan.

8 DAN MONKS: Thank you.

9 MR. CAMPBELL: I'd open it up for any
10 public comment if there's anybody that wants to
11 speak that hasn't had a chance to speak on this, or
12 that has had a chance to speak and has something new
13 to bring to the question. Crickets. No? Okay. So
14 Board, it would be my opinion that we should at very
15 least have an executive session. This is a
16 confidential memorandum. We should have an
17 executive session at the end of this meeting to see
18 if we can get a -- I don't know if we have time to
19 even get a summary of this. But at least --

20 MR. THURBER: It's only seven pages.

21 MR. CAMPBELL: -- give it a quick look and
22 see if there's any action we feel like we can take
23 tonight and if not, then we'd not do that. So we
24 have an executive session scheduled. Everybody
25 happy with that?

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1 UNIDENTIFIED FEMALE BOARD MEMBER: Yeah.
 2 MR. CAMPBELL: Mary?
 3 MARY: So what would be the process if you
 4 stop tonight or don't take action? What would be
 5 the process going forward?
 6 MR. CAMPBELL: All right. My sense would
 7 be that we -- we would go into executive session.
 8 We'd review our legal counsel's advice and if -- if
 9 their advice is that we're fine to take a vote on
 10 it, then we'd just come out of executive session
 11 tonight and -- and take a vote on it. And if -- if
 12 there's some reason for us to feel we need to be
 13 cautious and move more slowly, then I'd imagine we'd
 14 take a little bit more time and probably schedule an
 15 executive session between now and our next meeting
 16 and then vote on it on the next meeting.
 17 MARY: And we're (inaudible).
 18 MR. CAMPBELL: Not tonight. Any other
 19 questions? If there are no other questions, I guess
 20 I would look for a motion to close the hearing.
 21 UNIDENTIFIED FEMALE BOARD MEMBER: So
 22 moved.
 23 UNIDENTIFIED MALE BOARD MEMBER: Second.
 24 MR. CAMPBELL: Seconded. Okay. Any
 25 discussion?

1 UNIDENTIFIED FEMALE BOARD MEMBER: No.
 2 UNIDENTIFIED FEMALE BOARD MEMBER: Unless
 3 someone will reopen the hearing if someone comes at
 4 6:40? Do we need to leave the hearing open?
 5 MR. CAMPBELL: I don't know. Let's see.
 6 UNIDENTIFIED FEMALE BOARD MEMBER: Can we
 7 reopen it?
 8 DAN MONKS: Yes.
 9 UNIDENTIFIED FEMALE BOARD MEMBER: I'll
 10 just -- I'll just remove -- I'll just --
 11 MR. CAMPBELL: We can reopen it. Okay.
 12 Why don't we reopen the hearing if somebody comes at
 13 6:40 and really wants to speak. Otherwise, all in
 14 favor of closing the hearing at this point?
 15 ALL BOARD MEMBERS: Aye.
 16 MR. CAMPBELL: Okay. It looks like it's a
 17 unanimous vote. So that's closed. And we'll keep
 18 you posted, Mary. Oh, if you'd like, I can send you
 19 a text or something.
 20 MARY: Thank you.
 21 MR. CAMPBELL: All right. So now we're
 22 going to move on to the consent agenda, which is for
 23 the minutes of January 2nd, January 6th, January
 24 8th. It's been a busy budget season as well as the
 25 warrants, which you've all had a chance to look at.

1 And I guess I would look for a motion to accept this
 2 consent agenda.
 3 UNIDENTIFIED FEMALE BOARD MEMBER: So
 4 moved.
 5 UNIDENTIFIED MALE BOARD MEMBER: Second.
 6 MR. CAMPBELL: Moved and seconded. Any
 7 discussion about any of these? No? Hearing none,
 8 all in favor of passing the consent agenda, say aye.
 9 ALL BOARD MEMBERS: Aye.
 10 MR. CAMPBELL: Okay. So that's unanimous.
 11 The next thing on our agenda is the NeighborWorks
 12 Grant presentation. And so I can see Ludy. Is Ludy
 13 out there? Well, maybe Zerwat will open it up.
 14 Would you be willing to kind of queue this up for us
 15 and tell us what we need to know?
 16 ZERWAT: I have a slightly creaky voice
 17 here now. It's slightly difficult to talk about
 18 this because this is really NeighborWorks'
 19 presentation today, but --
 20 MR. CAMPBELL: Should we put it off?
 21 ZERWAT: I think we should wait until
 22 they're here because this is their request for an
 23 enhancement grant and I think they should have a
 24 chance to make their case for why they should do so.
 25 MR. CAMPBELL: Apparently, the roads are

1 already terrible up north, so.
 2 ZERWAT: We can always wait and see if
 3 they can get here maybe a little bit later if that's
 4 okay. If we can table it for now.
 5 MR. CAMPBELL: So why don't we -- motion
 6 to table this?
 7 UNIDENTIFIED MALE BOARD MEMBER: So moved.
 8 MR. CAMPBELL: Okay.
 9 UNIDENTIFIED MALE BOARD MEMBER: Second.
 10 MR. CAMPBELL: All in favor?
 11 ALL BOARD MEMBERS: Aye.
 12 MR. CAMPBELL: Okay. So we're going to
 13 table the NeighborWorks for now.
 14 ZERWAT: Thank you.
 15 MR. CAMPBELL: Thank you, Zerwat. Jason,
 16 that brings us to lead reduction grant presentation.
 17 Are you ready to reduce our lead?
 18 MR. DOLMETSCH: I'm ready to talk about
 19 the grant.
 20 MR. CAMPBELL: I'm sorry. I kind of swung
 21 that on you. You didn't have a chance to get your
 22 -- your gear together.
 23 UNIDENTIFIED MALE BOARD MEMBER: I guess
 24 he gets -- was there public comment?
 25 MR. CAMPBELL: There are two public

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1 comments which we'll -- oh I'm sorry, my mic waen't
2 on. There are two public comments that we'll get
3 to. That must have thrown you off.

4 MS. LIVELY: And there may be a third
5 person that was going to come.

6 MR. CAMPBELL: All right.

7 MS. LIVELY: Then we may get those
8 comments.

9 MR. CAMPBELL: Okay.

10 MR. DOLMETSCH: So I'm all set.

11 MR. CAMPBELL: Okay.

12 MR. DOLMETSCH: My name's Jason Dolmetsch,
13 I'm with MSK Engineering. I'm just giving, I'm here
14 tonight to give you guys a brief introduction and
15 update to the lead grant that the Town of Bennington
16 received and to describe some of the goals and
17 objectives of the lead grant and then to give a --
18 provide a brief status report of where we are in the
19 process and some of the things that are going to be
20 coming up next, which includes some public outreach.
21 So in general, the purpose of -- so just to give a
22 brief primer on lead, we'll just do a -- just to
23 tell people where lead can exist in your water
24 supply. We all know about the Flint water system
25 and how important it is to reduce lead exposure,

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1 So in general, the Town of Bennington in 2016, the
2 water department went and looked at all
3 approximately 3,600 individual service connections
4 that are located inside the Town's water system and
5 they classified them according to what they knew
6 about the service lines. So either service lines
7 that were constructed after the lead ban was in
8 place. Well, and so they are presumed to be not --
9 to not contain lead. There are other about 900
10 units where the Town has already replaced or done a
11 partial lead service line replacement inside --
12 inside the Town's lead service line but that --
13 there may be a service -- customer-owned service
14 line that is lead -- is leaded. There are 28 known
15 sites that have either a customer or Town owned
16 lead service line and then approximately 960 units
17 where we -- where the Town does not know what the
18 material type is. So in general, depending on what
19 we find or what the investigation yields, there
20 could be up to 1900 service lines that contain
21 either complete or partial lead service lines. So
22 what are -- what's our goals? The goals of our
23 grant here is really to map the Bennington's water
24 distribution system, particularly to collect curb
25 stops and service lines, and distribution systems --

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1 particularly among youth. But lead can be present
2 in a water system in -- in several locations. There
3 are lead service lines, which is what this
4 particular project is looking to identify. But also
5 there are lead solder in -- inside of your building
6 plumbing. If your -- if your house was constructed
7 prior to 1986 and you have copper pipes, there's a
8 likelihood or there's a possibility that the copper
9 is soldered together with a lead solder. And then
10 additionally, lead free fixtures weren't required in
11 Vermont until 2012. So there are many brass
12 fittings in houses, particularly older homes today,
13 that also contain lead. So each one of those
14 locations, lead service lines, either owned by the
15 Town, which would be prior to the curb stop and
16 inside the right of way or on the customer-owned
17 side where there's lead and then there would be lead
18 inside the distribution system or lead inside the
19 fixtures. Any of these locations may present
20 themselves or place lead into the drinking -- into
21 your drinking water. So this slide is -- or this --
22 the goal of this grant is really to be able to
23 identify where lead service lines are and to find a
24 way, without excavating, how to locate lead service
25 lines inside the Town of Bennington's water system.

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1 the distribution lines inside of the area of Town
2 where lead service lines may be present. And then
3 to develop a protocol for sampling water systems
4 where those units -- the units material type is not
5 known. There's an EPA draft protocol which we are
6 going to utilize in order to trace, essentially
7 trace through testing -- instantaneous testing
8 inside the home to determine whether we can
9 definitively determine that there's a lead service
10 line present, without excavating outside. And then
11 lastly to develop a lead service line replacement
12 program, funding strategies, and an outreach program
13 to educate people about lead so. And then just as a
14 general status, where we are in the -- in the grant
15 is we have taken the Town's diligent work and we
16 have classified -- we have mapped each of the
17 classified units. So there's lots of colors on the
18 map here, lots of dots, but the -- there -- we've
19 basically looked at all of the downtown as well as
20 the Town's water system to see where we -- where the
21 highest concentration of unknown potential lead
22 service lines are and that's where our mapping
23 process is going to begin. And so if -- in a much
24 larger scale, you can see that the basically the
25 downtown is where the majority of either unknown or

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1 known lead service lines exist. So that's been
 2 completed. We're also -- we're in the process in
 3 the next two months, we'll be mapping all of those
 4 == all of these areas and placing them in a GIS-
 5 based system that the Town is going to have access
 6 to manage their water system. And then lastly, what
 7 we're about to begin doing is reaching out to
 8 customers who fall into one of three criteria, which
 9 would be they are -- they own a unit where they are
 10 -- we are -- have known or confirmed lead service
 11 lines. They either own a unit where they
 12 have non-lead service line, but are very likely to
 13 have copper lines with lead solder. Or lastly, have
 14 either a home that does not have copper and lead
 15 solder, not lead service line, but is likely has
 16 fixtures which contain -- which contain lead. And
 17 the purpose of reaching out to those particular
 18 units is to complete the benchmark sampling where
 19 we'll be able to trace -- be able to trace the lead
 20 levels inside the unit and tie them to either a
 21 service line, lead solder, or leaded fixtures so
 22 that we can have adequate data to essentially and
 23 ultimately confirm all of these -- the material type
 24 of all of these 1900 unknown lead service or unknown
 25 service lines. We've included inside the Select

1 Board packet a general description, which I've just
 2 gone over, as well as a draft letter that we'll be
 3 sending to the residences. And so tonight, we
 4 basically want to inform you of our future outreach
 5 so people know that -- what the purpose -- of our
 6 reaching out to particular customers are and to get
 7 any kind of feedback from either the public or the
 8 Select Board prior to doing it.
 9 MR. CAMPBELL: So your -- your last
 10 sentence says, "MSK is seeking the Board's support
 11 in promoting this project." Any specific support?
 12 MR. DOLMETSCH: Just -- just supporting --
 13 determining leads -- supporting the effort to
 14 determine how many lead service lines we have in
 15 Town.
 16 MR. CAMPBELL: That's good. We just got
 17 through budget season, so the word support always
 18 makes us feel a little nervous.
 19 MR. DOLMETSCH: There's -- there's no
 20 financial support that I'm requesting at this time.
 21 MR. CAMPBELL: Thank you.
 22 MR. DOLMETSCH: Only moral support.
 23 MR. CAMPBELL: All right. Thank you.
 24 Questions from the Board for Jason? Nothing from
 25 you, Jim. This is always something you seem to have

1 thoughts on.
 2 MR. CARROLL: I was just ruminating for a
 3 moment. You said that you're -- you have instant
 4 detection ability now to go into somebody's home and
 5 --
 6 MR. DOLMETSCH: Well, I can't walk in and
 7 experience it. But what we'll be doing is the EPA
 8 has a draft protocol, which essentially because we
 9 have three potential sources of lead inside the
 10 unit, either the lead service line, the solder, or
 11 the lead fixtures themselves, we essentially have to
 12 test for and separate essentially the lead signature
 13 for each one of those.
 14 MR. CARROLL: Okay.
 15 MR. DOLMETSCH: So we've purchased an
 16 analyzer which we can take a sample at the site.
 17 And the protocol, I don't have it memorized yet.
 18 It's a little difficult for me to explain. But
 19 essentially what it's going to do is -- our goal is
 20 to isolate the signature of the lead service line
 21 alone. So that hopefully when we've completed the
 22 benchmark sampling, we can go into a home, go
 23 through a flushing procedure, and then be able to
 24 identify that if the test that we take inside the
 25 unit at that time is above a certain concentration,

1 that we can feel fairly certain that it's coming
 2 from a lead service line and not from some other
 3 potential source. So we will be able to have an
 4 immediate -- we will be able to make an immediate
 5 determination at that point.
 6 MR. CARROLL: So within minutes rather
 7 than weeks where you --
 8 MR. DOLMETSCH: That's correct.
 9 MR. CARROLL: Okay. But you won't be able
 10 to determine the -- the precise source of the leads.
 11 It could be soldered, it could be a service line.
 12 MR. DOLMETSCH: Well, but the purpose of
 13 it would be to -- would be to break those out.
 14 Right? So it's -- Montreal did a test. They --
 15 they essentially did this protocol. And what they
 16 found was that -- they found definitively that if
 17 you went in and you took a flush sample, right, not
 18 -- not a first draw sample, which is what we also
 19 take to see what level of lead you may have in your
 20 drinking water. But if you take a flush sample, in
 21 -- in Montreal, if their concentrations that they
 22 tested inside of that flush sample were above three
 23 micrograms per liter, they were certain -- they felt
 24 certain that that meant that there was a lead
 25 service line coming into the unit. We may find a

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1 different bench -- a different baseline in
 2 Bennington just based on the water characteristics
 3 But yes, we would -- we would immediately know,
 4 MR. CARROLL: Are you aware of -- and Stu,
 5 I think you would probably ought to pipe in on this
 6 one, are you aware of Bennington's efforts now to
 7 coat those lead lines with what are the chemicals
 8 that we use?
 9 MR. HURD: Well, there are various forms
 10 of sodium -- sodium hydroxide, sodium bicarbonate.
 11 We use lime now. And that was going to be one of my
 12 questions, Jason. We treat the system to prevent
 13 the leaching of lead into -- into homes and into
 14 service lines. You're going to be able to even in
 15 spite of that, you're going to be able to detect
 16 MR. DOLMETSCH: That's our hope. We
 17 haven't -- we -- because we haven't actually asked
 18 and gotten into homes and some of the analysis, that's
 19 our -- our expectation is that we're still going to
 20 see a lead signature. But yes, the Town of
 21 Bennington does -- the Town of Bennington, we know
 22 that the Town of Bennington does corrosion control.
 23 That is going to have an impact on what -- what lead
 24 levels we may see at -- at those house locations
 25 during the flush. Corrosion control is -- is a

1 great way of reducing the amount of lead that you
 2 may receive from your drinking water
 3 MR. CARROLL: And currently, are -- have
 4 you made any study or looked at the current lead
 5 level to give some reassurance to the drinking
 6 public, water drinking public?
 7 MR. DOLMETSCH: What I can say is that the
 8 Town is below -- the Town's tests that they complete
 9 are below action limit for -- for the EPA.
 10 MR. CARROLL: Stu, you want to back that
 11 up?
 12 MR. HURD: I think he said it very well.
 13 MR. CARROLL: Okay.
 14 MR. HURD: And we test, I think it's once
 15 every three years.
 16 MR. DOLMETSCH: Correct.
 17 MR. HURD: Some -- is it 30 locations?
 18 I'm never quite sure --
 19 MR. DOLMETSCH: Yes, I believe so.
 20 MR. HURD: -- of the number and we are
 21 consistently below what's called the action level,
 22 which is the minimum safe level.
 23 MR. CARROLL: It's good.
 24 MR. DOLMETSCH: It's not actually. So the
 25 action level just sorry to break in there, Stu.

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1 MR. HURD: No, it's all right.
 2 MR. DOLMETSCH: The action level is
 3 actually the level at which the EPA requires you to
 4 take action. Right? So you guys have already taken
 5 the first step, which the EPA would have required
 6 you to do, which is to implement corrosion control.
 7 MR. CARROLL: And what's the action level?
 8 MR. DOLMETSCH: The action level is 15
 9 micrograms per liter.
 10 MR. CARROLL: And what is ours?
 11 MR. DOLMETSCH: It's going to vary
 12 throughout the system. So you take 30 sample sites
 13 and they all spread anywhere from, you know, less
 14 than one microgram per liter, which is usually the
 15 test limit, to I think up to, you know, anywhere.
 16 We -- we took samples, just to give you a little bit
 17 of background, we took lead samples of all the
 18 houses, as many houses as we -- as were willing to
 19 give us samples back, of all the units that were
 20 connecting to this water system as a part of the
 21 expansion to take care of the contamination for
 22 PFDA. We got 78 results back. I think 70 percent
 23 of them contained -- had some concentration of lead,
 24 and none of them have lead service lines. They're
 25 also not connected to the water system right now.

1 But those ranged anywhere from 1.8 micrograms per
 2 liter to 54.
 3 MR. CARROLL: Does it vacillate over time?
 4 MR. DOLMETSCH: It really depends on,
 5 those were all first draw samples, so that means the
 6 water's going to stagnate inside the line for up to
 7 eight hours. And so it's the first time you turn
 8 the faucet on in the morning. But it will change
 9 over time.
 10 MR. CAMPBELL: So run your faucets. Run
 11 your faucets before you use them. Anyone else?
 12 Other questions from the Board? Thank you, Jim?
 13 Caron?
 14 UNIDENTIFIED FEMALE BOARD MEMBER: No, go
 15 ahead.
 16 MR. THURBER: I just had a cost question.
 17 There's no fee for residents for you guys to come in
 18 and do this sampling.
 19 MR. DOLMETSCH: That's right. We would
 20 love to take volunteers, which is why we're doing
 21 this initial outreach, is if you would like to
 22 participate in -- in our benchmark sampling and then
 23 later our sampling program, then we would love to
 24 hear from you.
 25 MR. THURBER: Great. And so this letter

1 that you have drafted here is going to go to a
 2 sample size? Is it going to go to all Bennington
 3 residents?
 4 MR. DOLMETSCH: It's going to go to a
 5 sample set. We're really aiming for the first 30.
 6 So we're aiming for 10 to be in each of the -- in
 7 each of the classifications of homes that we're
 8 looking at sampling for the benchmark sampling.
 9 MR. THURBER: So a pretty low number of --
 10 MR. DOLMETSCH: It's a low number. What
 11 we're going to aim to do after that is the goal will
 12 be to sample as many units as possible inside the
 13 confines of the lead grant. I -- I don't see us
 14 being able to do all 1900 in this, mainly due to the
 15 time constraints. It takes a long time to just take
 16 the outreach. But if we get a flood of requests,
 17 then we'll be really excited about it.
 18 MR. CARROLL: I've got one more.
 19 MR. CAMPBELL: Let's -- Jeanne, do you
 20 have something?
 21 MS. CONNER: Yeah, you can sign me up.
 22 MR. DOLMETSCH: Okay. Great.
 23 MS. CONNER: I also have a question.
 24 MR. DOLMETSCH: Sure.
 25 MS. CONNER: And it's money related and

1 you may not be able to answer this, but let's just
 2 say something's found. Someone has lead in a
 3 fixture. Is there money or is this just a study or
 4 is there money available for people to replace
 5 fixtures or, you know, remedy the problems?
 6 MR. DOLMETSCH: So this is -- this is
 7 really -- this is purely data collection, outreach
 8 and study. I think the goal, the next step that we
 9 may come back and talk about is what kind of funding
 10 strategies we can undertake. The average and as you
 11 know, a customer owns their service line, the
 12 section of the service line that's on their property
 13 after the curb stop, right? So the -- to replace a
 14 lead service line that's customer owned, you know,
 15 costs approximately \$7,000 to complete. And that's
 16 countrywide, but that's generally what the cost is.
 17 So if you look at, let's say we find that -- let's
 18 say we find that every single unit or the high or a
 19 high percentage of units that we had that were
 20 either unknown or the Town had already replaced out
 21 their lead service line, all had lead service lines,
 22 then we'd be talking about a project that would
 23 would be in the millions of dollars if we tried to
 24 do it at once. So it's going to be, I think we're
 25 going to have to -- we're going to be looking for

1 and determining what types of potential funding
 2 strategies there would be for lead service line
 3 replacement program, what that might look like.
 4 MS. CONNER: And I was even thinking about
 5 you needed to get a new faucet.
 6 MR. DOLMETSCH: Oh, you mean so to replace
 7 out your lead fixtures?
 8 MS. CONNER: Something as simple as that,
 9 yeah. I mean, if you have to start replacing four
 10 faucets in your home, that can be expensive. I
 11 didn't know if there was money.
 12 MR. DOLMETSCH: I don't -- I'm not aware
 13 of those kinds of funding opportunities for
 14 individuals at this point, but that's going to be
 15 part of the work that we're doing.
 16 MR. CARROLL: Just trying to see what kind
 17 of a problem we have.
 18 MS. CONNER: Yeah, great. Thank you.
 19 MR. CAMPBELL: Chad? Jeannie? Anything
 20 from either of you? Yeah, go ahead.
 21 MR. CARROLL: Have you conducted this
 22 survey before?
 23 MR. DOLMETSCH: This is a new initiative
 24 by the state of Vermont. So we're one of two
 25 communities in the state that have received this

1 funding.
 2 MR. CARROLL: I'm just thinking ahead.
 3 You know, I'm curious to -- for the people of
 4 Bennington to know if there are certain segments of
 5 the Town that higher -- where you find higher
 6 concentrations would be helpful.
 7 MR. DOLMETSCH: That -- that's going to be
 8 part of the outreach. You know, as you know, as we
 9 discussed, the Town's undertaken the -- the Town has
 10 undertaken corrosion control as a method. So if
 11 there are high lead levels inside the home, then
 12 there are other, you know, there are things that the
 13 customer can do to reduce their potential exposure
 14 to lead inside their drinking water.
 15 MR. CARROLL: And more to what Stu said,
 16 when we do our testing, it's done at the water
 17 treatment plant. Is that right?
 18 MR. HURD: No. No. No. It's done in the
 19 home.
 20 MR. CARROLL: It's done in the home.
 21 MR. HURD: Yes. And it's -- it's -- it's
 22 done as a first draw. So you -- you -- as -- as one
 23 of the volunteers who do that test on a three year
 24 basis, you rise in the morning. You -- the first
 25 draw out of your faucet, you fill the -- fill the

1 jar and return it to the water department. And that
 2 way you know whether or not you have higher amounts
 3 of lead in your -- in your system than normal. If
 4 you run or flush the water, it is likely that that
 5 concentration will drop because you're -- you're
 6 bringing the protection into your system that hasn't
 7 been there overnight.

8 MR. DOLMETSCH: It's also had less time to
 9 react inside the unit, inside the line.

10 MR. CAMPBELL: So three -- three quick
 11 things from me, Jason. I guess, just to confirm this
 12 is completely voluntary, right? So the people will
 13 be getting a letter and they can agree to it or not.
 14 I guess I wonder a little bit when I look at this
 15 map about the extent of the map. What happens to
 16 the left and the right and the top and the bottom of
 17 it? You know, how much bigger is our problem than
 18 we have? And maybe that's a question for another
 19 day.

20 MR. DOLMETSCH: This was just an example.
 21 We have the entire system.

22 MR. CAMPBELL: Okay.

23 MR. DOLMETSCH: We have every all 3600
 24 service connections mapped and classified based on
 25 the Town's classification.

1 MR. CAMPBELL: I understand.

2 MR. DOLMETSCH: And as you can guess,
 3 imagine the older sections of Town are -- are more
 4 impacted.

5 MR. CAMPBELL: Yeah.

6 MR. DOLMETSCH: But it -- it's -- it's not
 7 relegated just to inside this box.

8 MR. CAMPBELL: Okay.

9 MR. DOLMETSCH: This is more an example of
 10 what you can see on a larger scale.

11 MR. CAMPBELL: Well, I for one can't
 12 possibly see any downside to this except that it
 13 would be nice to have the study be even larger if --
 14 if there was more money. But at least it -- it
 15 sounds to me like we're -- we're going to really
 16 address this problem squarely and with as much
 17 funding as we can bring to it at this point. And if
 18 we find we have a problem, then we'll have to look
 19 deeper into it, right?

20 MR. DOLMETSCH: I -- I think it's -- it's
 21 less about finding a problem as, it's more about
 22 determining the scope and educating the public and
 23 identifying a collective approach on -- on the
 24 solution.

25 MR. CAMPBELL: Well said. Well said. Any

1 other thoughts from the Board? I think it would be
 2 my opinion, we should send him off with our
 3 blessing. I don't suppose you need a motion on
 4 this, but.

5 MS. JENKINS: Can I ask one more? So the
 6 timeframe, you probably said this, what is the
 7 timeframe for this?

8 MR. DOLMETSCH: The overall timeframe for
 9 the project runs through the end of August but we're
 10 aiming to complete our benchmark testing by the end
 11 of March.

12 MS. JENKINS: Okay. So it's really quick.
 13 Okay.

14 MR. CAMPBELL: All right. So okay to say
 15 the consensus of the Board is go man go?

16 MS. JENKINS: Absolutely.

17 MR. CAMPBELL: Great. Thanks very much,
 18 Jason.

19 MR. DOLMETSCH: Thank you.

20 MR. CAMPBELL: So I see that NeighborWorks
 21 made it down. How are the roads?

22 MS. BIDDLE: So far so good.

23 MR. CAMPBELL: Oh yeah?

24 MS. BIDDLE: It started raining.

25 MR. CAMPBELL: Okay. All right. So we

1 have tabled the NeighborWorks discussion, but let's
 2 bring that up now. So, Ludy and Zerwat.

3 ZERWAT: Thank you. I'm just here to
 4 introduce our guests here tonight. I have Ludy
 5 Biddle, who's the executive director of
 6 NeighborWorks of Western Vermont and Gregg Over,
 7 who's the director and NeighborWorks received, as
 8 you saw probably in the summary that -- the
 9 executive summary that they -- that they provided
 10 and that I also provided to you, NeighborWorks
 11 received a VCDP grant of \$250,000 last year, July
 12 2016, to conduct a rental rehab pilot. So this was
 13 a program to incentivize local landlords to acquire
 14 and rehabilitate rental units in Bennington. So
 15 they're here to tell you a little bit about what
 16 they've done this past year and some plans for the
 17 future.

18 MS. BIDDLE: Yes, thank you. Thank you
 19 very much for having us and thank you for moving us
 20 around in the agenda for the -- due to the weather.
 21 That's very nice. Yes. We are here actually the
 22 business before our -- for the -- the reason we're
 23 here tonight is to ask you to consider supporting
 24 our request for an amendment to the original
 25 application. The amendment would be for additional

1 sum of money that would allow us to do 15 more
2 projects, 15 more rental units in Bennington. We've
3 accomplished 10. We'll give you details on what
4 we've done. But the request would be subsidy from
5 VCDP that would go towards incentivizing landlords
6 to do 15 more units. Our proposal is that with the
7 original grant, there is enough money left in
8 program management that we can pay the -- the -- the
9 staff costs and the administrative costs out of the
10 original grant. So we're just asking for an
11 additional \$100,000 which would be subsidies to the
12 additional landlords.

13 MR. OVER: One hundred five.

14 MS. BIDDLE: One hundred five so. But I
15 wanted to just begin by saying that the original
16 grant has made a huge difference to us in that it
17 allowed us finally to have a satellite office in
18 Bennington. We're on North Main in a lovely space,
19 it actually belongs to Shires Housing. We're
20 partnering with Shires Housing on as many -- in as
21 many ways as possible. We have a long-range plan to
22 co-locate with them when the time comes. And having
23 a -- having a presence, a full-time presence in
24 Bennington has enabled us to bring all our other
25 programs in a much more immediate and constant and

1 reliable fashion as opposed to sort of working out
2 of West Rutland on an -- on a not as frequent basis.
3 So our home buyer education classes are taught here.
4 The -- the attendance has doubled. Our lending
5 officers come down to actually sit down with clients
6 for our lending program. We share some space in our
7 space with Habitat, which is very nice for sort of
8 social reasons as well. But just having a presence
9 in Bennington has meant a great deal to us. We've
10 been serving Bennington since 2004, but this is the
11 first time we've actually had a satellite permanent
12 office. I'm going to let Gregg talk. oh, I -- I
13 should also say two examples of additional benefits.
14 We started two programs in Rutland last winter. One
15 is called We Can Fix It, which is a home maintenance
16 course for women, taught by a woman. And it's been
17 extremely popular in the Rutland area. And Shires
18 is going to help us co-host and provide that course
19 to the at, for starters anyway, at the community
20 center in Apple, in the new, in the revised, or the
21 renovated Applegate housing complex. And the other
22 program is called Everyday Chef whereby a wonderful
23 chef teaches a course to -- about cooking with local
24 foods and healthy foods but teaching a course to
25 people who struggle to have, you know, adequate or,

1 you know, adequate cooking facilities. So she
2 literally teaches how to cook with a microwave, or
3 how to cook with a -- with a hot plate. or how to
4 cook on a grill, if that's all you have. And she
5 teaches these courses in places where people are
6 having a hard time such as Recovery House in Rutland
7 and so forth. So we are expanding that course with
8 the help and partnership of Shires as well. There
9 are just a few, there -- there are just other ways
10 that NeighborWorks will hopefully be bringing some
11 of our resources into Bennington, as I say, and with
12 the permanent space that we have. So I'm just going
13 to ask Greg to give some details on what we've
14 actually accomplished with the rental rehab. But
15 and do you have numbers on how many other rehabs
16 we've done?

17 MR. OVER: Actually I don't, but I know
18 it's around a dozen.

19 MS. BIDDLE: Yeah.

20 MR. OVER: From your handout there, I
21 tried to give a history of what we've done so far.
22 But I'd like to go over the fact that we have three
23 buildings that we're currently working on at 272,
24 274 Union -- Union Avenue, I believe it is.

25 MR. CAMPBELL: Street.

1 MR. OVER: That building owner has
2 invested \$128,000 into that building to take two
3 units and make them four. It's about 35 percent
4 complete at this time. Then we have a second
5 building on 32224 Gage Street. And that is one unit
6 plus repairs to the -- to the two-unit building.
7 That gentleman is going to be investing over \$40,000
8 into that and it's about 25 percent complete. And
9 then there's a third building on Safford Street at
10 343 that houses three units. Those people are going
11 to be gut rehabbing the two main units and probably
12 reconstructing a third unit on the back that was
13 attached by just a breezeway and set of stairs. So
14 there'll be three units there and they've taken a
15 building grant and they're going to be investing
16 over \$155,000 in that building, for a total of 10
17 units, which was our commitment for the first round
18 of the grant. Now, for the second round of the
19 grant, we've lowered the -- the grant amount from
20 8,500 down to 7,000. Hopefully -- hoping that we
21 can produce more units and still incentivize the
22 landlords to take advantage of this program.
23 Currently, we have one person that's extremely
24 committed to -- to remodel a four-unit building. Is
25 there a Grove Street around here? Close?

1 MR. HURD: Grove Street, yes.

2 MR. OVER: Is there a Grove close to here?

3 It's, the -- the units are very close to here and

4 he's -- he's looking to take a grant for each unit

5 plus make some significant improvements for the

6 building. Any questions? So now I'd like to answer

7 questions that I, you know, whatever I can.

8 MR. CAMPBELL: All right. So just to be

9 clear, as I understand it, eventually we're looking

10 -- you're looking for the approval of the Bennington

11 Select Board to begin the process of applying to

12 VCDB for a second year of enhancement. Have I got

13 that right?

14 MS. BIDDLE: That's correct.

15 MR. CAMPBELL: That's what you'd like from

16 us tonight? Okay.

17 MS. BIDDLE: Yeah.

18 MR. CAMPBELL: So questions from the

19 Board? Anything from you, Chad?

20 MR. GORDON: Yeah, I guess I could start.

21 What does someone have to do to be eligible to apply

22 for these grants?

23 MR. OVER: Just be willing to look over

24 the -- the grant commitments that you have to make

25 on the building. And we have developed a sheet that

1 -- that where we sit down and talk with the

2 individual property owner to start with and make

3 them aware that they, you know, they must commit to

4 -- to all these conditions. You know, those

5 conditions are to the effect of they must rent at

6 least 51 percent of the units to people that are 80

7 percent AMI and below. And if I talk too many

8 acronyms, just tell me.

9 MR. GORDON: Yeah, you might want to just

10 de-acronym a couple of those.

11 MR. OVER: Okay.

12 MS. BIDDLE: De-acronym.

13 MR. OVER: Fifty-one percent of the

14 building must be rented to people who are 80 percent

15 or below the average median income of the county.

16 That usually works out to be somewhere in the

17 \$40,000 range, depending on the amount of

18 dependents. There are HUD housing and urban

19 development guidelines on -- on rent and they're not

20 allowed to exceed those guidelines. They must rent

21 within the HUD guidelines.

22 MS. BIDDLE: For five years.

23 MR. OVER: For, well, for five years or

24 the life of the loan commitment, whichever comes --

25 whichever comes first. And they have to give a --

1 they have to supply NeighborWorks with income

2 information annually from the clients that they're

3 renting to, to make sure that they're abiding by the

4 -- the covenants of the grant.

5 MS. BIDDLE: And they have to make health

6 and, they -- they have to use the funds for health,

7 safety, efficiency improvements. The goal being to

8 improve the quality of -- of housing either to

9 create new units, which would be the -- the super

10 achievement, to create new units that are affordable

11 to low-income households and that meet very high

12 standards for health, safety and efficiency.

13 MR. OVER: Yeah, our number one criteria

14 was if units were vacant or offline or, I believe

15 the building at 343 Stafford had sat sat vacant

16 for quite a few years as a foreclosure. So that was

17 our first commitment to -- to bring new units online

18 here in Town.

19 MS. BIDDLE: It's also had the benefit of

20 making improvements to historic housing stock

21 because in most cases these are, you know, older

22 homes that have been converted or something. And in

23 many cases and this is, you know, this is what the

24 landlords -- this is why the landlords wanted to

25 work with us. They've been under maintained or

1 simply needed expensive repairs and this was sort of

2 the -- the jumpstart to getting those repairs done.

3 MR. CAMPBELL: So Jeannie?

4 MS. JENKINS: So -- so, I have -- I have a

5 couple questions. Thank you. So I'm wondering, can

6 you talk a little bit about how you do outreach?

7 Who are you looking for and how do you go about it?

8 And how you found the individuals that you're

9 working with now?

10 MS. BIDDLE: Well, we started with a sort

11 of steering committee. I'm not sure remember all

12 the members of the steering committee, but we talked

13 to the director of Shires Housing. We talked to

14 two, we invited several, but we had two landlords

15 come and advise on how it would work for them. We

16 had two inspectors.

17 MR. OVER: I think they were the building

18 inspectors for the Town were -- were present at our

19 meetings and the interim, what was it?

20 ZERNAT: Community Development Director.

21 MR. OVER: The Community Development

22 Director, the interim that was working at the time.

23 MS. BIDDLE: Yeah. Okay. So we had sort

24 of an ad hoc advisory group to sort of establish and

25 test what guidelines we were proposing. This is a

1 pilot. It's never been done before. So we were
 2 getting the best advice we could. We also consulted
 3 Joe Giancola, who's a big landowner in Rutland, who
 4 wanted it for Rutland, but sorry.
 5 MS. JENKINS: So I -- I guess I was
 6 thinking, so that's your -- your steering committee,
 7 but I was wondering how you did the outreach and who
 8 you were looking for. So beyond getting advice.
 9 MR. OVER: We had Chris who knew --
 10 MS. BIDDLE: Yeah. Yeah.
 11 MR. OVER: The person that we selected
 12 for, to do the management of the program here in
 13 Bennington was very well connected and knew I, what
 14 I feel to be 50, 60 percent of the community because
 15 he was in construction for a long time.
 16 MS. JENKINS: Is that -- is that Chris?
 17 MS. BIDDLE: Yes.
 18 MS. JENKINS: Okay.
 19 MR. OVER: And he knew a lot of the people
 20 that -- that eventually ended up in the program, if
 21 not all.
 22 MS. JENKINS: So what, how did you do the
 23 outreach? I mean, was it through Chris Callaert?
 24 MR. OVER: Yes.
 25 MS. BIDDLE: Mostly through Chris Callaert

1 because we were just getting started here. And --
 2 and then we -- we took various proposals from
 3 people. In some ways, it was a first come, first
 4 serve, if you qualified, you met the standards that
 5 we wanted to see for the improvements to the
 6 property and -- and were willing to, you know, agree
 7 to the covenants and so forth.
 8 MS. JENKINS: So I'm just sort of
 9 wondering so it was Chris reaching out rather than,
 10 did you have something that went out in the paper
 11 and talked about this? Did you send things to, I
 12 don't know, area, I know there's an area landlord
 13 list or.
 14 MS. BIDDLE: I don't know that we did.
 15 MR. OVER: Certainly our website.
 16 MS. BIDDLE: Yeah.
 17 MR. OVER: We had it, you know, plugged in
 18 very well.
 19 MS. JENKINS: Okay. All right.
 20 MS. BIDDLE: But those are very good
 21 suggestions.
 22 MR. OVER: And, you know, and social media
 23 also.
 24 MS. JENKINS: Okay. All right. All right.
 25 MR. OVER: It went out on.

1 MS. JENKINS: All right. And then if I
 2 may. So I -- so bear with me because I don't know a
 3 lot about this. So the -- the units that you were
 4 referring to are, are -- those new units as opposed
 5 to rehabs? I mean, you'd ask the number of rehab
 6 units and then.
 7 MR. OVER: There were seven new units and
 8 one unit that was being brought back online because
 9 it had fallen out of compliance to be rentable.
 10 MS. JENKINS: And that was Safford? There
 11 was one on Safford?
 12 MR. OVER: That was at Gage Street.
 13 MS. JENKINS: Gage. Okay.
 14 MR. OVER: And three of them -- each --
 15 each of the units got a building grant to make
 16 improvements that would -- that would affect the --
 17 the entire building. i.e., you know, all the people
 18 that are living there.
 19 MS. JENKINS: Okay.
 20 MR. OVER: Or would be.
 21 MS. JENKINS: And then what were the, so
 22 then what were rehab units? Sorry.
 23 MR. OVER: The rehab unit -- there were
 24 four at 272, 274 Union. And there were three at 343
 25 Safford.

1 MR. CAMPBELL: He's listing the same units
 2 there. So there were a total of seven units --
 3 MR. OVER: Eight units.
 4 MR. CAMPBELL: A total of eight units that
 5 were improved or that were brought online as a
 6 result of your funding.
 7 MR. OVER: Correct.
 8 MS. JENKINS: Thank you.
 9 MR. CAMPBELL: And these -- these --
 10 MS. JENKINS: Okay.
 11 MR. THURBER: Or the hope is to bring them
 12 online because currently they're -- they're in
 13 process.
 14 MS. BIDDLE: They're in process.
 15 MR. THURBER: Yeah some of them are not
 16 even in the -- in the vicinity of coming online.
 17 MR. OVER: Not yet.
 18 MS. JENKINS: So they're 35 percent, 25
 19 percent and then Safford is --
 20 MR. OVER: Twenty-five percent and one
 21 we're still working through --
 22 MS. JENKINS: Safford is zero percent.
 23 MR. OVER: -- the Department of Historical
 24 Preservation to enact guidelines that they have to
 25 use for the exterior of the building.

1 MS. JENKINS: Okay.

2 MS. BIDDLE: Because it's a historic

3 building.

4 MS. JENKINS: Okay. Thank you.

5 MR. CAMPBELL: Jeannie, anything else?

6 No?

7 MS. JENKINS: I think that's -- I'll stop

8 there.

9 MR. CAMPBELL: Why don't I go last. Jim,

10 anything from you? No? Carson?

11 MR. THURBER: As as you commented, year

12 one, pilot program, initial tunding. I know all the

13 -- everyone's heart was in the right place in

14 getting this off the ground. But I -- I know

15 through conversations with the individuals that

16 you're interacting with, it's definitely a trying

17 process in respect to what you need to do to get the

18 money and it's creating some incredibly lengthy

19 delays. Is that fair?

20 MS. BIDDLE: I would say some of the

21 delays are just the fact that we're getting -- we

22 were starting the program last year. I don't think

23 we have to -- some of those delays will be much

24 easier. But yes and this -- there is a way -- there

25 is a, you know, a problem or there are requirements

1 because these are federal funds.

2 MR. THURBER: Yeah

3 MS. BIDDLE: And they do have more, you

4 know, more strings attached and there are more

5 loops, you know, to jump through. And Gregg has to

6 do an environmental review. We have to do an

7 historical review. We have to do -- do we -- we

8 don't --

9 MR. OVER: Asbestos.

10 MS. BIDDLE: Yeah, so there -- there are a

11 lot of -- there are a lot of issues that arise when

12 you are using federal funds.

13 MR. THURBER: Are you optimistic in -- in

14 year two as you kind of increase the number of units

15 that you're hoping to to have these funds flow to

16 that the ability for individuals, small landlords,

17 which is the goal, to -- to obtain those funds is --

18 is going to be a little easier? Because the

19 landlords you selected in year one, I would not be

20 going out on a limb to say are -- are probably some

21 of the -- are some of the most competent and

22 probably efficient landlords you could have picked

23 in this community. One of -- a couple of them are

24 some of the largest landlords. So it -- it just

25 kind of -- the picking process was -- is interesting

1 to me. As far as small landlords, they weren't all

2 small landlords. And right now, there are -- some

3 of them are the most efficient and they're

4 struggling to get through the paperwork.

5 MS. BIDDLE: We would love those landlords

6 to participate. I will say, I -- there were

7 articles in the paper and some people did contact us

8 after articles in the paper when the grant was

9 announced and when the process -- the project was

10 sort of described in the paper. I don't know that

11 we put out a press release ourselves. I honestly

12 don't remember. But I know that there were articles

13 in the paper and people did call us. And we, but

14 we'd be very, very, very pleased to have the smaller

15 landlords.

16 MR. OVER: The small landlord that's

17 struggling right now to bring his units online

18 because of insufficient funds, we would give top

19 priority to in the second round. In other words, if

20 you have, you know, two -- two units that you own

21 and I don't know, even connected to your house and

22 -- and you know, you just don't have the financial

23 resources to -- to make the improvements or the -- or

24 the code -- the code compliance repair work that it

25 takes. Those are the people that we're truly

1 looking for.

2 MR. THURBER: Yeah

3 MR. OVER: And we don't have to keep this

4 to 11. It might be that, you know, that some of the

5 landlords don't need a full grant, that they could

6 get -- get by with a, with -- with a \$16,000

7 project, which means they'd only be eligible for a

8 \$4,000 grant. So we would like to stretch this out

9 as far as we possibly could.

10 MR. THURBER: And I agree. I think in the

11 30,000-foot level, the -- the funds that were

12 awarded and in year one, as I kind of settle on the

13 idea of it being year one, they're --

14 MR. OVER: Well, we didn't know what to

15 expect to be quite honest with you.

16 MR. THURBER: Agreed. And I think as year

17 two comes online, it's going to be hopefully --

18 MR. OVER: The grant -- the grant

19 conditions now say that -- that no one property

20 owner is eligible for more than eight. That might

21 even be a little bit -- a little bit too much. If

22 somebody's already, you know, had the ability to --

23 to have five grants and -- and restore a building,

24 we would certainly not jump to -- to refund them

25 again.

1 MR. THURBER: Yeah, we saw that in year
 2 one
 3 MR. OVER: We would look for those other
 4 -- for other people in order to distribute the
 5 wealth, right.
 6 MR. CAMPBELL: Thank you. Good hard
 7 questions. Jeanne?
 8 MS. CONNER: Yeah, forgive me. I don't
 9 know a lot about what you do. So forgive me if you
 10 feel like I'm being a little nitpicky but I would
 11 just like to reiterate, I -- I -- I'm -- I'm a
 12 little concerned that all the landlords that may
 13 have been eligible didn't know. So that makes me a
 14 little bit uncomfortable that there may be people
 15 out there that would have come forward had they
 16 known. So I guess I would encourage you to maybe do
 17 a better job of making sure that the smaller
 18 landlords do know about the program. The other
 19 couple things I've thought of is, is -- is there
 20 some sort of a time constraint that, in -- in other
 21 words, you don't want units under construction for
 22 years. The goal is to get them rehabilitated and --
 23 MR. OVER: Our grant agreements specify
 24 six months.
 25 MS. CONNER: Okay. Great.

1 MR. OVER: Okay? We do extend that for
 2 certain --
 3 MS. CONNER: Sure. Things happen.
 4 MR. OVER: -- criteria. But that's what
 5 we -- that's what we try to get our projects done
 6 in.
 7 MS. CONNER: And is there some sort of
 8 penalty of things --
 9 MR. OVER: Well, we don't have liquidated
 10 damages or anything like that.
 11 MS. CONNER: Yeah.
 12 MR. OVER: You know --
 13 MS. CONNER: It's difficult.
 14 MR. OVER: -- the construction manager
 15 tries to keep abreast of of what's going on. And
 16 -- and if it's falling behind, why they let us know.
 17 MS. CONNER: And how does the money come
 18 to the landlord? Are there bills paid for them out
 19 of their money?
 20 MR. OVER: No.
 21 MS. CONNER: Okay.
 22 MR. OVER: The -- the grant and the loan
 23 and or the funds that the landlord supplies are
 24 deposited in an escrow account With NeighborWorks.
 25 MS. CONNER: Okay.

1 MR. OVER: And we take care of all the
 2 distribution funds.
 3 MS. CONNER: Okay. And the other thing
 4 because things not only sometimes take longer than
 5 they were supposed to, they sometimes end up costing
 6 more than they were supposed to. So is there some
 7 sort of --
 8 MR. OVER: We have a -- we do have -- we
 9 have built in an agreement in with each landlord
 10 that they will be responsible if funds that -- that
 11 are in play do not create the units. That it's --
 12 it's their responsibility to take those units to the
 13 point where they are rentable.
 14 MS. CONNER: I guess I'm, what I was going
 15 to say was, is there any verification that they have
 16 the finances to complete the project in addition to.
 17 MR. OVER: There is.
 18 MS. CONNER: Okay.
 19 MR. OVER: That's correct.
 20 MS. CONNER: That's it. You did great.
 21 MR. CAMPBELL: Way to soldier through
 22 Jeanne. Well, so, you know, we know we want to work
 23 on our affordable housing stock in Bennington and --
 24 and we're thankful for help, any help, any good help
 25 that we can get. I think I probably speak for the

1 whole Board when I say that. Many of us have heard
 2 rumors of the process being slow and -- and maybe
 3 inefficient.
 4 MR. OVER: Can I just add one thing to
 5 that?
 6 MR. CAMPBELL: Yeah. Let me finish this
 7 thought and then I'll get there.
 8 MR. OVER: All right.
 9 MR. CAMPBELL: I -- I think enough people
 10 have asked us if it's, whether or not it's worth it.
 11 So I -- I think that's your challenge, not ours at
 12 some level. So we're -- we're, you know, happy
 13 enough to let you continue to improve things as they
 14 go on. I think we really would love to see some --
 15 some good progress to get the whole 15 units or
 16 something next year. But my one question that I'd
 17 really like to ask is, are we giving anything up by
 18 offering to support this grant? So the VCDP grant
 19 funds, I don't know how they're -- how competitive
 20 they are. I don't know how they're distributed to
 21 communities. Is there anything that we are giving
 22 up by supporting this? And if not, why would we not
 23 support further investment in our community, I
 24 guess?
 25 MS. BIDDLE: Well, I can't --

1 MR. OVER: I've always been told that one
 2 grant from VCDP does not impact anything else down
 3 the road that you might apply for is the way I've
 4 been --

5 MS. BIDDLE: You're not competing against
 6 yourself --

7 MR. OVER: Right.

8 MS. BIDDLE: -- for those funds.

9 MR. OVER: It's like there isn't a quota
 10 and you -- you know, because you're investing
 11 another 500, 105,000 into this program that, you
 12 know, that you won't be eligible for something else
 13 down the road is the way I've always been told.

14 MR. CAMPBELL: Okay. Do we have anything
 15 else in the pipeline for VCDP that we're anxious
 16 about, Zerwat?

17 ZERWAT: The only thing I would add to
 18 that is that every time we apply for a new VCDP
 19 grant we -- we from the Town's end, because we're
 20 the fiscal agents for these grants, have to
 21 demonstrate that we're on top of all of our grants.
 22 So I think when we ask for what is the accounting
 23 process, how well are the funds rolling out into the
 24 community, we have to show that the, you know, the
 25 outcome of that process to the state, we have to

1 report on that. And I've spoken to Ludy about this
 2 a little bit. You know, I think what would be
 3 helpful to know is, you know, for example, is Chris
 4 staying on with the program? You know, who is going
 5 to be involved in the program in year two because
 6 VCDP sends us the money, but if they're not getting
 7 the feedback that it is being used in the community,
 8 and if this is how it's being translated, do we get
 9 a penalty? Do we not? I can only speculate, but it
 10 doesn't look good on our portfolios.

11 MR. CAMPBELL: Can you tell a little bit
 12 more about how much work it is to oversee those
 13 funds or?

14 ZERWAT: Well, I mean, again, you know,
 15 every time, for example, you know, the funds come,
 16 go through us to NeighborWorks, who then distributes
 17 it to the landlords. In this case, you know, it's
 18 really kind of an advance to the landlords, and then
 19 we reimburse NeighborWorks in some ways. But, you
 20 know, as I, again, spoke with Ludy, that requisition
 21 process is not very straightforward, just because of
 22 also some changes in the administration at
 23 NeighborWorks. So I would certainly feel better
 24 knowing that, as the person who's responsible for
 25 this, from the Town's end, that I have competent

1 colleagues at NeighborWorks to work with on this
 2 project, that I know who the person is on the ground
 3 in Bennington. You know, as NeighborWorks is
 4 building a Bennington presence, who are the faces
 5 with that? How well known are those entities? How
 6 reliable are they? So that if I call them and I
 7 say, "A report is due tomorrow," they're going to be
 8 available. They know the, you know, information
 9 they need to provide me, and so on and so forth.

10 MR. CAMPBELL: So you're confident the
 11 first pancake always comes out looking a little
 12 funny, right? So you're confident that the second
 13 pancake, we -- we can probably improve things and
 14 smooth out the process a little bit? Would that be
 15

16 ZERWAT: I think, you know, again, I speak
 17 very, you know, I spoke with, I had a very frank and
 18 honest conversation with Ludy about this. And I
 19 think Carson raised some of the concerns that I've
 20 also had, which is, you know, the project is a
 21 really valuable one. We have, you know, housing
 22 that is remaining vacant, that really our community
 23 benefits from having converted into occupiable
 24 housing. But if it's, you know, how quickly that
 25 turnover is happening, who's actually moving into

1 any of these units? I mean, I think, you know, how
 2 quickly is a project being completed? And also, you
 3 know, it's great for landlords to have funds
 4 available, but what percentage of their total
 5 project? I mean, keep in mind that each unit gets
 6 \$8,500. If, you know, there's a big, you know,
 7 project that has to comply with, as Ludy said
 8 earlier, health, efficiency and safety, I think it's
 9 really important for landlords to know what
 10 percentage of that grant is going to go towards
 11 meeting those standards, and what percentage is
 12 actually going towards the housing conversion. So I
 13 don't think, I mean, Ludy has my full sympathy that
 14 this isn't just, you know, a question of how
 15 NeighborWorks is doing it. But I do think we have
 16 to be very frank about what converting a house to be
 17 code compliant really entails, and how well do
 18 landlords, you know, know that that's what they're
 19 signing up for?

20 MR. THURBER: And can I just add on to
 21 that? Also, at the end, there are restrictions on
 22 the income levels you can rent to people with. And
 23 so that puts us into a very interesting dynamic with
 24 other organizations that are providing housing to --
 25 to lower income individuals. So if we're, if

1 individuals who are doing renovations, are doing
 2 these costly renovations, although there might be a
 3 loan attached to it in this program, who you're
 4 renting to, your hands are tied to a little bit. So
 5 it puts you into a competitive market if you need to
 6 keep your rents low, you paid quite a bit to
 7 finance, you know, new renovations, and then you're
 8 competing with other organizations that may not be
 9 holding the notes on those apartments. So it's a
 10 very tough dynamic you're putting some landlords
 11 into, especially if they're small landlords. I
 12 could talk to you offline about it, I'm happy to --
 13 to go through the economics. I'm one of them right
 14 now. It's -- it's a very peculiar situation so.

15 MR. CAMPBELL: So, but Carson, you know,
 16 you seem to have -- be closest to this of all of us.
 17 What's your sense on what the Town should do?

18 MR. THURBER: I think there's a sharp
 19 learning curve for year two that needs to come out
 20 of year one. I don't know about staffing situations
 21 at Bennington right now, if you guys have an
 22 individual from NeighborWorks on the ground right
 23 now, is that -- is the staffing back up to --

24 MS. BIDDLE: We are -- we don't. Chris
 25 Callaert has resigned and we just came from an

1 interview with someone that we're very pleased
 2 about, but I can't announce that

3 MR. THURBER: I think in theory it's a. I
 4 mean, it's a fantastic program. I just think there
 5 are some, you know, first pancake dilemma. It's not
 6 to steal your thunder there, but there's -- there's
 7 a lot to improve upon, which I'd look at as an
 8 opportunity not to dwell on what happened in year
 9 one. I think we all know that there's really green
 10 pastures here. We just need to figure out how to
 11 make it work for small landlords because it's tough
 12 to bring these old buildings up to code. I mean,
 13 I've done three this in the last year and it's a
 14 pain and it's really expensive. And the loan
 15 structuring sometimes that you're offering seems
 16 wonderful, but it can -- it can be trying.

17 MR. CAMPBELL: So it sounds to me like the
 18 program is costing the Town very little to
 19 administer, that we feel like it's going to get
 20 better and that I'm hearing some reassurances that
 21 things are going to go more smoothly in the second
 22 year. I wonder if we have any more questions for
 23 these folks before we move on?

24 MS. JENKINS: I'm thinking, I think I have
 25 two more questions. So in the -- in terms of

1 completion rates, is what -- what -- what -- to what
 2 do you attribute the -- the low percentage of
 3 completion? Is it, I mean, is it that it's costly
 4 and therefore things are moving slowly? Is it that
 5 the paperwork burden was intense and that meant that
 6 things just didn't happen?

7 MR. OVER: First of all, first of all, we
 8 had -- we had to take what we have been doing for
 9 scattered site projects for the last 20 years and
 10 adapt it to -- to fit rental rehab and adapt it to
 11 fit a property owner that owns multiple units as
 12 opposed to a -- a single family resident. And that
 13 took -- that took quite a bit of development through
 14 our lending division and it had to, obviously it had
 15 to be checked for legality and everything. Then
 16 there's the actual lending process itself. And what
 17 I was going to say is we are, the lending department
 18 is only as fast as the people trying to borrow the
 19 money get the information to them. Okay? And my
 20 best example is the person that applied third for
 21 the program was the person that finished first
 22 because they had a handle on the paperwork that
 23 needed to be supplied. So some of that is, you
 24 know, it's a 50/50. It does take time to process
 25 these loans. We're getting better at it because,

1 you know, we're now, you know, into a second cycle.
 2 And we always tell the homeowners and the landlords,
 3 "Get your paperwork in as fast as possible because
 4 that's what's going to expedite things."

5 MS. JENKINS: Okay. So a bit of it is the
 6 first-year learning curve of, and that, so that --
 7 that hold up won't happen again. So my other
 8 question is just, I -- I had an energy audit done
 9 through you guys and someone from Rutland came down
 10 to do it. And I know there's been conversation in
 11 Bennington about not having enough energy certified
 12 folks to come out to do audits, et cetera. Is -- is
 13 it the case that you need to bring people from other
 14 communities that have a certification or -- or can
 15 someone that's not certified work under you with
 16 some kind of -- some kind of, I don't know,
 17 dispensation from you?

18 MS. BIDDLE: So our heat squad program is
 19 designed such that we have on staff three BPI
 20 certified -- Building Performance Institute
 21 certified efficiency auditors. And so our auditors
 22 came to your house, one of them, and they -- the
 23 auditors do an assessment of the home, right? A
 24 proposed scope of work for the home, discuss the
 25 cost, you know, offer the loan, et cetera. And then

1 the work is given to local contractors.
 2 MS. JENKINS: Even if they're not
 3 certified.
 4 MS. BIDDLE: No, they -- they -- they --
 5 they would -- they have to be certified. Well, let
 6 me think. Not in every case. They don't have to be
 7 certified in every case. The work has to be tested
 8 at the end, and the quality of work has to meet the
 9 standards for the BPI.
 10 MS. JENKINS: Okay. But it does open it
 11 up for people who are not energy certified.
 12 MS. BIDDLE: Yeah. So it's the local
 13 contractors that are getting the work to actually do
 14 the air sealing and installation.
 15 MS. JENKINS: Okay. All right. Okay.
 16 Great. Thank you.
 17 MR. CAMPBELL: Okay. So how are people
 18 feeling about this? If people are feeling positive
 19 about it, I'd accept a motion to begin the process
 20 of applying for a second year. Let's see. What
 21 would you like? Just a motion of support for your
 22 application?
 23 MR. OVER: Yes, that's what we need.
 24 MR. CAMPBELL: Would anybody like to be --
 25 make that kind of a motion?

1 MR. THURBER: And just a reminder to the
 2 watching public in the audience, this has -- these
 3 funds are not related to anything Bennington-driven,
 4 tax dollars, or anything along those lines. I think
 5 it's just important to re-clarify.
 6 MR. CAMPBELL: And we've also established
 7 that we're not giving up anything by applying for
 8 them. So it's, not to say money over the transom,
 9 but it's -- it's something that we're very happy to
 10 have you bringing to our community.
 11 MR. THURBER: Yeah. This is an
 12 information session, and I hope you don't realize
 13 I'm not being critical. It's just feedback from the
 14 general community that I think it's an amazing
 15 opportunity for small landlords, and even more so in
 16 year two.
 17 MS. BIDDLE: So we don't -- I don't -- we
 18 don't feel criticized or whatever.
 19 MR. THURBER: Everything I've brought up,
 20 you've heard it over and over again.
 21 MS. BIDDLE: It's the fact of life when
 22 you start a pilot program, you just have, you know,
 23 bumps and starts.
 24 MR. THURBER: Yeah, agreed.
 25 MS. BIDDLE: And we have them all, and

1 we're delighted that we can think about a second
 2 year and do more with less.
 3 ZERWAT: Can I just quickly add, and
 4 again, I can say all of this because I've spoken
 5 with Ludy in detail about this. Keep in mind that,
 6 you know, even with the year one, absolutely there's
 7 a learning curve, but a significant percentage of
 8 the grant did go into program management. And I
 9 would like to see whether it's a, you know, slightly
 10 more regular calendar of reporting about how some of
 11 these changes are being pursued and traced for year
 12 two. I think that would be helpful both for
 13 NeighborWorks and for the Town.
 14 MR. CAMPBELL: Do you have an MOU or
 15 something with NeighborWorks? Is there something
 16 written at this point?
 17 MS. BIDDLE: Yeah.
 18 ZERWAT: Yeah.
 19 MR. CAMPBELL: And could we -- could we
 20 open that up just a little bit to ask for a little
 21 bit more reporting on that?
 22 MS. BIDDLE: I can look into that. Yes.
 23 MS. JENKINS: I'm wondering if we could
 24 also add a little bit more about how people find out
 25 about the program. I -- I'm just -- I am concerned

1 that -- that -- that it not just be an individual
 2 saying, "Okay, I know these four people, let's go
 3 ask them." I -- I would really like the public to
 4 be able to invite themselves into it.
 5 MS. BIDDLE: And part of our conversations
 6 too with Zerwat was we could use help in finding the
 7 landlords. We'd love to be -- we'd love some
 8 guidance as to where you, you know, what -- what
 9 portions of your Town you might like to see some
 10 investment. What -- what landlords you'd like us to
 11 work with. You know, we're -- we're not as familiar
 12 with people on the ground here as you are and
 13 suggestions in helping and selecting would be very
 14 welcome.
 15 MS. JENKINS: Okay.
 16 MR. CAMPBELL: Happy with that?
 17 MS. JENKINS: Mm-hmm.
 18 MR. CAMPBELL: Yeah.
 19 MS. JENKINS: Yes. Thank you.
 20 MR. CAMPBELL: First year in a new
 21 community. Yeah.
 22 MR. CARROLL: I would, that, you know, as
 23 far as finding landlords, it should be fairly simple
 24 to do if you went to the assessor's office. They
 25 can identify multiple units and let you know who the

1 landlords are.

2 MR. CAMPBELL: Do you need a letter of

3 support on this or just a motion in the minutes?

4 MS. BIDDLE: A letter of support never

5 hurts.

6 MR. CAMPBELL: That's not quite what I

7 asked.

8 MS. BIDDLE: I don't believe it's required

9 in the amendment process.

10 MR. CAMPBELL: Uh-huh.

11 MR. OVER: Please (inaudible).

12 MR. CAMPBELL: Do you have, Stuart, some

13 sort of letter or something that we could --

14 MR. HURT: Well, we could probably pull

15 something together depending on the outcome of your

16 motion and support.

17 MR. CAMPBELL: Okay. All right. What's

18 the board's pleasure here?

19 MR. THURBER: Motion to support.

20 MS. JENKINS: With --

21 MR. CAMPBELL: Motion to support. Okay.

22 MS. JENKINS: With, do we want to have

23 some stipulations in there or is it not?

24 MR. CAMPBELL: I think we've just heard

25 Zerwat saying that she's going to look at the MOU

1 and she's going to look at some performance

2 standards and -- and a little better sense of how

3 it's how the award's disseminated. Yeah.

4 MS. JENKINS: Okay.

5 MR. CAMPBELL: Is that fair? Zerwat, did

6 I get that right? Okay. Okay. So motion to

7 support this grant application in the form of a

8 letter or just in the form of a letter?

9 MR. THURBER: Sure.

10 MR. CAMPBELL: Any second on that?

11 MR. GORDON: Second.

12 MR. CAMPBELL: Chad's seconding it. Any

13 discussion? All in favor?

14 ALL BOARD MEMBERS: Aye.

15 MR. CAMPBELL: Okay. So we are unanimous.

16 Thank you very much for coming to our community and

17 bringing some money and helping out. We hope you

18 have a great 2018. We look forward to your

19 progress.

20 MS. BIDDLE: Thank you.

21 MR. CAMPBELL: Okay. The next item on our

22 agenda is -- oh yes, thank you for reminding me. So

23 did anybody come in that was expecting to speak at

24 the public hearing for the Bennington Town Plan

25 Amendment? We did that very first in the meeting so

1 Mary Morrissey could be on a road to Montpelier. Is

2 there anybody that came in a little bit late and

3 would like to speak because we can open this back up

4 if -- if we need to. Laura, would you like to

5 speak?

6 LAURA: I wonder what's going on because I

7 came in late thinking that's going to be now.

8 MR. CAMPBELL: Understood. That's what

9 I'm saying. Yeah we changed it at Mary's request

10 so. So okay, I guess we probably need a motion to

11 open that back up then. Would somebody give me a

12 motion?

13 MS. CONNER: So moved -- so moved to open

14 the public hearing for the energy plan.

15 MR. CARROLL: Second.

16 MR. CAMPBELL: Okay. All in favor?

17 ALL BOARD MEMBERS: Aye.

18 MR. CAMPBELL: Okay. So we have now

19 reopened the public hearing for the Bennington Town

20 Plan Amendment and would be happy to hear from you,

21 Laura if you'd like to come on up and speak to us.

22 LAURA: I'm really here to find out what

23 was happening because I wasn't here when you started

24 with the first -- with the issue when you moved the

25 agenda around and I understand there's going to be

1 an executive session at the end and then what's the

2 intention what -- what are you expecting to do?

3 MR. CAMPBELL: We're going to review our

4 legal counsel's advice which we literally just got

5 as we sat down tonight and then we'll decide --

6 we'll either come out of the executive session --

7 take a vote or we will, if we decide we need more

8 time to understand our legal -- the legal opinion of

9 our lawyer, we will schedule a -- schedule an action

10 at our next regular scheduled meeting.

11 LAURA: At the next -- so you think it

12 will come back --

13 MR. CAMPBELL: Yes, we'll come back --

14 LAURA: -- if you don't make a decision?

15 MR. CAMPBELL: In one form or another,

16 yes.

17 LAURA: Okay. Because I actually have

18 been really disappointed at how long this has been

19 going on. It's been dragging on and dragging on

20 from the time of the creation of the energy

21 amendment, which was done way back in the spring I

22 think and we were expecting it to come to you and it

23 was -- I don't know what the causes of all the

24 delays were. It didn't come to the Planning

25 Commission rather. It took a long, long time to

1 finally get to the Planning Commission and then they
2 expedited it pretty quickly and then it came here.
3 But I think now we're facing the problem of sort of
4 a last minute wrench thrown into the works by the
5 developers which would not have been -- maybe they
6 would have done it anyway. But it seems like this
7 -- I really am sorry that it's been taken taking so
8 long and I really don't understand why and I know
9 that because these two projects, Chelsea and Apple
10 Hill solar projects, are now winding their ways
11 through the Public Utility Commission, that if the
12 Town had gotten its act together and either passed
13 or not passed this amendment earlier, it would have
14 made everything a lot easier at the Public Utility
15 Commission. So it's very aggravating for us or me,
16 I should just speak for me as a neighbor, to see
17 that this has -- there's been a lot of feet dragging
18 and I'm not blaming any individuals because I don't
19 even know why. But now we're stuck with this and
20 it's really unfortunate.

21 MR. CAMPBELL: Stuck with what?

22 LAURA: We're stuck with this issue that
23 now you are having to rightfully ask the attorney to
24 look at this complaint that was dumped on your lap
25 here and but -- and it could have been -- all of

1 this could have been done months and months and
2 months ago if it had been put to the Select Board
3 when -- we kept being told it was going to be passed
4 by the or looked at and approved presumably by the
5 Planning Commission and then brought to the Select
6 Board. So I'm just concerned about the timing.

7 MR. CAMPBELL: We've asked Dan to explain
8 the timing several times and he's given us several
9 explanations of the process and I do not believe
10 there was foot dragging involved in any of this. We
11 worked through the process in an orderly way to the
12 best of our ability. And yet, it is a wrench that's
13 been thrown in the works at a late time. At our
14 last meeting, we received a rather threatening
15 letter from the developer and we do not feel
16 comfortable taking action until we get the advice of
17 our lawyer to let us know whether or not there's
18 anything substantial in that -- in the claims that
19 the -- that the --

20 LAURA: No, I understand that. I'm not
21 disputing or questioning what you are doing tonight,
22 I, you -- obviously you have to because that serves
23 the purposes of the developers. The longer our
24 energy plan is not -- takes to adopt, the more
25 likely they will be able to move forward at the

1 Public Utility Commission and skirt their project in
2 without this amendment. That's what I'm getting at.

3 MR. CAMPBELL: We understand that. Thank
4 you.

5 LAURA: And I know you understand that and
6 I think a lot of us understand that and they've been
7 very successful in playing chess with us and winning
8 so far.

9 MR. THURBER: I don't -- I wouldn't go
10 that far. Well I think our staff are doing a very
11 good job and that we really with these individuals
12 as you know we need to probably make sure we're
13 doing everything in our power to ensure that our
14 legal team looks at things. We take the time to
15 look at them. Hence that's why we just got this. I
16 mean as we were sitting down and want to take the
17 time to review in executive session. If it takes an
18 extra meeting.

19 LAURA: I mean I'm not talking about that.
20 I understand that. I'm talking about the months and
21 months and months that it took before it even came
22 to you. It was finished a long time ago.

23 MR. CAMPBELL: Yeah so we worked on it for
24 a long time.

25 LAURA: That's what I'm talking about.

1 Prior steps.

2 MR. CAMPBELL: I'm disinclined to ask Dan
3 to go through that whole process again unless you
4 really want to.

5 MR. THURBER: No I'm comfortable. I just
6 -- I respect how much work they put into this.

7 MR. CAMPBELL: I think where we can meet
8 you Laura is that we're sorry it's taken so long for
9 all of us and it's been somewhat -- it's -- it's
10 frustrating but I do think good things take time and
11 we've worked hard on this thing. I think we're not
12 going to at the last minute lunge into something
13 with -- without doing our full due diligence. -- So
14 we'll try to move through this as quickly as we can.

15 LAURA: Well I do hope it comes up at the
16 next regularly scheduled meeting instead of having
17 to be postponed and postponed and postponed whatever
18 you decide at executive session.

19 MR. CAMPBELL: Well, we'll bring it up in
20 some form or another but we have to kind of review
21 what the lawyers say. Thank you very much. Any
22 other comments while we have this hearing open? All
23 right. So motion to re-close this hearing?

24 MR. THURBER: So moved.

25 MR. CAMPBELL: Second?

1 MS. JENKINS: Second.

2 MR. CAMPBELL: All right. All in favor?

3 ALL BOARD MEMBERS: Aye.

4 MR. CAMPBELL: Okay. So now barring any

5 further foolishness, the Bennington public hearing

6 on the Bennington Town Plan Amendment is closed.

7 We'll have an executive session on the subject at

8 the end of this meeting and we'll come out of that

9 executive session and just and let people know what

10 we're doing at the point. Okay? All right. So the

11 next item on the agenda is public -- is the

12 citizens' comment. We have two people that have

13 signed up for that. Before we go to citizens'

14 comment, the Chair and me in my role as Vice Chair,

15 have asked Stuart in the light of our Town Manager,

16 Stuart Hurd in light of the, well largely the Banner

17 editorial on Saturday, if he would further explain

18 the process around the mitigation grant. It has

19 been explained several times to -- to some of us on

20 the Select Board and I'm -- I'm pretty happy with

21 the explanation I've gotten but I do feel like the

22 general public could stand to hear a little bit more

23 about it and Stuart, if you'd be willing to, I'd

24 love to -- I'd love to --

25 MR. HURD: Sure thing.

1 MR. CAMPBELL: -- let you say what you

2 have. Thank you.

3 MR. HURD: I will summarize. I sent a

4 letter to the editor this afternoon clarifying in --

5 in -- in great detail the process that we went

6 through with regard, not only to the construction

7 and the design -- the design and construction of the

8 shed, but also the concurrent move on the mitigation

9 grant program. And I will summarize here. In 2016,

10 we began to design a facility and a salt and sand

11 shed. We always knew that would be a separate

12 facility from our public works facility. In May of

13 2017 we, following a successful bond vote, we

14 acquired the former -- the former Poisson building

15 on Bowen Road and located a proposed site for the

16 salt and sand shed which had already been pretty

17 fully designed outside of the -- the process. On

18 August 24th, construction documents were finished.

19 Bid documents were sent out for construction of the

20 shed. Ultimately contracts were awarded on

21 September 13th. Concurrently with that, staff

22 became aware of the mitigation grant program when a

23 BCRC employee indicated that VTrans was looking for

24 submittals because very few folks had applied for

25 the dollars that were offered in the mitigation

1 grant program. One of our staff, working with BCRC,

2 came in on Battle Day holiday which was August 14th,

3 to put together the one-page application form and

4 get that off in time for the deadline, which was the

5 following day, August 15th. The application clearly

6 showed the shed's location and its design. We

7 received a notification of the award via an email on

8 September 25th. A letter had been drafted

9 apparently on September 14th and that was attached

10 to the email. Around that time, a story appeared in

11 the Banner because VTrans announced the awards for

12 those grants. So we had -- we had already

13 essentially awarded contracts and were moving

14 towards a construction deadline. So I asked staff to

15 take a look at the eligibility requirements that are

16 attached to the award documents to ensure that we

17 were eligible because we're fairly far along in the

18 process. As it turns out, this is a federal

19 process. There are 20 steps to follow if you are to

20 be eligible for the federal grants. And it starts

21 with project selection and authorization to proceed.

22 I'm not going to go through all the details of the

23 steps. But we were or had completed work that would

24 have taken us through the first 18 steps without

25 following the federal process. We were not required

1 to follow it because we weren't accepting -- at that

2 time, we were not accepting any federal funds or not

3 anticipating the acceptance of federal funds. So

4 based on that fact, that we were that far along in

5 the process, the application actually should not

6 have been awarded to us. It should have been denied

7 by VTrans. Having said that, the award came. And

8 the question is could the Town have scrapped the

9 entire effort and restarted the process. The answer

10 is yes, we probably could have. But the amount of

11 money and funds spent to do the design to that date

12 would have not been eligible for federal funding.

13 So we would have lost those funds and then the

14 design work would have to follow the federal

15 regulations, which includes procurement of

16 engineering firms, the National Environmental

17 Protection Act, federal wage requirements for

18 construction, contractor qualification requirements

19 for construction, and a host of other requirements

20 that are required for all of these federal dollars.

21 The NEEPA process, New England Environmental

22 Protection Act, that process alone can be at least

23 six months and perhaps longer, depending on the

24 project. So here we were sitting, ready to go with

25 contractors, looking at a federal process that was

1 obviously going to push us way out. So given those
2 time constraints and the fact that more than likely,
3 the cost to do it using federal standards would be
4 higher, we declined the grant. And I'll give you an
5 example of the process. We've all been talking
6 about the Pleasant Street enhancement grant. It's
7 one that we've been carrying forward in each highway
8 budget, hoping to complete the process with VTrans
9 using the federal standards, because these too are
10 federal monies. The original grant was first
11 awarded in 2008, January. Here we are, ten years
12 later, and we still haven't gotten through to the
13 final approval to go forward with the federal
14 dollars. In fact, it's taken so long, we went ahead
15 with local dollars and did a major portion of that
16 project, including paving and sidewalks, that would
17 have been a part of the project and eligible for the
18 federal funds, had we decided to wait. We didn't
19 think we could. So that gives you an idea of the
20 timing that these federal projects take. And so
21 given that, we believe that the federal process
22 would have driven the cost of the shed up, would
23 have obviously perhaps stalled construction of the
24 shed for anywhere from, I would guess, three to
25 seven years. There was no right-of-way acquisition

1 included, and that's sometimes the problem in the
2 enhancement grants. And remember, we had very
3 competitive bids. We were ready to start. And bond
4 funds, once appropriated, cannot be prepaid or
5 repaid before the bond schedule because the banks
6 are selling bonds to individuals. It's a money-
7 making opportunity for individuals who buy bonds.
8 You have to pay those out on a 20-year schedule. So
9 there would have been no change in the bond cost had
10 we seen even any kind of savings if the project had
11 moved forward quickly. That's a summary of the
12 reasons why we looked at the project as a project
13 that was ready to go and could be utilized
14 relatively quickly at a very cost-effective price
15 versus a federal process that could have dragged on
16 for years and perhaps not saved a heck of a lot of
17 money.

18 MR. CAMPBELL: Okay. Thank you very much.
19 MR. CARROLL: I've got some questions.
20 MR. CAMPBELL: Yeah. Be pointed, if you
21 would, please.
22 MR. CARROLL: I will. I'm going to.
23 MR. CAMPBELL: Because this is a public
24 comment session we're moving into.
25 MR. CARROLL: I will. I will be. So what

1 I heard you say is that even with this federal grant
2 money of \$140,000, it would not have changed the
3 total that we would have to pay back with respect to
4 the bond.

5 MR. HURD: More than likely not. If in
6 fact there were savings, theoretically you can, with
7 permission of the agency on the federal dollars,
8 because this was a grant for a salt and sand shed,
9 you might have been able to take some of those
10 savings and done something additional at the
11 facility that was not related to the salt and sand
12 shed. That would require agency approval. Or you
13 could have taken those savings, should there be any,
14 and set them aside and use them as part of your
15 first or second payment on the bond.

16 MR. CARROLL: You said it would be more
17 expensive if we went with the federal guidelines,
18 which would have, what you're suggesting is it would
19 have eaten into the overall bond. Do you have any
20 estimate of how much more it might have cost?

21 MR. HURD: Hard to know. It would really
22 depend on the time. I mean if construction
23 projects, depending on the cost of materials and
24 contractor availability, a construction project that
25 is ready to go on year one, that goes off on year

1 five or six, could be anywhere from, I would guess
2 anywhere from 10 to 30 percent higher, perhaps even
3 more, depending on what's happening with inflation
4 and everything else. So it's hard to know, Jim.
5 You can't guess what it would be, but based on our
6 experience with the federal programs and
7 specifically the enhancement projects that we have
8 worked on, we think that the savings would have been
9 lost in lost time and increased cost.

10 MR. CAMPBELL: Okay. Thank you for doing
11 that. Too bad the Banner didn't ask you for that
12 information at first.

13 MR. HURD: The letter will appear in the
14 Banner tomorrow. They've assured me that they have
15 it and will run it.

16 MR. CAMPBELL: Okay. Great.
17 MR. THURBER: Can I ask a question? This
18 is not an opportunity for, are we offering --

19 MR. CAMPBELL: No, we're not.
20 MR. THURBER: -- public comment.

21 MR. CAMPBELL: Well, we're moving into
22 public comment. We have two people that are both
23 going to talk about, I think, at least one of them
24 wants to talk about this issue.

25 MS. JENKINS: Could we ask if there's

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1 anyone that came, given we're in public comment, is
 2 there anyone else that didn't sign up to speak
 3 during the public comment period that would like to?
 4 Okay.

5 MR. CAMPBELL: We'll -- we'll add you in
 6 when you get up here. Great. Thank you very much.
 7 Okay. First person on the list is Mr. Culkin.

8 MR. CULKIN: Hello. Joey Culkin,
 9 Bennington. It's kind of funny that, you know, we
 10 get three minutes every two weeks and then you try
 11 to quash us and tell us what we can or can't say. I
 12 just want to say Stu -- Stu, that was a lovely
 13 narrative. I know you and your employees worked
 14 very diligently on that. So just to remind folks at
 15 home, two weeks ago, Stu admitted that he knowingly
 16 violated state law to build the salt shed without a
 17 wetlands permit, which is why the Town is under
 18 investigation and taxpayers may be fined \$42,000.
 19 Not to mention we lost \$340,000, the possibility to
 20 get \$340,000. It's funny that you say, you know, it
 21 wouldn't have been a good grant to get and yet RJ
 22 rushed in to submit it on behalf of the Town. That
 23 doesn't really make sense. Being that this is under
 24 investigation, I think there are some questions that
 25 haven't been answered and they need to be on the

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1 record whether you choose to answer them or not. I
 2 hope you all will act like leaders that were elected
 3 to answer questions. And if you don't answer them
 4 from me, the Banner's here, maybe they'll take the
 5 questions and run. So I'm going to ask four
 6 questions and ask each of you for the answers. You
 7 can answer or just sit there in silence.

8 MR. CAMPBELL: I'm going to remind the
 9 Board that we are in citizens' comment here, which
 10 is the time to hear from citizens and to take under
 11 advisement what they have to say. But it's not a
 12 time for debate. I'm sorry.

13 MR. CULKIN: So Bojica, you know, it's
 14 like, you know, you ask us not to interrupt you and
 15 yet you interrupt me. Question number one, when did
 16 each of you Board members first gain knowledge of
 17 the permit issue? Number two, when did the first
 18 shovel start digging up dirt for the salt shed?
 19 Number three, did any one of you ask for favors
 20 gaining the Act 250 permit and whom did you ask?
 21 And who else other than Dan Monks, Larry McLeod, RJ
 22 Jolie knew about the lack of permits?

23 MR. HURD: I think it's RJ Jolly.
 24 MR. CULKIN: Great. Thank you.
 25 MR. HURD: I just wanted to make sure.

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1 MR. CULKIN: Mr. Jolly, I apologize. So
 2 Jeanne, would you like to --

3 MR. CAMPBELL: No, Joe, we're not doing
 4 this.

5 MR. CULKIN: But I have three minutes
 6 until I can, if you don't want to answer, but I'm
 7 going to ask you to --

8 MR. CAMPBELL: You may do your public
 9 comment and then you may sit down.

10 MR. CULKIN: Carson?

11 MR. THURBER: No, I think I'm with Donald.

12 MR. CULKIN: Jimmy?

13 MR. CARROLL: I think it's necessary that
 14 we be as transparent as possible, even though this
 15 may be as unpleasant as it's appearing to be. But
 16 let me answer your first question. I think we all
 17 became -- well I can't speak for the rest of the
 18 Board, but I became aware of this approximately six
 19 to eight weeks ago. So first that I heard of it and
 20 we deliberated on it. Not in a public fashion, but
 21 in an executive session over the last six --
 22 approximately six to eight weeks. We just haven't
 23 worn it on our sleeve much to the dislike of you who
 24 prefer that we air it. But that is not how we
 25 conduct ourselves. We try to be --

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1 MR. CULKIN: Right --

2 MR. CARROLL: I'm not done.

3 MR. CULKIN: And secretly.

4 MR. CARROLL: We try to be deliberative
 5 and purposeful. And as far as favors -- favors?
 6 Are you kidding? Look at the people that sit around
 7 this table. They're all men and women of integrity.
 8 And asking favors? That's insulting.

9 MR. CAMPBELL: So yeah. I feel your -- I
 10 feel your pain, Jim. But I'm going to really ask if
 11 we can move on. Let's not even but if anybody else
 12 wants to speak, I'm not going to stop you.

13 MR. CULKIN: So I'll just go down the
 14 line. Donald, I guess that's a no. Jeannie?

15 MS. JENKINS: It's public comment period,
 16 and you know that. I'm not -- I'm not saying that
 17 your questions aren't things that people can -- that
 18 you can ask.

19 MR. CAMPBELL: We'll be happy to talk with
 20 you about them later.

21 MS. JENKINS: Yeah, but this is not the
 22 place to do it.

23 MR. CULKIN: Well, of course it is.
 24 Again, we get three minutes over two weeks. We're
 25 at your mercy. And you shove us back into the hole.

1 Mr. Gordon, Chad?
 2 MR. GORDON: No comment. I'm going to
 3 follow Board procedure.
 4 MR. CAMPBELL: Okay. Anything else?
 5 Thank you for your comments. We'll take them under
 6 advisement. All right. The next person that is on
 7 our list tonight is William Stewart. Good evening,
 8 Mr. Stewart.
 9 MR. STEWART: Good evening. William
 10 Stewart, of Bennington, Vermont. I just have a few
 11 short questions for everybody. Seeing as we have
 12 the explanation from Stuart about how everything
 13 went down and everything was handled, how does the
 14 Select Board try to handle on recouping the \$340,000
 15 that we lost by negligence?
 16 MR. THURBER: Is that your opinion?
 17 MR. STEWART: That's my question. How are
 18 we going to try to recoup this \$340,000 that
 19 taxpayers are going to have to pay for now?
 20 MR. CAMPBELL: So we just had an
 21 explanation of that. Did you follow his
 22 explanation?
 23 MR. STEWART: I followed his explanation
 24 but I was asking you, you know, how are you having
 25 any ideas how we're going to recoup this money? And

1 talking about bonding, by the way, Stuart Hurd is
 2 our manager, is in charge of the Town. Is there --
 3 why isn't he bonded against negligence like this?
 4 And if not, why aren't we looking into bonding to
 5 have insurance against this happening anymore? Are
 6 we bonded?
 7 MR. CAMPBELL: Don't know the answer to
 8 that question.
 9 MR. HURD: I am bonded.
 10 MR. CAMPBELL: He's bonded.
 11 MR. STEWART: Okay. So there's the answer
 12 to that. So as losses -- losses come to us as
 13 taxpayers, why aren't we looking into the bonding
 14 aspect of the losses, continued losses, and any
 15 future losses?
 16 MR. CAMPBELL: Well, thank you for your
 17 comment. Do you have any more?
 18 MR. STEWART: I need an answer for that.
 19 MR. CAMPBELL: We're not -- we're not
 20 sitting here and doing a debate tonight. We're --
 21 we're here to get --
 22 MR. STEWART: It's not -- Mr. Campbell --
 23 MR. CAMPBELL: -- we'll listen to your
 24 questions.
 25 MR. STEWART: One more time, the three

1 minutes that I was entitled to, I asked the
 2 question, a simple question, it wasn't a hard one.
 3 He said he's bonded. So why is the fact that we as
 4 taxpayers have to pay the whole \$450,000? We only
 5 had to pay \$110,000. We lost \$340,000, which would
 6 have covered the whole cost minus just what we had
 7 included to \$110,000.
 8 MR. CAMPBELL: Well, I thought his
 9 explanation was plenty thorough, and I don't need to
 10 go back to it. Does anybody else want to go back to
 11 it.
 12 MR. STEWART: Well, it's a clouded issue.
 13 You know, he can cloud the issue all he wants, but
 14 the bottom line is, it is what it is. And you can --
 15 and you can all quiet everything down.
 16 Everything's a big hush hush about it. You never
 17 want to answer. That's the reason why I asked the
 18 questions. You don't want to answer, and the Town
 19 needs to see that. Thank you.
 20 MR. CAMPBELL: It's a process we're
 21 following. Thank you. Thank you for your comments.
 22 Okay. One more comment. Would you -- would state
 23 your name, please?, Mr. Smith.
 24 MR. SMITH: I'm a resident of Bennington.
 25 I just have a few questions unrelated to anything

1 here tonight. This involves the senior center. I'm
 2 wondering if there's plans to put more staff at the
 3 senior center?
 4 MR. CAMPBELL: Not this year.
 5 MR. SMITH: Okay.
 6 MR. CAMPBELL: It's not in the budget this
 7 year. No. But you may give us your thoughts if
 8 you'd like.
 9 MR. SMITH: Okay. Well, I think it needs
 10 staff. There's a lot of part-timers. Not part-
 11 timers. They're volunteers. I'm one of their
 12 volunteers, and I also sit on the Board for the
 13 advisory committee. But my question is this: Are
 14 the volunteers covered by liability insurance like
 15 the Town employees are covered? So if someone
 16 falls, someone chokes, and nothing happens, do the
 17 volunteers put themselves at risk to be sued?
 18 MR. CAMPBELL: Don't know. Can we get
 19 back to you on that?
 20 MR. SMITH: I'd like you to do that.
 21 Yeah. Thanks.
 22 MR. THURBER: Okay. Before you walk away,
 23 Zerwat, I'm not going to put you on the spot, but
 24 maybe a little bit. The reallocation of potential
 25 recreational staff.

1 MR. HURD: I was going to clarify that.
 2 MR THURBER: Okay Yeah To your
 3 original question there about the staffing. Yes.
 4 And we have some individuals in the audience that
 5 are here steadfast in relation to the senior center.
 6 MR. HURD: I'll take it.
 7 MR. THURBER: Take the mic as far as how
 8 that's going to be looked at.
 9 MR. HURD: My first answer was we're not
 10 bringing on any new staff.
 11 MR. SMITH: Okay.
 12 MR. HURD: We do have full-time staff at
 13 the recreation center, as you know. And for a time,
 14 they were covering absences that Susan had or when
 15 she was traveling, so that we tried to have a full
 16 time staff person there most of the time. For some
 17 reason, that process stopped. And I had a meeting
 18 with Zerwat, Tracy Knights, and Susan Hogue to get
 19 that reestablished.
 20 MR. SMITH: Good.
 21 MR. HURD: We're also looking to perhaps
 22 move some of the additional part-time staff at the
 23 rec center that we use there to see if they can be
 24 available for those times where our full-time staff
 25 are involved at functions at the rec center. So we

1 will -- our goal is to bring an employee of the Town
 2 to the center at all times. So that if there are
 3 liability issues associated with the volunteerism,
 4 that they would be in fact, handled by the Town's
 5 liability insurance and the employees are,
 6 therefore, covered. If someone does fall at the
 7 center or if someone is injured at the center, our
 8 liability insurance would cover them as well.
 9 Unless the fall was created by the volunteer, then
 10 that's perhaps another question. But I wouldn't
 11 expect that you would have those kinds of issues.
 12 MR. SMITH: Okay.
 13 UNIDENTIFIED FEMALE: Why don't you just
 14 answer?
 15 MR. HURD: I just did answer.
 16 UNIDENTIFIED FEMALE: No, you didn't.
 17 MR. HURD: Yes, I did.
 18 MR. CAMPBELL: So I think this is probably
 19 delving into, you know, we can get back to you with
 20 more information if you like.
 21 MR. SMITH: Yeah.
 22 MR. CAMPBELL: Since this is citizens'
 23 comment, we'd like to just hear what's on your mind
 24 and try to get back to you if we can.
 25 MR. SMITH: Yeah, I think people need to

1 be assured they're not going to be held responsible.
 2 If somebody chokes and they do the Heimlich and they
 3 break a rib or they hurt the person or the person
 4 dies, is that volunteer going to be at risk? And
 5 you know the world today.
 6 MR. CAMPBELL: Yeah.
 7 MR. HURD: And I can't answer that
 8 particular question.
 9 MR. SMITH: Okay. Thank you.
 10 MR. CAMPBELL: Thank you. We'll get back
 11 to you. Were there any other citizens that came in
 12 after the period of time that we had to sign up?
 13 No? Okay. We will move on to the oh, I'm sorry.
 14 ROSE: Can we get a mic?
 15 MR. CAMPBELL: If you'd like to.
 16 ROSE: I want to know why we can't get
 17 somebody to help us at the senior center.
 18 MR. CAMPBELL: Oh, okay. Thank you for
 19 that comment.
 20 ROSE: It's not a comment. I want to know
 21 why.
 22 MR. CAMPBELL: Well we've done our
 23 budgeting process for the year and we've had the
 24 recommendations from the staff and we're getting
 25 ready to vote on that next.

1 ROSE: Are you serious?
 2 MS. JENKINS: Can I -- can I ask whether
 3 in so I -- I haven't heard before that maybe there's
 4 some part-time staff that could be covering. Is
 5 there a way to build a relationship so that if there
 6 is a part-time staffer that is splitting their time?
 7 I mean, we talked about some sort of moving, you
 8 know, moving people around. I'm just, I think it's
 9 very hard to have sort of, okay, Thursday we're
 10 going to need somebody to cover from 11 to 2. Is
 11 there a way to have, I'm making it up, you know,
 12 Dixie is the person who you know, who has -- who
 13 understands the protocol in the senior center so
 14 that there's, so that they're at least there, if
 15 we're going to have somebody sort of on call, that
 16 there's someone who's very familiar with the
 17 processes there?
 18 MR. HURD: The goal -- the goal is to
 19 identify those folks at the recreation center, both
 20 full and part-time employees who could perhaps
 21 provide that coverage. I don't think you can look
 22 to one individual to always be available. But if --
 23 if there are several of our employees that are
 24 familiar with the protocols and processes at the
 25 center, they would be the ones that would fill those

1 gaps. At least that's the plan.
 2 MS. JENKINS: So can I ask where, how --
 3 when in the year is this an appropriate topic I
 4 guess to really figure out? Because, you know, it,
 5 it doesn't really work at budget time because then
 6 we're sort of passed, you know, we're, we're passed
 7 the, we're passed the point where we're sort of
 8 looking at, at our needs in that way. So I want to
 9 make sure that we don't go another year without
 10 really thinking about how -- how, whether, see, you
 11 know, what recreation looks like as one of, and
 12 within that topic, how we staff appropriately.
 13 MR. HURD: I have, I've challenged Susan
 14 and -- and Tracy to work with Zerwat and others to
 15 come up with a plan to do just that.
 16 MS. JENKINS: Okay.
 17 MR. HURD: And that -- that should be
 18 underway, not perhaps tonight, but it's -- they
 19 should be thinking about it and working up and
 20 coming back to me with a recommendation.
 21 MS. JENKINS: Okay. Thank you.
 22 MR. CAMPBELL: And presumably your staff
 23 is working on it throughout the year. And -- and we
 24 did have a long conversation about this at the
 25 budget meeting when we talked about the senior

1 center budget too. So it's not like it -- it
 2 happens without us knowing about it
 3 MS. JENKINS: Yeah. So Rose.
 4 ROSE: And we're not covered -- when Sue
 5 was out and they knew it and they closed the center.
 6 MS. JENKINS: So Rose, our hope is that
 7 this year now that, you know, thanks to the efforts
 8 of people using the senior center and to Sue, we're
 9 much more aware of the need. And so that is the
 10 plan for this year is to figure out how we're going
 11 to how we're going to -- how we're going to staff
 12 appropriately. Okay.
 13 ROSE: To know the need and help. Do you
 14 realize she's the only full-time person there?
 15 MS. JENKINS: I do.
 16 ROSE: What -- what do they do if all the
 17 volunteers leave? So I'm thinking seriously.
 18 MS. JENKINS: Let's take this offline.
 19 We'll talk about it at break. We'll talk about it
 20 afterwards. Okay?
 21 MR. CAMPBELL: Okay. Thank you for your
 22 comments. Okay. We're now going to move into item
 23 number seven on the budget. I'm sorry we're behind
 24 schedule a bit here but we will be talking about
 25 adopting the 2019 budget for approval of the annual

1 meeting. Right Stuart? What have you got for us?
 2 MR. HURD: That's correct. We would be
 3 looking for a motion to adopt the budget as approved
 4 by the Board or adopt finalized by the Board at its
 5 last budget meeting and to approve the warning and
 6 circulate it for signature.
 7 MR. CAMPBELL: So any comments from the
 8 Board on this?
 9 MS. CONNER: Do you want a motion first?
 10 MR. CAMPBELL: I'd love a motion.
 11 MR. THURBER: So moved.
 12 MR. CARROLL: Second.
 13 MR. CAMPBELL: Okay. We have a motion to
 14 approve for warning the budget as we created over
 15 the past month or more. Anyone have any comments?
 16 No? Okay. All in favor.
 17 MR. THURBER: I have a lot of comments.
 18 MS. CONNER: Actually, I do have a
 19 question. Is the way the warn -- what are these
 20 things called?
 21 MR. HURD: The warning.
 22 MS. CONNER: The warning or the ballot
 23 items, is this the exact wording that will appear on
 24 the ballots?
 25 MR. HURD: Yes.

1 MS. CONNER: Okay.
 2 MR. CAMPBELL: That is the exact wording
 3 that was petitioned.
 4 MS. CONNER: Okay.
 5 MR. CAMPBELL: Happy with that?
 6 MS. CONNER: I'm thrilled with that.
 7 MR. CAMPBELL: Okay. All right. All in
 8 favor of moving this nice frugal budget forward, say
 9 aye.
 10 ALL BOARD MEMBERS: Aye.
 11 MR. CAMPBELL: Okay. Thank you, Stuart for
 12 taking us through that process. It was long but it
 13 was lots of fun.
 14 MR. HURD: I'll be circulating this for
 15 signature.
 16 MR. CAMPBELL: We are next going to hear
 17 from Stuart on speed limit amendments.
 18 MR. HURD: Yes, this is -- this is a
 19 housekeeping amendment actually. The, as you know,
 20 the state of Vermont is planning to pave Route 9
 21 throughout -- throughout -- through the community as
 22 well as Route 7 south to north and as part of their
 23 preliminary design process, they hire an engineering
 24 firm to actually go through, mark all of the speed
 25 limits, mark the signage because a lot of the

1 signage will be upgraded to the most recent
 2 municipal traffic standards. And one of the things
 3 this engineering firm discovered is that we have two
 4 speed zones where it drops from 50 to 40 and then to
 5 30 as you come in from Route 7 south down by the
 6 Greenberg Reserve up to around the former village
 7 line or what we know as the Park Lawn entrance.
 8 There's a 40 mile per hour speed zone there. There
 9 is also a 40 mile per hour speed zone as you come
 10 into town from the east. It -- it starts around at
 11 the present time Barney Road and terminates just --
 12 just before Kelly Fuel's. For whatever reason those
 13 -- those speed zones were never added to the
 14 Bennington traffic ordinance Section 10-1903 and the
 15 engineers caught that and suggested that we should
 16 adopt those zones so they can be properly signed and
 17 otherwise, they would not sign them. So we're here
 18 tonight asking you to adopt the two zones as
 19 described. They are each four tenths of a mile
 20 long. They expand that 40 mile per hour speed limit
 21 slightly to the east and to the south. But we did
 22 that in order to find some appropriate markers so
 23 that we can easily describe where they start and
 24 where they stop and I would look for a motion to
 25 adopt this particular ordinance amendment, circulate

1 this for signature and these take effect within 60
 2 days which should then be just in time for the start
 3 of construction.
 4 MR. CAMPBELL: All right. Anybody have a
 5 motion on this?
 6 MS. CONNER: I move that we accept the --
 7 MR. THURBE: Already established speed
 8 limits in those zones.
 9 MS. CONNER: Yeah.
 10 MR. HURD: Thank you.
 11 MR. THURBER: It's just a piece of paper,
 12 right?
 13 MR. CAMPBELL: All right. So we have a
 14 motion to accept the proposal. Do I hear a second?
 15 MR. THURBER: Second.
 16 MR. CAMPBELL: All right. Any discussion?
 17 Any concerns? Seems like a good idea. All in
 18 favor?
 19 MR. CARROLL: I'm going to abstain because
 20 I wasn't here to hear everything.
 21 MR. CAMPBELL: Okay.
 22 MR. THURBER: If you got a speeding ticket
 23 in a certain area in Bennington -- I'm just kidding.
 24 I don't want to snatch it, Nancy.
 25 MR. CAMPBELL: Sorry Jim, we just forged

1 ahead without you.
 2 MR. CARROLL: That's okay.
 3 MR. CAMPBELL: All right. Liquor
 4 licenses?
 5 MR. HURD: Yes, I have to be circulated.
 6 These are all renewals. One first class license for
 7 Sodexo Vermont, two and then one, two, three, four,
 8 five, second class renewals, Apple Barn, two Jolly
 9 establishments. That's not our Jolly but the Jolly
 10 Company. The Beverage Den and North Bennington
 11 variety. And these I just need to circulate so that
 12 you can sign. No motion necessary.
 13 MR. CAMPBELL: Okay. Do you have a
 14 Manager's report you'd like to share with us Stuart?
 15 MR. HURD: Yes, I do. I just have one
 16 action item this evening. And then a special note
 17 that I want to announce. We have been working with
 18 Shires Housing about a development that they are
 19 attempting to bring to fruition in the Town of
 20 Shaftesbury, just over their line from North
 21 Bennington Village. They are seeking from us
 22 municipal sewer to serve that particular
 23 development. Over the last, I would say probably
 24 decade or so, I've been having a number of
 25 conversations with the Town of Shaftesbury and

1 various representatives about how we might bring
 2 municipal sewer into Shaftesbury to serve
 3 Shaftesbury. And while our treatment plant might
 4 have capacity, there are some issues associated with
 5 that. And most of them go to how do you shut the
 6 sewer off, if they don't pay? With the village of
 7 North Bennington, we have an agreement that should
 8 somebody not be paying appropriately, the village of
 9 North Bennington will allow us to actually dig into
 10 the road and stop service to that home. Because we
 11 don't have a similar agreement with Shaftesbury at
 12 the present time, I'm using this as a model that
 13 I've talked with a number of their different
 14 representatives. Shires has agreed, through a
 15 memorandum of understanding, that it will build the
 16 sewer line all the way to the village line and
 17 maintain it. It will allow for installation of a
 18 stop device or a closer device in the line should
 19 they not pay. So there will be no need to dig up
 20 the service line to turn it off. And they have
 21 agreed to prepay on an annual basis sewer service
 22 for those units. And that would be based on the
 23 estimated usage as first established. And at the
 24 end of the year, we would true up. So that if in
 25 fact they had overpaid based on the usage, it will

1 be metered, we would return funds to them. If they
 2 hadn't paid enough, then they would agree to pay
 3 promptly any overage. And I'm looking for you folks
 4 to authorize me to sign that memorandum of
 5 understanding with the Shires Housing which will
 6 allow them to then proceed at least to try to get
 7 the additional permits necessary to move this
 8 development forward.

9 MS. JENKINS: Wow. (Inaudible.)

10 MR. THURBER: Do you need a decision on
 11 this tonight?

12 MR. HURD: If you would like to wait a
 13 couple of weeks, that's fine. I'm good with that.

14 MR. CAMPBELL: It's hard to with that
 15 short description, it's hard to imagine why we
 16 wouldn't do this. But I also don't feel like I have
 17 a great deal of depth on this.

18 MR. THURBER: I mean I don't want to take
 19 all the time but I have some questions but I can
 20 talk to him offline about it. I just want more
 21 information. That's all.

22 MR. CAMPBELL: All right.

23 MR. THURBER: I'm not trying to be tough.
 24 I just.

25 MR. HURD: No, that's okay.

1 MR. THURBER: I'm really just -- well I'd
 2 like to know more

3 MR. CAMPBELL: There's no rush on this.
 4 Stuart?

5 MR. HURD: No.

6 MR. CAMPBELL: Okay.

7 MR. HURD: We're just at the point where
 8 Shires has finally agreed that they'd like to start
 9 moving forward. The project had been on hold for a
 10 short time.

11 MR. THURBER: Just one example is, you
 12 know, are there other where in Shaftsbury kind of
 13 what other individuals might want to be included.
 14 Just kind of things like that where.

15 MR. HURD: Well yeah. In this particular
 16 case just to answer that question quickly, this
 17 would be a standalone project. The line would be
 18 wholly within their property. It wouldn't be in
 19 public rights of way. It would leave the North
 20 Bennington system which we operate into their
 21 property and run for a distance to serve the housing
 22 units. And it would be all theirs, essentially a
 23 service main for the entire development.

24 MR. THURBER: Okay.

25 MR. CARROLL: What does true up mean?

1 MR. HURD: True up. Well it means that
 2 you -- you take a look at the payment received at
 3 the beginning of the year. If it's -- if it was
 4 excessive, you return funds to the customer. If it
 5 wasn't enough, then the customer agrees to pay you
 6 the difference.

7 MS. JENKINS: I'm just -- I mean I'm --
 8 I'm a bit curious about your questions because from
 9 my reading of this, it seems like a wonderful
 10 arrangement. Very -- I mean they're -- they're
 11 paying up front. They're entering into an MOU with
 12 us. And it's specific to their project.

13 MR. HURD: That's correct.

14 MS. JENKINS: So I -- so I don't know if
 15 you're if you're

16 MR. THURBER: I'm just wondering on -- I
 17 mean I can again I don't waste time. I'm curious on
 18 location. I'm curious on a couple other things too.
 19 I just I'd just like to take an extra little bit.

20 MR. HURD: Yeah.

21 MR. THURBER: That's all.

22 MS. JENKINS: I mean I'm just -- I mean I
 23 don't know anymore. I'm just thinking that it could
 24 be interesting. It could be useful for everyone to
 25 hear.

1 MR. HURD: What? Location. I should have
 2 actually attached a map. There is a plan layout and
 3 design that in order to move this evening forward,
 4 perhaps -- I'll provide a map for the next meeting.
 5 You guys will all get it ahead of time and that'll
 6 give you a much better idea.

7 MR. CAMPBELL: We can have a -- let's have
 8 another conversation and we can ask about how the
 9 fees were established or whatever else that, you
 10 know, whatever we want to ask at that point. We'll
 11 make it an agenda item.

12 MR. HURD: That would be fine.

13 MR. CAMPBELL: So okay and as long as
 14 there's no rush.

15 MS. CONNER: Full disclosure, I'm on the
 16 board of Shires and we have a meeting tomorrow
 17 night, so if anyone has any questions you want me to
 18 bring back to Shires, let me know.

19 MR. CAMPBELL: I would not send back a
 20 suspicious report.

21 MS. CONNER: No, no, no. Not at all.

22 MR. CAMPBELL: I'm like Carson. I just
 23 would like to get a little more information. It's
 24 the kind of long-term commitment we get into you
 25 know and it'd be nice to know we're doing the right

1 thing so.

2 MS. CONNER: And Stephanie would be happy

3 --

4 MR. CAMPBELL: I do trust our staff's

5 recommendation on this but I think, you know, I feel

6 like Carson, I'd just like a few more details before

7 I vote on it.

8 MS. CONNER: This -- this is -- this

9 project is not all that new to Shires. It's just

10 not moving forward primarily because of this reason

11 so.

12 MR. CAMPBELL: I see.

13 MR. GORDON: Is this something we could

14 add to our special meeting next week if we needed to

15 act on it sooner? Or just wait till the next

16 scheduled meeting?

17 MR. HURD: I think -- I think it would be

18 better to do it at a regular business meeting.

19 MR. CAMPBELL: Okay.

20 MS. CONNER: If you'd like Stephanie to

21 come just, all you have to do is invite her and

22 she'll come.

23 MR. HURD: And then just a quick

24 announcement. We have an applicant for the Housing

25 Authority Board. This individual must be a person

1 who is a resident or a beneficiary of Housing

2 Authority Services. He is. And my question to you

3 folks is do you want to conduct an interview with

4 this individual prior to considering his

5 appointment?

6 MS. JENKINS: I would. We've done it for

7 everyone else.

8 MS. CONNER: Yeah. I feel like we need to

9 be consistent.

10 MR. HURD: Okay. We'll try to set that up

11 probably perhaps just before the next business

12 meeting.

13 MS. CONNER: Okay.

14 MR. CAMPBELL: That'd be great.

15 MR. HURD: And then one last point. Just a

16 -- the Putnam block as or the Bennington

17 Redevelopment Group, has asked the Town to step in

18 as a -- in a temporary position as the grantee in a

19 Vermont Housing Conservation Board funding

20 application. It appears that our acting as grantee

21 will be extremely temporary. They -- they are

22 making arrangements to find -- find another

23 501(c)(3) to act. But I wanted you to know that I

24 did commit the Town to do that in case they couldn't

25 find anyone. And should we step into that, should

1 the award come and we be forced to step into that

2 location, they would come to us at the second

3 meeting in February and make a full presentation as

4 to the -- what the housing is and what it's going to

5 cover and how it's going to be done so. But I

6 wanted to put that out there.

7 MS. JENKINS: Okay. Thank you.

8 MR. HURD: And that's all I have.

9 MR. CAMPBELL: Okay. Other business? Who

10 wants to start. Jeanne, how are you feeling about

11 other business?

12 MS. CONNER: Pretty blank.

13 MR. CAMPBELL: Pretty blank You don't have

14 to drum anything up. Carson?

15 MR. THURBER: No.

16 MR. CARROLL: I just want to make one

17 thing clear to the general public with respect to

18 the salt shed and Stu issue that I wish I had said

19 earlier. In that -- that is -- this is a personnel

20 issue which prohibits us from discussing it in

21 public and that needs to be made clear. It's not --

22 I think it may even be illegal to discuss it in

23 public what we discussed in executive session. It's

24 not that we're deliberately being secretive or

25 keeping it from anybody. Those are the rules.

1 Thanks.

2 MR. CAMPBELL: Jeannie?

3 MS. JENKINS: Nothing.

4 MR. CAMPBELL: Chad?

5 MR. GORDON: Nothing.

6 MR. CAMPBELL: No? I -- I would invite

7 the Board offline to give me comments on if you feel

8 like we're on the wrong track with citizens'

9 comment, I'd be open to hearing it. My opinion on

10 citizens' comment is it's a time for people to come

11 and for us to listen. I know that was scratchy and

12 difficult tonight and I apologize if anyone felt

13 uncomfortable with that. But I feel quite strongly

14 that citizens' comment really is a time for us to

15 listen and not for us to debate. So that's my

16 that's where I am. But I invite other opinions from

17 you offline. Okay. So if anyone would like to --

18 we need to have an executive session on a legal

19 matter. Could I have a motion to go into an

20 executive session for a legal matter?

21 MR. CARROLL: So moved.

22 MR. CAMPBELL: We have a first. And a

23 second?

24 MR. THURBER: Comment.

25 MR. CAMPBELL: Are you seconding or are

1 you.

2 MR. THURBER: I'll second and then --

3 MR. CAMPBELL: Yeah.

4 MR. THURBER: So we have some individuals

5 here that are still wanting to find out kind of what

6 comes out of this. Are we going to make a kind of a

7 comment after to give them some rest assurance?

8 MR. HURD: Come back to staff --

9 MR. CAMPBELL: Here's what I'd like to do.

10 If this -- if this works for --

11 MR. THURBER: That's the least we can do.

12 MR. CAMPBELL: -- if this works for the,

13 you know, folks that are kind of concerned about

14 what happens tonight. I'd like to go into executive

15 session. Well, first of all I'd like to get some

16 chairs out in the hallway so people don't have to

17 stand.

18 MR. HURD: We've made arrangements to take

19 them down to the conference room.

20 MR. CAMPBELL: Okay.

21 MR. HURD: On the second floor.

22 MR. CAMPBELL: Okay. All right. So a

23 place to sit. Got that -- got that feedback, Laura.

24 Thanks. So there's a comfortable place for them to

25 sit. We'll go into executive session. We consider

1 this -- what we've gotten from our lawyer. I

2 haven't even looked at it yet. But if we think it's

3 something we can move on quickly, we should. If it's

4 not something we can move on quickly, we should --

5 we should come out of executive session and plan a

6 longer session to go through it, would be my

7 opinion. So I do feel like we owe it to somewhat to

8 the people that will be waiting not to leave them

9 sitting down in the hallway for a long time.

10 MS. JENKINS: May I. Chad had a great

11 suggestion.

12 MR. GORDON: I just thought to not

13 inconvenience the audience, would it be easier for

14 us to go to the conference room and then come back?

15 MR. CAMPBELL: Is the conference room

16 open?

17 MR. HURD: It is.

18 MR. GORDON: So they don't have to move,

19 they can stay here and wait for us to come back.

20 MR. CAMPBELL: We can do that.

21 MS. JENKINS: That might be easier.

22 MR. CAMPBELL: We can do that. All right.

23 So Dan.

24 DAN MONKS: Just thinking about these

25 folks, maybe we can set up actual time limits and

1 they don't --

2 MR. CAMPBELL: It's seven pages. I'm a

3 pretty quick reader. We'll try to get back to --

4 we'll send Dan out in you know 15-20 minutes --

5 MS. JENKINS: -- for sandwiches.

6 MR. CAMPBELL: Okay. Thank you everybody.

7 (WHEREUPON, the Board adjourned for an

8 executive session.)

9 (WHEREUPON, the Board returned from

10 executive session at 8:28 p.m.)

11 MR. CAMPBELL: Okay. All right. We are

12 coming back into session at 8:30 -- 8:28, having

13 been in executive session to discuss a legal matter.

14 And the legal matter that we discussed was the

15 Bennington Town Plan Amendment. Do I have any

16 motions?

17 MR. CARROLL: I'd like to make a motion

18 that we adopt the amendment to the Town Plan as

19 written.

20 MR. CAMPBELL: Anyone second that?

21 MR. THURBER: Second.

22 MR. CAMPBELL: Any discussion? All in

23 favor? Okay.

24 ALL BOARD MEMBERS: Aye.

25 MR. CAMPBELL: Okay. It's unanimous. We

1 have adopted the amendment. And I would now ask for

2 a motion to close this meeting and go home.

3 MR. CARROLL: So moved.

4 MR. CAMPBELL: All right.

5 MR. THURBER: Second.

6 MR. CAMPBELL: All in favor?

7 ALL BOARD MEMBERS: Aye.

8 MR. CAMPBELL: Good night.

9 (WHEREUPON, the Board Meeting concluded.)

CERTIFICATE

I, Pamela Ross Neil, do hereby certify that the proceeding named herein was professionally transcribed on the date set forth in the certificate herein; that I transcribed all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true, and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of November, 2024.

Pamela Ross Neil

Pamela Ross Neil

Table with 4 columns containing financial data and indices. Columns include dollar amounts (e.g., \$100,000, \$110,000), various indices (e.g., 18 74:24, 30,000-foot 47:11), and other numerical values.

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EXHIBIT 8

BENNINGTON FIRE FACILITY

130 RIVER STREET

BENNINGTON, VERMONT 05201

JANUARY 8, 2018

MINUTES

SELECT BOARD MEMBERS PRESENT: Thomas Jacobs-Chair; Donald Campbell-Vice Chair; Jim Carroll; Carson Thurber; Jeannie Jenkins; Chad Gordon and Jeanne Conner.

SELECT BOARD MEMBERS ABSENT: None.

ALSO PRESENT: Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator and Assistant Town Manager; Jim Sullivan-BCRC; Lynn Green-Grow Bennington Initiative; Peter Lawrence; Laura Block; Dianna Leazer; Bob Cabelia; Joe Schoenig; Joey Kulkin; Sam Restino; Robert Ebert; Daniel Malmborg; 20 citizens; CAT-TV; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 6:00 pm, Chair Thomas Jacobs called the meeting to order.

1. PLEDGE OF ALLEGIANCE

Recited by all present.

2. CONSENT AGENDA

A. MINUTES OF DECEMBER 19, 2017 AND DECEMBER 27, 2017

B. WARRANTS

Donald Campbell moved and Jim Carroll seconded to approve the Consent Agenda as submitted. The motion carried unanimously.

3. PUBLIC HEARING, BENNINGTON TOWN PLAN AMENDMENT, ENERGY ELEMENT

Mr. Monks explained that the Bennington Town Plan Energy Element, approved by the Planning Commission on November 6, 2017 was in response to Act 174. The town's goals are:

- Reducing our dependence on non-renewable and imported energy sources;
- Promoting energy conservation and efficiency in residential, commercial, and industrial structures and operations;
- Reducing energy consumption in all taxpayer funded buildings and operations; and
- Developing sustainable, local renewable energy resources.

These goals are consistent with Vermont's energy goals and policies, including:

- Obtaining 90% of energy for all uses from renewable sources by 2050;
- Reducing greenhouse gas emissions to 50% below 1990 levels by 2028 and 75% by 2050;
- Relying on in-state renewable energy sources to supply 25% of energy use by 2025;
- Improving the energy efficiency of 25% of homes by 2020;

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- Meeting the Vermont Renewable Energy Standard through renewable generation and energy transformation.

The first section of the Plan consists of statistics in all areas - residential, municipal, commercial and industrial - while the second section offers suggestions on renewable resources to achieve our goals, such as biomass, hydro and solar. "This is a comprehensive energy plan."

Mr. Sullivan added that the BCRC had developed a regional energy plan that was determined by the State to be compliant with the Act 174 standards which allows them to approach individual towns. Bennington was the first town to submit a Town Plan Amendment to the BCRC for approval, however, other towns in the region, as well as, throughout the State will be doing so in the future. It is important to remember that this is part of the Town Plan and not a stand-alone document.

Board questions/comments:

Ms. Conner: The table on Page 10 doesn't include the recent installation of new windows, and Mr. Sullivan agreed. The text, however, does indicate the savings from those upgrades.

Mr. Carroll: There has been a substantial decrease in propane use at the Recreation Center and will this follow in other facilities, and Mr. Hurd answered that the focus had been the Rec Center and the Waste Water Treatment facility because they were the highest energy users but energy improvements have also been done at the Senior Center with insulation and window upgrades as much as is allowed in our historic buildings.

Mr. Carroll: Reiterated his request to get cost numbers on geothermal for some of our buildings. Mr. Sullivan stated that the capital cost of geothermal is very high and is most competitive on new construction and well insulated buildings.

Mr. Campbell: Stated the Board had received a letter today from Thomas M. Melone, President and Senior General Counsel for Allco Renewable Energy Limited that criticizes many aspects of the proposed energy amendment with one comment being that "the energy amendment and siting map are a product of unconstitutional discrimination". Mr. Campbell asked for an explanation of their process and Mr. Monks noted that the State had identified the following environmental constraints that are not even able to be considered:

- Class 1 and 2 wetlands, vernal pools, and hydric soils;
- Mapped river corridors and FEMA-defined floodways;
- Natural communities and rare, threatened, and endangered species;
- Federal wilderness areas;
- "Primary" and "Statewide" significant agricultural soils;
- FEMA-defined special flood hazard areas;
- Lands protected for conservation purposes;
- Deer wintering areas; and
- State-identified high priority "Conservation Design Forest Blocks".

In addition, we then applied our local criteria, such as, to protect historical areas and not visually appealing areas that brought us to 348 acres of preferred sites.

Mr. Sullivan added that Act 174 requires documentation to backup any local restraints that have been applied to properties and Bennington would be required to contribute 25 megawatts of generated capacity to the region by 2050. The total capacity in the Plan exceeds 100 megawatts.

The letter from Allco will be made available to the public within the next two weeks.

Ms. Jenkins: Thanked everyone for their work and is pleased that Bennington is the first with an Energy Plan.

Mr. Gordon: Thanked everyone for the report.

Mr. Jacobs: Noted that a significant number of the sites are in industrial zones and asked what percentage that is. Mr. Monks agreed that it was a substantial number but did not know the exact number.

Mr. Jacobs: Is 40% of the preferred sites controlled by the Town, and Mr. Monks answered that one of the sites is the landfill with substantial acreage but thought the 40% included public and state owned lands, as well.

Public questions/comments:

Laura Block: Supports the Plan and encouraged the Board to adopt it. *(Applause from the public.)*

Dianna Leazer: Thanked everyone for their work on the project.

Bob Cabelia: Stated that he has a solar farm on his 4 acres of steep property which would normally take up 5 acres. He also has other steep property that he feels should be considered for solar panels. Apparently it has not been considered because he is located in a "rural conservation" area, but the property he is offering is not able to be farmed and is not visible. Mr. Monks noted that the Planning Commission determined that rural conservation areas were not preferred sites for large scale solar but the Board may reverse that if they wish.

Joe Schoenig: Feels that we could maximize the productivity of the solar panels if they were placed at a steeper angle, and Mr. Sullivan agreed that this was a good point but was not addressed, per se, within the Plan.

At 6:47 pm, the Public Hearing, Bennington Town Plan Amendment, Energy Element was closed.

Mr. Hurd read a statement to the Board and community concerning the construction of the salt shed this fall. He apologized to everyone for his decision to go forward with this construction prior to receiving the wetland's permit to do so. The building is entirely on what was a paved parking lot and no wetlands were to be disturbed. Conversations with the wetlands division began in May 2017 and in September 2017 we were concerned with the lengthy permit process and believed that it would be coming imminently. We had competitive bids for the work and contractors were making purchases. We had a tight timeline to complete the project hoping to use it this winter, and had we postponed the project, we would have lost the savings of \$60,000-\$75,000 on the bids that we had. The building actually provides an additional buffer to the wetlands. No salt or sand will be put in the shed until all conditions of the recently issued permit have been satisfied. The wetlands permit was issued on January 3, 2018.

Mr. Jacobs stated that the Board was "disappointed" that they were unaware of this construction taking place. "Dice were rolled that shouldn't have been rolled" and we should have waited until we had permits in hand. The Board will be addressing this issue with Mr. Hurd in Executive Session.

Mr. Carroll asked why Mr. Hurd didn't go to the Governor, and Mr. Hurd answered that he will stand by his statement.

4. CITIZENS COMMENTS

Joey Kulkin congratulated Mr. Campbell and Mr. Carroll for running for re-election and asked about the budget and TIF bond. Mr. Jacobs answered that the Board is still having budget meetings and it is premature to discuss either at this time. Mr. Campbell added that it isn't appropriate to campaign during Citizens Comments.

Sam Restino asked if a sidewalk could be built between Molly Stark and Applegate, and Mr. Monks answered that all of the paperwork is in process to go from Molly Stark to Applegate and Willow Brook with the hope for completion to be in time for the next school year.

Mr. Restino also encouraged everyone to adopt a fire hydrant to keep them clear of snow and visible for the fire department.

5. GROW BENNINGTON INITIATIVE

Ms. Green shared the following highlights on the Grow Bennington Initiative:

- Everyone benefits and can contribute to a thriving Downtown.
- The Internet and Amazon.com have presented different challenges to downtowns everywhere.
- We need to attract visitors and millennials and provide a place to walk with our families.
- The Initiative began about a year ago with ideas from business owners that were together for a different reason.
- Research has shown that out of 20,000 cities and towns in the country, all but 1,000 have populations under 40,000.
- We have started with the following changes:
 - Create a Sense of Arrival with pole banners.
 - Increase our footprint with gas lamps over time.
 - Put winter string lighting on 30-35 trees downtown and up lighting in the summer. We already have some of the winter lights because Home Depot arranged for the purchase and Enterprise volunteered to drive to Philadelphia to get them.
 - A presence of perpendicular signs on as many buildings as possible with work to be done to be sure they conform to our sign ordinances.
 - Extend building thresholds and streetscapes with artful displays and façade planters.
 - Improving and expanding our wayfinding signs and shop window placards.
 - Build a small downtown playground.
 - All ideas are welcome.
- Our fundraising goal is \$101,000 and the Downtown Alliance is our fiduciary agent so we are a 501c3. There is a page on the Downtown Alliance website and donations can be made online.

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Several local businesses and individuals have already contributed with cash and/or in kind services. As of today, we're already at \$25,000.

Mr. Jacobs noted Ms. Green's enthusiasm and will keep that in mind during budget discussions.

Mr. Gordon offered the volunteer help of the football players and his January Select Board check of ~\$100 as a donation with the challenge to the community that, if we have \$1,000 of donations by the end of January, he would also donate his February check.

Ms. Conner will up the challenge and donate her January and February Board checks, as well.

6. CHARTER COMMITTEE REPORT DISCUSSION - SECTION 1. POWERS OF THE TOWN, SECTION 2. OFFICERS, SECTION 3. SELECT BOARD

Mr. Jacobs explained the Bylaw change process in that the Charter Review Committee has presented their change recommendations to the Select Board; the Select Board will review those changes and tweak or suggest other changes and decide what is to be presented to the voters for their vote; and what is accepted by the voters then goes to the Legislature for their approval.

- ✓ *The Preamble* - recommendation to add "and to improve the operation of Town government" because this was specifically mentioned as the charge of the Committee in the §806. Charter Review Committee.
- ✓ *Subchapter 1 - Section 102 - Additional Town Power* - was combined with Section 302. Additional Powers of the Select Board. This recommendation was approved by the Committee's Charter Counsel, Jim Barlow.
- ✓ *Subchapter 1 - Section 104(b) - Recall* - remove the requirement of "within 15 calendar days of its issue" because it was an unclear deadline.
- ✓ *Subchapter 2 - Section 202(a) - Appointive Officers* - remove the requirement of a Constable because we haven't had a Constable in years and the State now requires that a Constable be certified as a law enforcement officer, and we have a Police Department so certified.
- ✓ *Subchapter 3 - Section 302(2) - Additional powers of the Select Board to adopt ordinances* - recommendation to incorporate the waste removal powers enumerated in Section 102 and the statutory definition of "solid waste" to clarify the power of the town.
- ✓ *Subchapter 3 - Section 302(5) - Additional powers of the Select Board to adopt ordinances* - recommendation that powers enumerated in Section 102 relating to construction be incorporated into Section 302 and that limitations on this power not be limited to mere hazard or danger.
- ✓ *Subchapter 3 - Section 302(9) - Additional powers of the Select Board to adopt ordinances* - recommendation that the Select Board have the power to regulate intrusive technologies, including drones that may intrude upon the interests of its citizens to provide the right balance between recreational interests, commercial opportunity, law enforcement and the protection of fundamental rights of citizens.
- ✓ *Subchapter 3 Section 303(1) Further powers of the Select Board* - looking to the future, when there may be a need to pay certain members of the fire department, the Committee wanted to write language into the Charter that would allow the Select Board to pay volunteers, if necessary, and at the same time keep the autonomy of the Fire Department. Mr. Ebert added that it has been his experience that volunteer fire departments may reach the point when they need to pay people such as drivers to be at the station 24/7. This language is the result of multiple meetings between the Committee and the Fire

Department including its members. "It does not require any change." It just gives the Select Board and Fire Department the tool to come to the table if change is needed.

- ✓ *Subchapter 3 - Section 304(a) - Organization of Select Board* - recommendation to designate the Chair of the Select Board as the head of Town government for ceremonial purposes as is done in a number of Vermont towns. The intent is to set the expectation that the Chair will provide leadership and vision for the town. The Committee had much discussion on the Strong Mayor, Weak (ceremonial) Mayor, and Town Manager/Select Board forms of government. No one was in favor of the Strong Mayor so we tried to adapt the public comments of more leadership and vision to our existing Town Manager/Select Board form of government. The accountability of the Town Manager to the Select Board is much better representation than assuming the person that is elected Mayor is qualified for the job, or that the Town even has a stable of people that are.

There was discussion that "(a) The chair shall be the head of Town government for all ceremonial purposes." put too much responsibility on the Chair, whereas, it doesn't say that the Chair has to attend all events. As "the head of Town government" he/she could designate another Board member to actually attend some events.

- ✓ *Subchapter 3 - Section 304(g) - Organization of Select Board* - recommendation that the Select Board create "Select Board Rules of Procedure and Conduct" and review annually.
- ✓ *Subchapter 3 - Section 304(h) - Organization of Select Board* - recommendation that a Select Board member who is absent from four consecutive warned Select Board meetings or 50% or more of warned Select Board meetings in any 6-month period be removed from the Select Board. It is in the best interest of the Town that all Select Board members be present, and this leaves it objective to the Board that needs to enforce this Section. It is in the State statute that, if you phone in or skype, you are considered present at a meeting.

The Charter Review Committee Report is on the Town's website and Committee Co-Chairs Sean-Marie Oller and Robert Plunkett will be taped on CAT-TV on Wednesday, January 10, 2018, to go over the report and explain the decision process for the changes.

7. MANAGER'S REPORT

The 2018 Certificate of Highway Mileage was circulated for signatures. No additional mileage was added for this year.

Mr. Hurd explained that when there is a petition that could change the Charter, such as the Mayor Form of Government petition, there needs to be two public hearings. The first one cannot be closer than 30 days before the vote, and the second one, must be within 10 days of the first one. Rob Woolmington has drafted the notice for the public hearings for the Board's signatures.

Donald Campbell moved and Jeannie Jenkins seconded to hold Public Hearings for the Mayor Form of Government Petition on January 29, 2018 at 6:00pm and February 5, 2018 at 6:00pm, respectively. The motion carried unanimously.

8. OTHER BUSINESS

Ms. Conner asked if the Board needed to take any action on the Bennington Housing Authority issue, and Mr. Hurd said not at this time.

9. EXECUTIVE SESSION

A. PERSONNEL

At 8:43 pm, Donald Campbell moved and Carson Thurber seconded finding that an Executive Session be held on Personnel as premature public knowledge would place a person involved in the subject matter at a substantial disadvantage. The motion carried unanimously.

Respectfully submitted,

Nancy H. Lively

Secretary

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BENNINGTON SELECT BOARD
BENNINGTON FIRE FACILITY
130 RIVER STREET
BENNINGTON, VERMONT 05201

JANUARY 22, 2018

MINUTES

SELECT BOARD MEMBERS PRESENT: Donald Campbell-Vice Chair; Jim Carroll; Carson Thurber; Jeannie Jenkins; Chad Gordon and Jeanne Conner.

SELECT BOARD MEMBERS ABSENT: Thomas Jacobs.

ALSO PRESENT: Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator and Assistant Town Manager; Zirwat Chowdhury-Community Development Director; Representative Mary Morrissey; Jason Dolmetsch-MSK Engineering and Design President; Ludy Biddle-NeighborhoodWorks Executive Director; Gregg Over-NeighborhoodWorks Project Manager; Laura Block; Joey Kulkin; William Stewart; Steve Smith; 18 citizens; CAT-TV; Jim Therrien-Bennington Banner and Nancy H. Lively-Secretary.

At 6:00 pm, Vice Chair Donald Campbell called the meeting to order.

1. PLEDGE OF ALLEGIANCE

Recited by all present.

Jeanne Conner moved and Carson Thurber seconded to move Agenda 5. Public Hearing, Bennington Town Plan Amendment, Energy Element Continued to be the first agenda item. The motion carried unanimously.

5. PUBLIC HEARING, BENNINGTON TOWN PLAN AMENDMENT, ENERGY ELEMENT CONTINUED

Mr. Campbell noted that the Hearing was warned for 6:40pm and should anyone want to speak at that time they will be allowed to.

Mr. Monks explained that this is the second of two required Hearings. After the Hearing is closed, the Board can choose to adopt it as is, reject it, make changes to it and have two more Hearings, send it back to the Planning Commission for their opinion followed by two more Hearings, or do nothing at this time, as long as, something is done within a year.

Mr. Campbell stated that the Board had just received a 7-page letter from the Town’s legal counsel in response to the letter from Alico Renewable Energy Limited dated January 8, 2018. This will be reviewed in Executive Session with a decision on the Board’s action on the Energy Amendment following that review.

At 6:07pm, Jeanne Conner moved and Chad Gordon seconded to close the Public Hearing. The motion carried unanimously.

2. CONSENT AGENDA

36 A. MINUTES OF JANUARY 2, 2018; JANUARY 6, 2018; JANUARY 8, 2018

37 B. WARRANTS

In the Minutes of January 8, 2018, change "Cabelia" to "Kobelia" on Page 1 and Page 3.

39 *Jeannie Jenkins moved and Jim Carroll seconded to approve the Consent Agenda as amended with*
40 *the spelling change as indicated. The motion carried unanimously.*

41 -----

42 3. NEIGHBORWORKS GRANT PRESENTATION

43 *Jim Carroll moved and Carson Thurber seconded to table the NeighborWorks Grant Presentation until*
44 *later in the meeting. The motion carried unanimously.*

45 _____

46 4. LEAD REDUCTION GRANT PRESENTATION

47 Jason Dolmetsch shared the following information on the Lead Reduction Grant:

- 48 • Lead can be present in several locations - service line made of lead pipe; service line containing
- 49 a lead "gooseneck" or "pigtail" or other fitting; or copper pipes with solder containing lead.
- 50 • This grant is for the purpose of determining where there are lead service lines in Bennington.
- 51 • There are 28 known sites that either the Town or the customer has a lead service line, and
- 52 there are 960 where the service line material is not known.
- 53 • There could ultimately be as many as 1,900 service lines that are completely or partially lead.
- 54 • The goal of the grant is to collect curbsides and service lines inside the area where lead service
- 55 lines may be present, develop protocol where the unit material type is not known; and to
- 56 develop a lead replacement program with funding strategies.
- 57 • A letter has been drafted to reach out to the customers that may be part of the 1,900 units and
- 58 volunteers are encouraged to come forward.
- 59 • The overall project runs until the end of August 2018 with sampling and testing to be
- 60 completed by March 31, 2018.
- 61 • EPA protocol with an analyzer enables the determination of the presence of lead within
- 62 minutes.
- 63 • The Town currently does corrosion control which greatly reduces the amount of lead in the
- 64 system and is consistently below the EPA "action level".

65 *It was the consensus of the Board to support the Lead Reduction Strategies Grant work done by MSK*
66 *Engineering and Design.*

67 -----

68 3. NEIGHBORWORKS GRANT PRESENTATION

69 Ludy Biddle, Executive Director, and Gregg Over, Project Manager, of NeighborWorks are requesting an
70 amendment to the 2016 VCDP grant for 15 more rental units in Bennington, or an additional \$105,000 to
71 identify landlords to do more units. They shared the following presentation with the Board:

- 72 • There is enough money left from the original grant of \$250,000 to pay staff so the \$105,000 request is
73 strictly for landlord incentives.
- 74 • The original grant has also enabled the establishment of a Bennington satellite office with more
75 presence in town instead of only working out of West Rutland.
- 76 • Two courses, We Can Fix It for women, and the Everyday Chef for how to cook with what cooking
77 mechanism you have, are now being offered in Bennington.
- 78 • Work is currently being done on three buildings - 272/274 Union Street with an investment of
79 \$128,000 to go from two units to four and is 35% complete; 322/324 Gage Street with an investment
80 of over \$40,000 for three units and is 25% complete; and 343 Safford Street with an investment of
81 \$155,000 to renovate three units, for a total of 10 units.
- 82 • The \$105,000 request would be 15 grants of \$7,000 each to inspire and empower more landlords to
83 rehab and create 12-15 additional rental units with five year covenants, which will remain affordable to
84 low income households in Bennington for up to five years.

85 *Board comments/questions:*

- 86 • Mr. Gordon: What does someone have to do to be eligible to apply for the grants, and Mr. Over
87 answered to adhere to the covenants of the grant, such as, renting 51% of the units to individuals who
88 are 80% or below the average median income (AMI), rent within the HUD guidelines, and make health,
89 safety and efficiencies for the units
- 90 • Ms. Jenkins: How do you outreach to the landlords, and Ms. Biddle stated through Kris Callaert, the
91 website and Facebook. Ms. Jenkins added that there needs to be improvement in the outreach
92 process going forward.
- 93 • Mr. Carroll: Added that a list of landlords can be found at the Assessor's Office.
- 94 • Ms. Jenkins: How do you explain the low completion rates (35% and 25%), and Mr. Over noted that the
95 lending office has had some of its own inefficiencies with the other holdup being the receipt of the
96 necessary paperwork from the landlords, themselves.
- 97 • Ms. Jenkins: What is the availability of certified energy auditors, and Ms. Biddle stated that they have
98 three building performance institute (BPI) certified on staff in West Rutland with any work that needs
99 to be done given to local contractors.
- 100 • Mr. Thurber: Understanding it is a pilot project, some individuals have indicated that it is an extremely
101 slow process to get the money, and Ms. Biddle explained that there are many "hoops to jump through"
102 because these are federal dollars.
- 103 • Mr. Thurber: Most of the landlords that participated in the first year were large, successful landlords
104 and would think that the small, struggling landlords would be more for what these funds are for. Mr.
105 Over stated that they hope to bring more on board with this project. Mr. Thurber added that the first
106 year has been a learning experience, and given the expense of rehabilitating these units for low income
107 housing rents, is very difficult for the small landlords and these funds would be a great help to them.
- 108 • Ms. Conner: Is concerned that all of the eligible landlords were not made aware of the funds and
109 encouraged NeighborWorks to do a better job of informing the smaller landlords of what is available.
110 Also, is there a deadline for completion, and Mr. Over answered 6 months with extensions for certain
111 criteria. NeighborWorks receives all of the grant funds and distributes them to the landlords. The
112 landlords are also personally responsible for any overages that may occur.
- 113 • Mr. Campbell: Is the Town giving up anything by supporting this grant, and Mr. Over said that it is his
114 understanding that one VCDP grant does not overlap with another. Ms. Chowdhury added that we are

115 responsible for reporting the outcomes of the grants to VCDP and she would need to know how to
116 obtain this information from NeighborWorks. Ms. Chowdhury will look at the Memorandum of
117 Understanding (MOU) that the Town has with NeighborWorks and review the performance standards.

*Carson Thurber moved and Chad Gordon seconded to send a Letter of Support for the Vermont
119 Community Development Program (VCDP) Implementation Grant SS-2015 amendment application in the
120 amount of \$105,000 with NeighborWorks of Western Vermont (NWWVT) to act as the sub-grantee. The
121 motion carried unanimously.*

123 *At 7:10pm, Jeanne Conner moved and Jim Carroll seconded to re-open the Public Hearing,
124 Bennington Town Plan Amendment, Energy Element Continued. The motion carried unanimously.*

125 Laura Block asked how the Board was going to proceed with their decision on the Town Plan Energy
126 Element Amendment, and Mr. Campbell answered that the Board will review the letter they just received this
127 evening from counsel in Executive Session, and then either vote after that this evening or, if deemed
128 necessary to get more legal advice, at the next meeting.

129 Ms. Block expressed how disappointed she was with the length of time this process has taken.

*At 7:17pm, Jeanne Conner moved and Jeannie Jenkins seconded to close the Public Hearing,
130 Bennington Town Plan Amendment, Energy Element Continued. The motion carried unanimously.*

133 Mr. Hurd summarized the process that was done for the salt shed design and construction and the
134 subsequent mitigation grant program as follows:

- 1 ➤ In 2016, the public works facility and sand/salt shed were designed.
- 136 ➤ In May 2017, a successful bond vote was received for the public works facility on Bowen Road, and a
137 proposed location for the sand/salt shed was established.
- 138 ➤ On August 24, 2017 the sand/salt shed design was finished, construction bids were sent out, and
139 contracts were awarded on September 13, 2017.
- 140 ➤ Concurrent with this process, staff at the BCRC were made aware that there were few applicants for
141 the Mitigation Grant.
- 142 ➤ On August 14, 2017, one of our staff put together the one page application that was due the next day
143 that clearly showed the shed's design and location.
- 144 ➤ We received verification of the grant award on September 25, 2017 with a letter dated September 14,
145 2017 attached.
- 146 ➤ We had already awarded contracts for the project which was well into its progression.
- 147 ➤ This is a federal grant and there are 20 steps that you need to follow to be eligible. We had already
148 completed 18 of the steps without following the federal process.
- 149 ➤ We were not required to follow the federal process because, at that time, we were not anticipating the
150 use of any federal funds.
- 151 ➤ Because we were so far along in the process, the grant never should have been awarded to us.
152 Nevertheless, the award came.

- 153 ➤ Could we have scrapped the entire process and started over? Yes, we could have, but the monies that
- 154 had been spent to date would not have been eligible for federal funding. And, then, the process would
- 155 have had to start over under federal guidelines.
- 156 ➤ Given the loss of dollars that had already been spent, the expense of re-doing everything while
- 157 following federal regulations, and the extended time frame of completion - we declined the grant.
- 158 ➤ An example when federal dollars are involved is the Pleasant Street Enhancement Grant. The grant
- 159 was first awarded in January 2008 and 10 years later we still haven't gotten the final approval to go
- 160 ahead with federal dollars.
- 161 ➤ Had we accepted the grant, the cost would have increased, there would potentially have been no
- 162 change in the bond payment, and the time to completion would have been an estimated 3 to 7 years.

163

164 **6. CITIZENS COMMENTS**

165 Joey Kulkin stated that Mr. Hurd decided to build the sand/salt shed without a wetlands permit, the
166 Town is under investigation and may be fined \$42,000, and we've declined the opportunity to get a \$340,000
167 grant.

168 Mr. Kulkin was going to poll the Board with the following 4 questions - 1. When was the Board first
169 aware of the permit issues?; 2. When did the first shovel start digging up dirt for the salt shed?; 3. Did any
170 Board member ask for favors in gaining the Act 250 permit and who did you ask?; Who other than Larry
171 McLeod, Dan Monks, and R.J. Joly know about the permits?, but Mr. Campbell stated that this was a time for
172 citizens comments "and not a debate".

173 Mr. Carroll answered two of the questions - 1. 6-8 weeks ago and have been discussing it in Executive
174 Session since; 3. "Favors? Favors, are you kidding me?....that's insulting".

175 No other Board members had any comments.

176

177 William Stewart asked how the Board plans on recouping the \$340,000 lost "out of negligence" and
178 was Mr. Hurd bonded? Mr. Campbell reiterated that this was Citizens Comments and not a debate. Mr. Hurd
179 added that he is bonded.

180

181 Steve Smith wondered if there were plans to put more staff at the Senior Center, and Mr. Hurd stated
182 that meetings are being held to resurrect coverage at the Senior Center from staff at the Rec Center with the
183 goal being to have a Rec Center staff person there at all times.

184 Mr. Smith noted that there are several volunteers at the Senior Center and asked if they are covered
185 by liability insurance, and Mr. Hurd answered that they were unless the volunteer causes the injury.

186

187 **7. ADOPT THE FY2019 BUDGET; APPROVE THE ANNUAL MEETING WARNING**

188 *Carson Thurber moved and Jim Carroll seconded to approve the FY2019 Budget and the Annual*
189 *Meeting Warning as submitted.*

Ms. Conner asked if this wording is as it will appear on the ballot, and Mr. Hurd said that it was.

The motion carried unanimously.

8. SPEED LIMIT AMENDMENTS

Mr. Hurd explained that this is a “housekeeping issue” because the 40 mph speed zones on Route 7 South and Route 9 East were never added to the town’s Article 10 Traffic Control Ordinance.

Jeanne Conner moved and Chad Gordon seconded to adopt the ordinance amendment as follows:

Article 10 Traffic Control Ordinance

10-19.03 Speed Limits

2. The maximum speed limit shall be 40 mph as follows:

- *On Vermont Route 9, beginning at the easterly exit drive at the Chain-up area 0.4 miles west to the easterly entrance of Kelley Fuels.*
- *On Vermont Route 7, beginning at the entrance to the Greenberg Reserve 0.4 miles north to the former Bennington Village boundary line.*

The motion carried with Jim Carroll abstaining.

9. LIQUOR LICENSES

The following 2018 Liquor License Renewal Applications were circulated for signatures:

1st Class Renewals -

1. Sodexo Vermont, Inc. (SVC)

2nd Class Renewals -

1. Apple Barn
2. Bennington Jolley #117
3. Bennington Jolley #145
4. Beverage Den
5. North Bennington Variety

10. MANAGER’S REPORT

Mr. Hurd reported that Shires Housing, Inc. plans to construct a housing development just over the North Bennington Village line in Shaftsbury, and in order to do this, they require municipal sewer from the Town of Bennington. Mr. Hurd is requesting Board authorization to enter into an MOU which would allow the development to move forward. The MOU states that Shires Housing will build and maintain the sewer line up

222 to the Village line with the ability to stop service for non-payment without digging it up, and it requires an
223 upfront payment for anticipated use with a true up at year end.

224 *The Board would like more information on the project before going forward, and Mr. Hurd will supply*
225 *that for the next meeting.*

226 Mr. Hurd stated that there is an applicant for the Housing Authority Board and he will set up the Board
227 interview just before the next business meeting.

228 Mr. Hurd reported that he has authorized the Bennington Redevelopment Group (BRG) to use the
229 Town as the short term Grantee in its application for a \$630,000 VHCB grant for housing in the rehabilitated
230 Putnam Block with the understanding that BRG will make a presentation to the Select Board in February if
231 they do not have another 501c3 in place. The application deadline is January 24th.

232 **11. OTHER BUSINESS**

233 Mr. Carroll clarified that the salt shed decision is a Personnel issue which prevents the Board from
234 discussing it in public.

235 Mr. Campbell stated that he feels that Citizens Comments is a time for citizens to comment and for the
236 Board to listen, and offered to discuss this with other Board members offline if they interpreted it differently.

237 **12. EXECUTIVE SESSION**

238 **A. LEGAL**

239 *At 7:58pm, Chad Gordon moved and Carson Thurber seconded finding that an Executive Session be*
240 *held on Legal as premature public knowledge would place a person involved in the subject matter at a*
241 *substantial disadvantage. The motion carried unanimously.*

242

243

244

245 Respectfully submitted,

246 Nancy H. Lively

247 Secretary

EXHIBIT 9

M E E T I N G N O T I C E
BENNINGTON SELECT BOARD
PLANNING COMMISSION
Monday, January 8, 2018
Bennington Fire Facility
Multi-Purpose Room - 3rd Floor
130 River Street
Bennington, VT 05201

A G E N D A
6:00 PM

1. Pledge of Allegiance

2. Consent Agenda (6:00 PM - 6:05 PM)
 - A. Minutes December 19, 2017; December 27, 2017
 - B. Warrants

3. Public Hearing
 Bennington Town Plan Amendment
 Energy Element
 (6:05 PM)

4. Citizens Comments (15 minutes)

5. Grow Bennington Initiative - (20 minutes)

6. Charter Committee Report discussion; (40 minutes)
 - Section 1.Powers of the Town, Section 2.Officers
 - Section 3.Select Board

7. Manager's Report (5 minutes)

8. Other Business (10 minutes)

M E E T I N G N O T I C E
BENNINGTON SELECT BOARD
Monday, January 22, 2018
Bennington Fire Facility
Multi-Purpose Room - 3rd Floor
130 River Street
Bennington, VT 05201

A G E N D A
6:00 PM

1. Pledge of Allegiance
2. Consent Agenda (6:00 PM - 6:05 PM)
 - A. Minutes January 2, 2018; January 6, 2018; January 8, 2018
 - B. Warrants
3. NeighborWorks Grant Presentation (6:05 PM - 6:20 PM)
4. Lead Reduction Grant Presentation (6:20 PM - 6:40 PM)
5.

Public Hearing
Bennington Town Plan Amendment
Energy Element continued (6:40 PM - 7:00 PM)
6. Citizens Comments (7:00 PM - 7:15 PM)
7. Adopt the FY2019 budget; Approve the Annual Meeting Warning
(7:15 PM - 7:30 PM)
8. Speed Limit Amendments (7:30 PM - 7:40 PM)
9. Liquor Licenses (7:40 PM - 7:45 PM)
10. Manager's Report (7:45 PM - 7:50 PM)
11. Other Business (7:50 PM - 8:00 PM)
12. Executive Session
 - A. Legal

EXHIBIT 10

**PLANNING COMMISSION
NOTICE OF PUBLIC HEARING
AMENDMENT TO
BENNINGTON TOWN PLAN**

The Bennington Planning Commission will conduct a Public Hearing on Monday, October 16, 2017 at 6:00 p.m. at the Bennington Fire Facility, 3rd Floor Assembly Room, 130 River Street in Bennington, Vermont for the purpose of adopting an amended Energy section of the Bennington Town Plan.

A. STATEMENT OF PURPOSE:

The purpose of the amended Energy section of the Bennington Town Plan is to further the goal of a sustainable energy future in a manner that minimizes environmental impacts and supports the local economy.

B. AREA COVERED

The proposed amendment to the Town Plan impacts all areas of the Town of Bennington.

C. SECTIONS OF PROPOSED AMENDEMENT

I. Introduction, II. Energy Use in Bennington, and III. Energy Conservation, Efficiency, and Renewable Energy Strategies.

D. WHERE THE FULL AMENDMENT MAY BE EXAMINED:

Copies of the full text of the proposed amendment to the Bennington Town Plan, and accompanying report, are available for examination at the Bennington Town Office at 205 South Street, in Bennington, Vermont.

Michael McDonough, Chairperson, Town of Bennington Planning Commission



TOWN OF BENNINGTON

TO: Chair, Town Planning Commissions, Towns of: Glastenbury, Pownal, Shaftsbury, Woodford and Hoosick, NY, and Villages of: Old Bennington and North Bennington, Vermont Department of Housing and Community Development, Bennington County Regional Commission

FROM: Michael McDonough, Chairman, Town of Bennington Planning Commission, 205 South Street

Date: August 28, 2017

Re: Proposed amendment to Bennington Town Plan

Enclosed is one copy of the proposed amendment to the Bennington Town Plan Energy section, and a copy of the report regarding the proposed amendment.

The Planning Commission has scheduled a Public Hearing to consider the adoption of the proposed amendment to the Town Plan on Monday, October 16, 2017 at 6:00 p.m. at the Bennington Fire Facility, 3rd Floor Assembly Room, 130 River Street, in Bennington, Vermont. If the amendment is approved by the Planning Commission, it will be submitted to the Select Board for review and approval.

Per 24 VSA, Chapter 117 § 4384 (e) the Bennington Planning Commission is soliciting comments, especially from Bennington's municipal neighbors and the Bennington County Regional Commission, through this notice.

Please address any questions, comments, or concerns, to my attention at the above address at your earliest convenience. Thank you.

Enc: Proposed amendment to Bennington Town Plan, report, and Legal Notice for Planning Commission Public Hearing.

Planning Commission Reporting Form for Proposed Municipal Plan Amendment

Pursuant to 24 V.S.A. §4384(c), which states:

“When considering an amendment to a plan, the planning commission shall prepare a written report on the proposal. The report shall address the extent to which the plan, as amended, is consistent with the goals established in §4302 of this title.”

the Bennington Planning Commission has prepared the following report on the proposed amendment to the Bennington Town Plan, which will receive input at a public hearing scheduled for October 16, 2017.

The Bennington Planning Commission has prepared an Energy Element to be adopted as an amendment to the Bennington Town Plan. The amendment was developed with technical support from Bennington County Regional Commission staff throughout the spring and summer of 2017. The amendment will replace the current Energy Chapter of the Bennington Town Plan (adopted October 6, 2015 and amended April 11, 2016).

The proposed amendment alters the designation of specific land areas in the town by designating preferred sites and preferred areas for commercial solar energy facilities larger than 150kW capacity. Preferred sites are shown on the Solar Energy Resource Map (pg. 27), and preferred areas include the following types of sites: roof-mounted systems; proximity to existing commercial and industrial buildings; proximity to vegetation or topographical features that provide natural screening; former brownfields; and previously disturbed areas such as gravel pits, closed landfills, or former quarries.

Projected impacts on areas surrounding preferred sites include limited increase in traffic to install and maintain electric facilities and no impact on overall pattern of land use. There will be long-term benefits to the municipality from this designation since designated areas will incentivize concentrated renewable energy generation to meet local energy demand. There are no existing areas currently subject to the proposed designation. A majority of newly designated preferred sites are currently vacant or underutilized. Selected areas are advantageous compared to other areas for one or more of the following reasons: selected areas are publicly-owned lands with few possible alternative uses; they are properties where owners are amenable to developing solar energy facilities; areas are previously disturbed areas such as a covered landfill or sandpit; and areas are zoned for commercial/industrial uses. The preferred sites total an appropriate land area (about 350 acres of solar resource within preferred sites) consistent with Bennington’s municipal solar generation target (25.1 MW) identified in the Bennington County Regional Energy Plan (2017).

Otherwise the amendment is consistent with goals established in 24 V.S.A. §4302, and designation changes have no negative impact on these same goals. The intent of the amendment is to support the efficient use of energy, energy conservation, and responsible development of local renewable energy resources.

Copies of the proposed Bennington Town Plan with new Energy Element Amendment are available for review at the Town Offices during regular hours; additional information is available by calling the Town Offices at 802-442-1037.

Michael McDonough, Chair
Bennington Planning Commission

EXHIBIT 11

**Town of Bennington
Planning Commission**

**Monday, November 6, 2017
6:00 p.m.
Bennington Fire Facility
130 River Street
Bennington, Vermont 05201**

MINUTES

Members Present: Michael McDonough, Charles Copp, Robert Ebert, Nick Lasoff, Ken Sweirad
Also Present: Dan Monks, Jim Sullivan, Catherine Dryers, Bhima Nitta, Bob Block, Laura Block, Bill Knight, Peter Lawrence, Joe Schoenig, Mary Morrissey, Rick Carroll, Diana Leuzer, Wendy Lawrence, Brad Wilson, Jim Carroll, Libby Harris and others that did not identify themselves.

Meeting was called to order at 5:00 p.m.

Public Hearing – Amendment to Town Plan – Revised Energy Section of Bennington Town Plan
Jim Sullivan, BCRC, presented a brief overview of the revised Energy section prepared by him and his staff. Jim then discussed some minor changes that he suggested making, including: adding a map that just shows the preferred sites; showing the RCON District as a possible constraint on the maps; clarifications in format to clearly indicate which sections apply to all solar facilities and which sections apply only to large scale solar facilities; clarification that the preferred solar sites are, in total, 570 acres and that 340 acres are have no known constraints; and that the plan accommodates projected rooftop, large scale and small scale solar projects of up to 72 megawatts in total. Jim noted that none of the changes modify the policies of the revised energy section. In particular, the policy to restrict large scale solar to preferred sites is not modified in any way.

Jim discussed two additional changes. A change to recognize community solar projects that are not located in prohibited areas as preferred sites and a change to clarify that statewide and primary agricultural soils are a state identified environmental constraint.

Several people, including residents of the Apple Hill neighborhood, expressed support for the revised Energy Plan and urged the Planning commission to approve the plan as written.

Brad Wilson, Ecos Energy, presented several concerns about compliance with Act 174 that he felt should be addressed before the amendment was submitted to the Select Board. A memo outlining his concerns are attached to these minutes. Mr. Wilson also requested that the proposed Chelsea solar site and Battle Creek 2 site be included on the preferred sites map.

Jim Sullivan addressed each of the concerns raised and indicated that it was his opinion that the revised Energy section of the Town Plan complies with Act 174.

Robert Ebert made a motion to approve the proposed revised Energy section of the Bennington Town Plan, dated November 6, 2017, with a modified Solar Resources Map identifying the RCON Zoning District local constraint as a possible constraint as opposed to a known constraint.

Nick Lasoff seconded the motion. The motion passed unanimously.

The meeting was adjourned.

Respectfully submitted



Daniel W. Monks
Planning Director

I. Introduction

The Town of Bennington recognizes that it is necessary to work toward a sustainable energy future in a manner that minimizes environmental impacts and supports the local economy. The purpose of this energy element is to further those goals and recommended actions by increasing public awareness of energy issues, assessing local energy use and conservation opportunities, reducing the number of energy-related dollars exported from the town, and evaluating the potential for utilization of various renewable energy resources to meet the town's stated goals of:

- Reducing our dependence on non-renewable and imported energy sources;
- Promoting energy conservation and efficiency in residential, commercial, and industrial structures and operations;
- Reducing energy consumption in all taxpayer funded buildings and operations; and
- Developing sustainable, local renewable energy resources.

These goals are consistent with Vermont's energy goals and policies, including:

- ◊ Obtaining 90% of energy for all uses from renewable sources by 2050;
- ◊ Reducing greenhouse gas emissions to 50% below 1990 levels by 2028 and 75% by 2050;
- ◊ Relying on in-state renewable energy sources to supply 25% of energy use by 2025;
- ◊ Improving the energy efficiency of 25% of homes by 2020;
- ◊ Meeting the Vermont Renewable Energy Standard through renewable generation and energy transformation.

A thorough understanding of energy and a plan to address future challenges is essential because energy is critical to every aspect of our lives. At the most basic level, we need the energy we obtain from food to survive. And it is the energy contained in oil, propane, and wood that heats our homes and the energy in gasoline and diesel fuel that moves our vehicles. Energy also generates the electricity that runs our appliances, machinery, computers, and telecommunication systems.

Most of the energy that we use, and have come to rely upon, is derived from "nonrenewable" fossil fuels and, to a lesser extent, nuclear fuels. This energy has been abundant and cheap, but supplies are becoming scarcer and oil, natural gas, coal, and uranium will become increasingly expensive to obtain. Moreover, serious and longstanding environmental concerns with coal mining, offshore oil drilling, acid rain, and other pollution resulting from fossil fuel use are now overshadowed by potentially catastrophic global climate change that is driven by the release of tens of millions of years of stored carbon in just a few decades.

Fortunately, alternative energy sources such as solar, wind, hydroelectric, and biomass-based fuels can provide significant amounts of clean energy well into the future. Developing these resources is extremely important, but the total amount of energy that can be extracted from such resources is markedly less than what we currently obtain from fossil fuels. To maintain a good quality of life, vibrant communities, and prospering economies, we will have to develop conservation strategies and improve energy efficiency as we transition to the widespread use of renewable energy.

II. Energy Use in Bennington

Bennington County Regional Energy Plan contains a detailed review of regional and statewide energy data. It shows that total energy consumption in Vermont has risen over the past 50 years and that during that time, the transportation sector eclipsed the residential sector as the largest consumer of energy (Figure 1). Over \$150 million is spent annually in the region on energy for space and

DRAFT Bennington Town Plan Energy Element—November 6, 2017

water heating, transportation, and electricity – with most of that money leaving the area to pay for imported fuels. The following section will provide estimates of current energy use by sector as well as projections illustrating the magnitude of conservation, efficiency, and transition to alternative fuels needed to meet Bennington’s energy goals.

Residential Sector Energy Demand

With over 6,000 residential units in Bennington, space and water heating and electricity usage for lighting and appliances consumes a large amount of energy and offers opportunities for considerable energy savings in the future. A majority of home heating in Bennington continues to rely on oil, although fuel switching to wood (particularly wood pellets in recent years) has been observed to occur with oil prices increase. Transportation energy demand also is influenced by the location of residential development, and that data will be presented separately in the discussion of the transportation sector.

The magnitude of residential energy consumption in Bennington can be estimated by considering the fuel usage of a typical Vermont home. An average single family home in the northeast requires approximately 60,000 Btu (British Thermal Units) of energy per square foot for annual space heating. A gallon of home heating oil contains approximately 140,000 Btu of energy. The average annual heating oil consumption of a Vermont home – 850 gallons – (based on an average house size of 2,000 square feet) is consistent with this data. An evaluation of the composition of Bennington’s housing stock and heating fuel and electricity usage provides an estimate of total residential energy consumption (Table 1).

It is useful to consider scenarios illustrating how this level of energy demand and accompanying mix of fuels may change over time in a way that would allow the town to meet its energy goals. The BCRC, working with the Vermont Energy Investment Corporation, made use of the Long-range Energy Alternatives Planning (“LEAP”) computer modeling tool to assess how the region’s energy demand profile might change over time based on a realistic trajectory toward achieving 90% of all energy from renewable sources by 2050.

The model first was run at the statewide level, and then adjusted based on regional conditions and the output customized for the Bennington Region. The resulting regional data was then used to provide town-level estimates (consequently, the data in Table 1 will not align perfectly with the LEAP data, but the trends and the magnitude of the changes are clear). Several key points become clear when looking at the overall residential energy demand for the Bennington County region (Figure 2). Of particular importance is the significant reduction in the total amount of energy used. The reduction displayed on the graph assumes continuing and effective deployment of existing conservation and efficiency programs plus additional measures that result in a further increase in the number of existing homes that are weatherized and additional efficiency gains from advanced heating and cooling systems (the “Avoided vs. Reference” blocks on the chart). The transitions in fuel usage (for space and water heating; i.e., not including non-thermal electric use) within the Town of Bennington that correlate with the regional LEAP scenario are outlined in Tables 2 and 3.

Figure 1. Energy Use by Sector in the Bennington Region. Source: 2017 Bennington County Regional Energy Plan.



DRAFT Bennington Town Plan Energy Element—November 6, 2017

Table 1. Estimate of Bennington’s annual residential energy use and cost.

	Residential Units	Total Oil Use	Total LP Gas Use (gallons)	Total Wood Use (pellet bags)	Electric Use for Heat (kWh)	Non-heat Electric Use (kWh)
Single Family	3,508	2,414,850	501,800	44,280	3,080,000	24,556,000
Two-Family	638	335,900	69,160	6,096	425,600	3,828,000
Multi-Family	1,722	627,750	130,221	11,448	797,650	8,610,000
Mobile Home	510	265,200	55,328	4,925	345,800	2,550,000
Total	6,378	3,643,700	756,509	66,749	4,649,050	39,544,000
Cost Factor		\$2.50/gal	\$3.50/gal	\$5.00/bag	\$0.15/kWh	\$0.15/kWh
Total Cost		\$9,109,250	\$2,647,782	\$333,745	\$697,358	\$5,931,600

This data provides a rough estimate of total residential energy consumption and costs for Bennington. The combined total cost of residential purchases of heating oil, LP gas, wood/pellets, and electricity is \$18,719,735; with a population of 15,764, the per capita cost of residential energy use (not including transportation energy costs) is \$1,187. Data was obtained from the 2010 US Census, the Vermont State Data Center—Housing Statistics, and the US Energy Information Administration. The following assumptions were used in the calculations: average single-family house size of 2,000 square feet, two-family dwelling unit of 1,500 square feet, and multi-family dwelling unit at 1,000 square feet (estimates of fuel usage rounded to nearest 50 gallons of oil/lp gas and ratios used for wood and electric heating use calculations. Heating fuel usage for mobile homes were generated based on the two-family dwelling unit (larger than a typical mobile home) because of generally lower insulation values and inefficient heating geometry for mobile homes. Electric use estimated at 7,000 kWh per year for a single-family home, 6,000 kWh per year for a two-family dwelling unit, and 5,000 kWh per year for a multi-family dwelling unit and mobile home. Energy use for domestic hot water production assumed included in the space heating and/or electric usage data. “Wood” heat includes both cord wood and wood pellet fuel; for simplicity, quantities and cost are presented using only wood pellet data.

Trends evident in the LEAP projections (Figure 2) include a large-scale reduction in total energy use driven by conservation and efficiency, an increased reliance on electricity and liquid biofuels (such as biodiesel), and a larger share of remaining energy use from renewable wood products (cord wood and wood pellets). Under this LEAP scenario, these changes result from development of much more efficient buildings, through construction that meets or exceeds energy codes and weatherization of existing buildings, and greater reliance on electricity and liquid biofuels for home heating and cooling in the residential sector (as well as in the transportation sector, discussed later in this chapter).

The transition in home heating anticipated by the LEAP model is dramatic; by 2050 oil will have been phased out as a heating fuel and propane use will have been reduced by about 70 percent. Inefficient electric resistance heating systems also will be phased out, but efficient air source heat pumps, and some geothermal source heat pumps for new construction, will become a primary heating and cooling technology used in over 40 percent of the town’s housing units. Heat pumps represent a particularly valuable technology because they are powered by electricity that can be generated from renewable sources such as solar, wind, and hydro. Existing houses and apartments also can be converted relatively easily, and at moderate cost, from fossil fuel based heating systems to heat pumps. Heat pumps may need to be supplemented with alternative heating systems in extremely cold weather, but when combined with thorough weatherization, heat pumps can provide for most of a residential building’s heat load.

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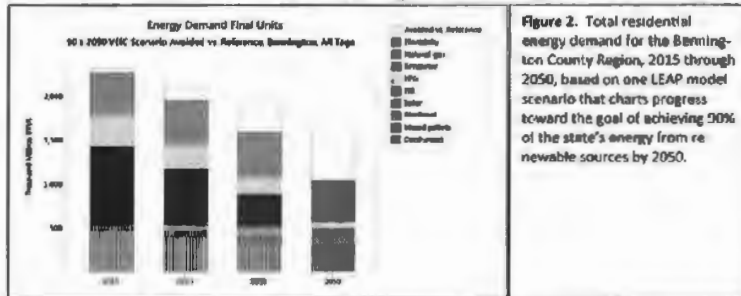


Figure 2. Total residential energy demand for the Bennington County Region, 2015 through 2050, based on one LEAP model scenario that charts progress toward the goal of achieving 50% of the state's energy from renewable sources by 2050.

Table 2 Total Residential Thermal Energy Demand By Fuel Town of Bennington—LEAP 90x2050 Model Projections Standard Fuel Measurement Units

Fuel	2015	2025	2035	2050
Biodiesel (gallons)	35,691	191,434	347,177	590,525
Cord Wood (cords)	9,750	8,321	6,790	4,782
Wood pellets (tons)	1,179	1,656	1,907	2,158
Electric Resistance (kWh)	8,978,898	7,765,533	4,368,113	1,213,365
Heat Pump (kWh)	1,941,383	10,313,599	19,413,834	26,087,339
Kerosene (gallons)	196,267	138,000	82,800	-
LPG (gallons)	1,582,950	1,265,383	845,217	254,054
Oil (gallons)	2,723,466	1,944,043	1,134,527	-

Table 3 Total Residential Thermal Energy Demand by Fuel Town of Bennington Number of Households
Derived from Regional 90x2050 LEAP projections and adjusted to increase the number of households using heat pumps as a primary heat source.

Fuel	2015	2025	2035	2050
Biodiesel	35	199	432	1,144
Cord Wood	1,501	1,356	1,323	1,451
Wood pellets	150	223	307	540
Electric Resistance	236	216	145	63
Heat Pump	51	896	1,550	2,570
Kerosene	204	152	109	-
LPG	1,033	874	698	327
Oil	2,885	2,179	1,521	-
Total	6,095	6,095	6,095	6,095

Table 2 illustrates how the mix of fuels used to heat homes could change in Bennington consistent with meeting state energy goals and Table 3 shows how the number of households using each fuel source for heating changes over the same timeframe. Because of Bennington's dense development, household heat pump use shown in Table 3 is increased beyond the level projected by the fuel comparison shown in Table 2.

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Another fuel that may contribute to a relatively straightforward transition away from oil and propane based heating systems is biodiesel—with similar properties to petroleum diesel, but produced from oil crops such as canola, sunflower, and even algae. While efficiencies in production technologies are needed to make these fuels affordable and to meet renewable standards, once developed (an assumption built into this LEAP scenario), biodiesel powered furnaces and boilers can take advantage of existing fuel delivery infrastructure and in-home ductwork and plumbing.

Vermont has an abundant supply of wood that can be used for space heating. The LEAP scenarios project an increased reliance on wood as a thermal energy source for the residential sector, even though the total amount of wood energy use declines slightly (attributable to building efficiency improvements). The use of wood pellets, produced in or near the region, is expected to expand significantly, either as a primary home heating fuel or as a cold-weather supplement to air source heat pumps. Larger multifamily residential buildings and residential complexes such as apartment/condominium developments, dormitories, and even mobile home parks may convert to pellet or wood-chip based heating systems. A recent example of this efficient and renewable energy based residential "district heating" is the replacement of 29 oil-burning boilers at the 104 unit Applegate Apartment complex with a single efficient biomass boiler (together with major weatherization improvements to the buildings).

Commercial and Industrial Energy Demand

Bennington is an important center of business activity in southwestern Vermont so it is not surprising that energy consumption in those sectors is substantial. Annual expenditures on energy in the local commercial and industrial sectors are estimated to approach \$30 million (Table 4). In addition to on-site energy use, many businesses rely on shipments of raw materials to their facilities, exports of finished products to markets, and/or transportation of people to the region and to their

Table 4. Estimated commercial and manufacturing building energy consumption, Bennington, Vermont.

	Estimated Floor Area (square feet) (1)	Annual Electricity Consumption (kWh) (2)	Annual Oil/Gas Consumption (gallons) (2)
Manufacturing	1,234,000		
Commercial	4,721,624		
Total Consumption		89,957,000	5,404,216
Cost Factor (3)		\$0.15/kWh	\$3.00/gallon
Total Cost		\$13,493,550	\$16,216,390

(1) Floor area estimates were computed by multiplying the number of employees in each sector (2010 Vermont Department of Labor Covered Employment data) by 766 square feet (US EPA estimate of average commercial/industrial floor space per employee)

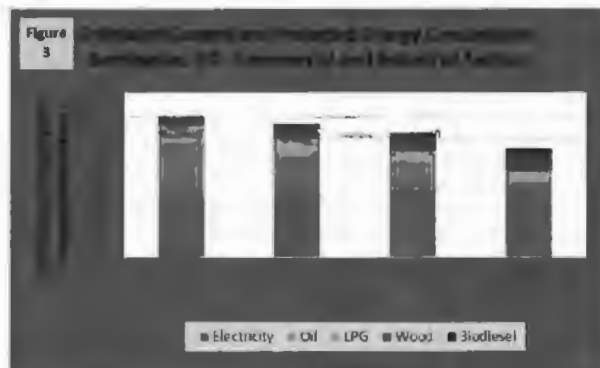
(2) Total manufacturing sector energy consumption was calculated by multiplying total floor area by 450,000 Btu/square foot (average of low and high estimates for various types of industries—data developed by E Source Companies, LLC "Managing Energy Costs in Manufacturing Facilities"). Total commercial sector energy consumption was calculated by multiplying total floor area by 90,500 Btu/square foot (average for all commercial uses, US Energy Information Administration). For Oil and LP gas were combined for the analysis and Btu content used in the calculations (125,000 Btu/gallon is an average weighted slightly toward the Btu content of oil).

(3) Electricity consumption data obtained from Efficiency Vermont, based on actual metered usage. A cost factor of \$0.15 was used to be consistent with the residential rate, although varying commercial rates apply. Because oil and gas were combined, a conservative cost factor of \$3.00 was used in the calculations.

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establishments. Those energy demands are accounted for in the transportation sector—which has seen a very large increase in consumption of fossil fuels in recent years.

The LEAP energy forecasting models project a decrease of over 20 percent in overall commercial and industrial energy demand in Bennington through 2050 (Figure 3). This reduction is achieved through both conservation and deployment of more efficient systems, often utilizing alternative fuels. Use of petroleum oil is expected to decline by over 80 percent during this period, while propane (LPG) use is expected to fall by over 50 percent. On the other hand, use of woody biomass, a locally available fuel, is projected to nearly double, while biodiesel consumption is expected to begin to become a regionally significant fuel in these sectors. Electricity use will displace much of the current nonrenewable fuel demand in these sectors while contributing to the overall reduction in energy consumption through use of more efficient electrical systems.



Municipal and Institutional Energy Usage

Local government, schools, colleges, and other institutional uses such as the Southwestern Vermont Medical Center all are major users of energy. The costs associated with energy use by those entities has a direct bearing on taxes and critical issues such as the cost of education and health care. Energy conservation and the use of alternative energy systems in this sector have the potential to produce significant savings and to promote economic development.

Municipal Government

The Town of Bennington relies on energy to provide services to the community. The town owns and operates several buildings, a large fleet of vehicles and equipment, and is responsible for other services such as the provision of water, disposal of wastewater, and street lighting. The town already has taken steps to reduce its energy use through use of more efficient lighting and equipment in office buildings, installation of a hydroelectric generator at the water treatment facility, and by pursuing other initiatives through Efficiency Vermont and other resources. An assessment of municipal energy use was conducted recently and is reported in this section.

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Municipal Buildings and Infrastructure

Energy consumption data at five municipal buildings was gathered through a project coordinated by EPA’s Energy Star Initiative. Those buildings support a variety of services and are used in significant but different ways, so opportunities for energy savings in each will differ. Each of the buildings requires energy for space heating (and in the case of the Recreation Center, pool water heating) and electricity for lighting, air conditioning, office equipment, and other functions. Information on energy use at the water and wastewater facilities was obtained from recent municipal records. Total energy use and estimated costs for these buildings and related infrastructure is presented in Table 5.

Table 5. Annual Energy Consumption (2012) – Bennington Municipal Buildings and Infrastructure

Building	Oil / Cost (gallons @ \$2.50)	Propane / Cost (gallons @ \$3.50)	Electricity / Cost (kWh, rate specific to use)	Total Cost
Fire Station	6,222 \$15,555	154 \$539	99,624 \$13,947	\$30,041
BBC/BCIC	1,150 \$2,875	-	12,432 \$1,492	\$4,367
Police Station	-	18,420 \$64,470	212,940 \$27,684	\$92,154
Recreation Center	-	54,000 \$189,000	173,400 \$36,414	\$155,677
Town Offices	2,961 \$7,403	<100	66,612 \$9,651	\$17,054
Water Department/ Filtration Plant	8,239** \$20,598	1,196** \$4,186	-	\$24,784
Water Infrastructure*	-	-	-	\$33,053
Wastewater Plant	6,216** \$15,540	647** \$2,265	-	\$17,805
Wastewater Infrastructure*	-	-	-	\$5,705
Total	24,788 \$61,970	54,312 \$260,460	-	\$332,527

* Infrastructure includes facilities such as pumping stations and other equipment that utilize electricity.

** Gallons imputed from cost information obtained from municipal records.

The Bennington Fire Station is a relatively new building, located on River Street. It houses the Bennington Fire Department’s vehicles, equipment, and support offices and facilities. A large meeting room on the third floor is used for public meetings by local government and other organizations. Although the largest of the town-owned buildings surveyed, much of the building is not used on a daily basis and it includes a large garage area that is not heated to the level of the rest of the structure. As a consequence, heating fuel use is relatively low, averaging 6,222 gallons of oil per year. Electricity use at the building is significant, although the total cost is below the space heating expense. The monthly average of 8,320 kWh is typically exceeded by 50 percent during summer months (and is generally consistently lower the rest of the year), indicating that air conditioning probably is driving a significant portion of the electricity demand during warm weather. The Fire Station also uses a small amount of propane (approximately 150 gallons per year).

The “Blacksmith Shop” at the corner of South and Elm Streets, is leased to the Bennington Downtown Alliance (BDA). It encompasses 3,600 square feet and includes offices for several people on the first and second floors, a meeting room, and a visitor welcome center/display area. As a renovated

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The Police Station must remain active around the clock every day, contributing in a high rate of electricity usage.

historic building with a high heating cost per square foot, it can be assumed that there exist significant opportunities for weatherization. Electricity use for the building averages approximately 1,036 kWh per month.

The Police Department is housed in the historic stone building on South Street that used to serve as a federal building. It includes 10,360 square feet of space, numerous office and meeting rooms, and significantly—from an energy perspective—is occupied twenty-four hours per day. The structure is heated with a propane-fired system that consumes an average of 18,420 gallons of that fuel each year. Although from a cost standpoint, propane use is the most significant at the building, it is the electricity consumption at the building that is most striking. The Police Station uses twice as much electricity per square foot as the Town Office Building and far more than the

Blacksmith Shop—attributable, in part, to its non-stop operation, but moisture, especially in the basement, requires constant use of pumps and humidifiers. The existing heating and air conditioning systems, and the design of the building, results in high energy use.

The Recreation Center, located on Gage Street, provides residents with access to a fitness center and an indoor swimming pool. The facility uses a considerable amount of propane, with demand highest in the winter months, but substantial year-round. Approximately 54,000 gallons of propane were used in 2012 (Table 5), but installation of two high-efficiency propane boilers and a high-efficiency propane pool heater has reduced propane use to 29,350 gallons.

The Town Office Building, located on South Street, includes the Town Clerk's office and most of the administrative activities that support the full range of services offered by the municipal government. The offices are housed in a renovated historic house—with additions—that occupies 6,214 square feet. Space heating is provided by an oil-fired system that, during the sampling period, used an average of 2,961 gallons of oil per year. Electricity use at the building is fairly consistent year-round, averaging just over 5,000 kWh per month.

The town operates public water supply and wastewater disposal systems that cover defined areas, primarily in the state-designated growth center. This infrastructure is essential to allow the type of concentrated development pattern that is consistent with the Town Plan and which leads to long term energy savings. Both functions require considerable energy inputs, both to heat buildings and to operate equipment (Table 5). The water system, for example, utilizes numerous pumping stations that require a considerable amount of electrical energy and the wastewater treatment plant uses more electricity than any other municipal facility. As noted earlier, the town has taken steps to limit energy consumption; the hydroelectric generator at the water filtration plant and the decision to compost biosolids at the wastewater treatment plant are two examples. Efficiency Vermont has assigned an energy efficiency expert to work on a range of municipal projects, including planned improvements to the wastewater facilities which are expected to significantly improve overall energy efficiency.

Municipal Vehicles and Equipment

The town operates a sizeable fleet of vehicles and heavy equipment that use gasoline and diesel fuel. Total expenditures on fuel in a recent 12-month period were over \$200,000 (Table 5), and with

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rising costs that number can be expected to increase significantly in the current and ensuing years. Several municipal departments (Fire, Recreation, Senior Center, Planning and Code Enforcement), use relatively little fuel for transportation and to operate their equipment, but others (Police, Highway, Water, and Wastewater) depend heavily on those fuels to accomplish their work.

Table 6. Fuel cost - municipal vehicles and equipment.

Department	Inventory	Annual Fuel Cost
Police	9 vehicles	\$54,607
Fire	6 trucks and one sedan	\$3,348
Recreation	1 pickup truck and 2 mowers	\$3,350
Senior Center	2 vans	\$2,904
Highway	10 dump trucks, 9 pickup trucks 16 pieces heavy equipment	\$113,291
Water	6 pickup trucks, 1 dump truck, 2 pieces heavy equipment	\$16,293
Wastewater	4 pickup trucks 5 pieces heavy equipment	\$9,194
Planning and Code Enforcement	1 sedan	\$547
Total		\$203,534

The Bennington Police Department has specific requirements for the types of vehicles it operates. The department has indicated a preference for SUVs because of their capacity and greater durability; use of hybrid SUVs and battery systems that allow for reduced idling might achieve significant fuel savings. Some limited patrols also are conducted on foot. The Highway Department, with its dump trucks, pickup trucks, and array of heavy equipment is the largest user of transportation fuel in the local government. Consequently, its costs will rise more rapidly than any other department as gasoline and diesel fuel costs increase. The Water and Wastewater Departments also rely on vehicles and heavy equipment, together spending over \$25,000 per year on transportation fuels.

Streetlighting

The town recently took advantage of a program coordinated by Efficiency Vermont whereby it replaced all of its old (mostly 150W high pressure sodium) streetlights with new energy efficient LED streetlights (the town also has identified 12 streetlights that are not necessary and which were removed altogether). The new LED streetlights are much more energy efficient, with 52W units replacing the old 150W high pressure sodium units. The light from the LED units also is much more "natural" and is distributed evenly, with very little wasted light or areas of overlapping illumination between adjacent lights. This streetlight replacement program has reduced electricity



New LED streetlights like this one have been installed throughout the town, saving energy, and saving the town about \$30,000 per year.

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use by approximately 50% while saving the town over 20% on its streetlighting bill. The electric distribution company, Green Mountain Power, also benefits because it achieves comparable savings on the amount of electricity it must purchase.

Public Schools

The Bennington School District maintains three public elementary schools in town and the Mount Anthony Union District maintains the local public middle school and high school. The schools are of varying age and the relative energy efficiency of each is partially attributable to the original design and construction of the buildings (Table 7). Each of the schools has participated in at least one Efficiency Vermont and/or Vermont School Energy Management Program review, and a number of efficiency improvements have been implemented in the past, with major improvement projects being completed at the three elementary schools this year (summer of 2017). The transportation section of this plan considers the energy and health related benefits of walking, bicycling, carpooling, and use of school buses rather than personal vehicles.

Table 7. Recent annual energy use at Bennington's public schools (prior to current efficiency upgrades).

School	Oil (gallons)	Oil Cost	Woodchips (Tons)	Woodchip Cost	Electricity (KWH)	Electricity Cost	Propane (gallons)	Propane Cost	Total Cost
Bennington Elementary	21,000	\$67,059	-	-	180,000	\$35,302	-	-	\$102,361
Molly Stark	14,000	\$54,238	-	-	380,000	\$59,911	-	-	\$114,149
Monument	9,000	\$29,250	-	-	120,000	\$19,429	-	-	\$48,679
MAUMS	13,000	\$43,137	810	\$52,555	958,000	\$114,476	3,500	\$5,100	\$215,268
MAUHS	20,000	\$76,590	1,100	\$65,914	1,600,000	\$185,686	6,900	\$11,943	\$340,043
Total	77,000	\$270,274	1,910	\$118,479	3,118,120	\$414,804	10,400	\$16,943	\$820,500

Notes
 Square feet of floor space in each school: Bennington Elementary—41,200; Molly Stark—52,000; Monument—24,000; MAUMS—150,000; MAUHS 225,000.
 Fuel and electricity consumption data obtained from the facilities director for each school district; in some cases consumption was averaged over more than one year. Cost data was obtained from annual reports using actual expenses.

One of the most obvious differences between the schools has been the cost of heating the buildings. The three elementary schools are older than the middle school and high school, and the elementary schools have relied solely on oil for space heating. The secondary schools, on the other hand, each derive a significant portion of their heat from wood chip (biomass) based boilers that greatly reduce the utilization of more expensive heating oil. Annual heating costs at both the middle school and high school average approximately \$0.63 per square foot, while annual heating costs at the elementary schools have ranged from \$1.04 per square foot at Molly Stark to \$1.63 per square foot at Bennington Elementary.

All of the schools have benefited from some lighting system upgrades, with older interior fluorescent lights being replaced with energy-saving T-5 and T-8 lights, and inefficient exterior floodlights replaced with highly efficient LED lights. Estimated energy savings from these upgrades amount to 153,000 KWH, and \$25,000, annually between the three elementary schools and an additional

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\$18,000 in savings at the high school. The most recently constructed school building, Mount Anthony Union Middle School, also benefited from \$52,000 in energy conservation incentives (light and heating controls and other measures) during its construction several years ago.

The current energy efficiency work being completed at each of the three elementary schools involve a range of improvements, including:

- Installation of efficient LP boilers and elimination of oil boilers from the schools;
- Upgraded control systems and new energy recovery ventilators;
- Replacement of interior and exterior lighting with high efficiency LED fixtures;
- Air sealing and other weatherization work.

Total cost savings to be realized as a result of these improvements is expected to exceed \$107,000 per year

Hospital Campus

The Southwestern Vermont Health Care's (SVHC) main campus in Bennington includes a full-service 99-bed hospital, a 150-bed nursing facility, a medical office building, cancer treatment center, and smaller buildings housing additional administrative and medical functions. SVHC currently is in the final stages of developing a plan for modernization of its facilities, and those plans include replacement of the aging oil boilers, along with other improvements that will affect energy use on the campus. At the present time, SVHC consumes over 600,000 gallons of #6 heating oil per year and uses over of 12 million KWH of electricity—clearly, medical facilities are among the biggest energy users in most communities, and certainly in Bennington. Consider, for example, that SVHC annually uses as much oil as nearly 1,000 average houses and as much electricity as several thousand houses. Fortunately, SVHC recently has placed a strong emphasis on energy efficiency, having cooperated with Efficiency Vermont in conducting a comprehensive analysis of its facilities and considering alternative options for replacing its heating plant.

SVHC has commissioned several studies to evaluate alternative solutions for replacing the heating plant. That facility until recently was also used to provide energy for a large institutional laundry, but all laundering is now done off-site. In addition, the facility has converted to an electric chiller system, further reducing future need for energy derived from the heating plant. By removing the laundry function, converting to an electric chiller system, and installing more efficient boilers that utilize compressed natural gas (CNG) rather than #6 heating oil (currently planned and permitted), SVHC has significantly reduced its overall energy demand.

In planning for the new central boiler plant, it became clear that the most energy-efficient and cost-effect option, from an operational standpoint, is a system that uses a woodchip-based boiler with new CNG boilers as a backup. That option, however, is the most expensive to construct initially, even though an analysis completed for SVHC by the Biomass Energy Resource Center shows that, factoring in the cost of financing as well as expected rates of increase in both oil and woodchips, the annual savings associated with the woodchip/oil system exceed \$1 million annually.

SVHC has decided to install the new CNG-powered system, but to include a primary convertible boiler to allow for woodchip use should that option become preferable based on future fuel costs. The site plan and buildings have been designed to accommodate the future change with minimal disruption or additional expense.

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Forests cover most of Bennington County; the wood available from Bennington County and surrounding areas can provide energy for facilities such as this 400 horsepower wood boiler system at Bennington College, which has reduced oil consumption on the campus by more than 300,000 gallons per year.



College Campuses

Bennington is home to two college campuses, Bennington College and Southern Vermont College (the smaller Community College of Vermont, the Vermont Technical College, and the Northeast Baptist College, are considered for the purposes of this analysis to be part of the commercial sector). Colleges use a considerable amount of energy for heating residential and academic buildings, and to power the lights, computers, and other special equipment required at such institutions.

Several years ago Bennington College installed a biomass heating system to serve as the primary heat source for most of the college's buildings. According to a study of that system conducted by the Biomass Resource Center, the college uses approximately 4,000 tons of woodchips annually (\$208,000 at current prices), displacing approximately 350,000 gallons of oil use. Oil boilers still are used as a supplement and back up to the primary biomass system. The college has reported that the biomass system has been reliable and has saved several hundred thousand dollars per year in fuel costs. The college's facilities director has reported that the campus uses approximately 3,186,000 KWH of electricity per year, at a total cost of \$552,000. Bennington College has worked with Efficiency Vermont to implement a wide array of measures to reduce electric usage, and, in addition to its biomass heating system, has constructed a new building that is highly energy efficient and which uses a geothermal heating system. Many of the older buildings on campus would benefit from air-sealing, insulation, and other weatherization work; projects that will be taken on as funding becomes available.

Southern Vermont College is a smaller campus (in terms of both student enrollment and buildings); with approximately half of the number of residential students, two main academic buildings, and a field house/gymnasium, so its energy consumption is significantly less than that of Bennington College. Because the campus does not have a biomass boiler system like Bennington College, its heat energy must be provided by oil and propane gas—and the campus uses approximately 16,000 gallons of propane and 15,000 gallons of oil per year. Annual electricity consumption amounts to 703,000 kWh per year at a cost of \$130,000. Many of SVC's buildings are relatively new, although the main academic building (The Mansion) is a historic stone building that certainly could benefit from weatherization work—the design and historic nature of the building will complicate any such work, however.

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Both colleges are interested in using local food in their dining halls, and both have considerable acreages of prime agricultural land on their campuses, suggesting the potential for cultivation and processing of food at appropriate locations on their campuses.

Transportation Sector Energy Demand

The amount of energy used for transportation in Vermont has grown steadily and now accounts for more energy consumption than any other single sector. Although significant gains in the overall efficiency of the combined vehicle fleet have not been observed during this time period, improved technology has led to the production of some highly efficient vehicles. However, low fuel prices for gasoline and diesel (generally half to one-third of what consumers pay in many developed countries) have encouraged people to buy large fuel-inefficient vehicles; and even people with fuel-efficient vehicles are able to drive more miles so may not actually be conserving much energy relative to their SUV-driving neighbors.

Inexpensive energy in the transportation sector also has facilitated a land use pattern where people live relatively far from where they work, attend school, shop, and obtain other important services. Until the era of good roads and inexpensive fuel, most people lived in close proximity to urban and village centers where goods and services were close at hand. People who lived in the countryside had to be more self-sufficient, and indeed, most were involved in some type of agricultural activity. Some people have observed that cheap and easy personal transportation has allowed people to live an urban lifestyle in rural locations.

The personal automobile has come to be seen as an indispensable component of modern life, used to get to work, shopping, school, visiting friends, recreational and entertainment venues, and more. Consequently, the amount of fuel used—and dollars spent—to drive ourselves around has become an increasingly important issue for many people. The amount of money spent on gasoline by Bennington residents, for example, is approximately equal to the amount of money spent on all fuels for home heating and electricity (Table 8). According to the 2010 US Census, the average Bennington worker commutes a total of approximately 15 miles per day; with over 8,000 resident workers, mostly commuting in single-occupancy vehicles, commuting alone accounts for over 100,000 miles per day of travel, and over 1.1 million gallons per year (and \$3,000,000) of gasoline consumption.

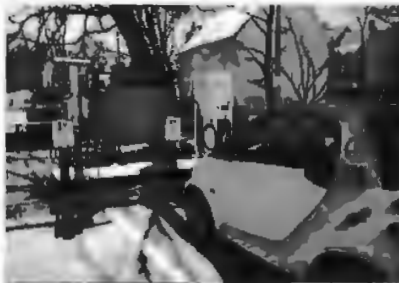
A number of electric and "plug-in hybrid" electric vehicles recently have been introduced to the market and some area residents and businesses have purchased them, although relatively few are

Table 8. Transportation fuel use (personal and commercial/industrial) estimates for Bennington.

	Annual Miles		Gallons Fuel	Total Fuel
	Driven (2)	Used (3)	Used (3)	Expenditures (4)
Number of Personal Vehicles	12,118	169,652,000	6,786,080	\$16,965,200
Commercial/Industrial Diesel Fuel Use			1,357,200	\$4,071,600
Total			8,143,280	\$21,036,800

(1) 6,378 housing units * 1.90 average vehicles per unit (2010 US Census).
 (2) Based on 14,000 miles per year per vehicle—current estimates, Federal Highway Administration
 (3) Personal vehicle fuel (gasoline) consumption based on 25 miles per gallon average (US EPA), commercial/industrial estimate based on 20% of personal vehicle fuel consumption (Vermont Department of Public Service data).
 (4) Expenditures based on gasoline cost of \$2.50/gallon and diesel fuel cost of \$3.00/gallon

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The Town of Bennington has installed several new high-speed electric vehicle charging stations in municipal parking lots in the downtown area.

available from local dealerships. The Town has obtained grant funding to install several EV charging stations in the downtown area, and they receive considerable usage.

The composition of the fuel mix used for transportation in the region will need to change dramatically over time, according to the LEAP model scenarios, to attain the level of renewable fuel use required to support the "90x2050" statewide energy goal (Figure 4, Table 9). This LEAP model scenario for light-duty vehicles shows that gasoline and petroleum diesel powered cars and light trucks in the region will be largely replaced by vehicles powered by electricity (generated from renewable sources) and liquid biofuels by 2050. A comparable trend is expected in Bennington, to be

consistent with the modeling criteria. An analysis of the LEAP projections show, for example, that the number of gasoline-fueled vehicles (including gas-ethanol mix fuels) in Bennington would decrease by over 90 percent to less than 1,000 vehicles by 2050. Corresponding growth in use of electricity as a primary fuel would lead to a dramatic expansion in the use of electric vehicles (over 8,000 EVs in Bennington by 2050) and vehicles that burn biodiesel fuel.

The town's transportation infrastructure includes the system of local and state roadways, bicycle and pedestrian facilities, local and regional public transportation, and railway and airport facilities. These facilities and services are essential components of the transportation system and are discussed in more detail in the transportation section of this Town Plan. The town has been maintaining and expanding its bicycle and pedestrian facilities and has been working with local, state, and regional partners to ensure that other, non-automotive, modes of transportation are accessible to residents, visitors, and businesses—all key to reducing reliance on fossil fuels in this sector.

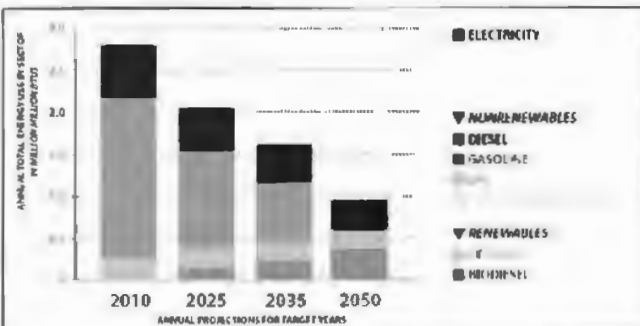


Figure 4. Change in the use of fuels in the regional transportation sector through 2050, based on LEAP model analysis.

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Table 9. Fuel use and number of vehicles using each fuel as a primary energy source through 2050
LEAP model projections (Vermont Energy Investment Corporation).

Fuel Type	2015		2025		F
	# Vehicles	Total Fuel Demand	# Vehicles	Total Fuel Demand	
Gasoline (gallons)	7,177	3,444,902	6,859	2,743,563	
Ethanol (gallons)	981	654,296	761	434,733	4 4
Electricity (kWh)	36	109,027	572	1,526,377	3.1 1
Diesel (gallons)	300	102,754	207	62,193	
Biodiesel (gallons)	23	8,746	128	43,732	

Notes: Although, vehicle numbers for base year differ from current estimates (Table 8) because projections are derived from statewide "LEAP" model data—trends are consistent. The model assumes no overall growth in total miles driven. Ethanol includes mix with gasoline and vehicle numbers can be combined for gas/ethanol.

Local Energy Production

The vast majority of energy used in Bennington is imported from outside the town (and generally from outside the state and nation) in the form of gasoline, oil, propane, and electricity. Some of the imported electricity is generated from renewable sources, primarily electricity obtained from hydroelectric generating facilities in Quebec and Labrador (via utility contracts with Hydro Quebec). Some energy production currently occurs in Bennington, all of which is electricity generated from renewable sources including a 360 kW capacity hydroelectric facility on the Walloomsac River and roughly 3 MW of solar capacity in small private and moderate-sized commercial photovoltaic systems. For current generation sites and capacities, refer to the Community Energy Dashboard: <http://www.vtenergydashboard.org/my-community/bennington/statistics>.



A local energy entrepreneur re-established the hydroelectric generating capacity at the "Paper Mill" site along the Walloomsac River in Bennington. The facility is rated at 360KW generating capacity and produces electricity with greater consistency and reliability than solar or wind facilities.

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This 6 KW residential scale solar array is fixed to a bi-directional tracking base so that it can orient the panels to take maximum advantage of solar radiation at any time of the day. Backyard and home rooftop solar arrays as well as larger arrays, both on the ground and on commercial rooftops, can generate significant amounts of electricity, although generation peaks in the summer and is limited in the winter months. Bennington has approximately 1MW of installed solar generating capacity in town—location and size of existing facilities can be viewed online at the Community Energy Dashboard, an energy resource and mapping tool currently maintained by the Energy Action Network.



III. Energy Conservation, Efficiency, and Renewable Energy Strategies

A diverse array of targeted policies and actions will be required to effectively advance the town toward its conservation, efficiency, and renewable energy goals and to support attainment of Vermont's goal of obtaining 90 percent of all energy used in the state from renewable sources by 2050. The following strategies have been identified as most appropriate for the Town of Bennington to pursue at this time. Additional information on land use and transportation policies and recommended actions can be found in the land use and transportation sections of this Town Plan. More detail on many of the approaches can be found in the 2017 Bennington County Regional Energy Plan (Bennington County Regional Commission, March 2017) and in the Guidance for Municipal Enhanced Energy Planning Standards (Vermont Department of Public Service, March 2017).

Town Energy and Land Use Planning

1. The town should reestablish, maintain, and support its municipal energy committee. That committee should pursue implementation of this plan, advocate for energy conservation and renewable energy projects, and report on a regular basis to the Select Board.
2. Continue implementing land use planning policies that encourage efficient development with high density mixed-used development in the designated growth center and low density development that does not require extensive infrastructure or services in rural areas, consistent with the land use plan and policies set forth in this Town Plan.
3. Actively support investments in the downtown and surrounding neighborhoods, especially projects such as the Putnam Block Redevelopment, that bring new housing and essential businesses such as food stores and hardware stores, as well as employment opportunities, into the walkable center of the community.

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4. All developments should be planned to take advantage of opportunities for utilization of solar energy.

Residential Sector Energy Conservation and Efficiency

5. The town should routinely provide information on the state mandated Residential Building Energy Standards to all building permit applicants, and take steps to require and verify that all new residential building meets those Standards.
6. The town should promote use of the "Energy Star" building performance rating system and related building practices that limit energy consumption in new and remodeled homes, and promote the use of Vermont's residential building energy label/score.
7. Energy education programs sponsored by Efficiency Vermont, the Bennington County Regional Commission, and other organizations—particularly those that focus on home weatherization improvements and energy savings—should be supported and widely publicized.
8. Programs that provide funding for weatherization of the homes of lower-income residents, including the Weatherization Assistance Program offered through the Bennington Rutland Opportunity Council (BROC), should be supported.
9. Work with NeighborWorks of Western Vermont (NWWVT) to widely publicize their "Heat Squad" home energy improvement programs, including low-cost audits and assistance with construction and financing.
10. Efforts to assist homeowners to switch to alternative space heating systems, including stoves and systems that burn wood and wood pellets, as well as air source heat pumps, should be supported. Woody biomass fuels can be sourced locally and heat pumps are highly efficient systems powered by electricity that can be generated from renewable energy sources.
11. A high percentage of Bennington's housing stock are rental properties, and many of those in the center of town would benefit from energy audits, weatherization work, and installation of alternative heating systems, especially air source heat pumps. The town should work with the BCRC to organize and hold another walk-through and information session for owners of residential rental properties.

Commercial and Industrial Sector Energy Conservation and Efficiency

12. Obtaining feedstock for heating systems from local sources supports regional economic development and renewable energy goals. The town should work with the regional development corporation, the Bennington County Sustainable Forestry Consortium, and other organizations to support existing forest products businesses and new businesses involved in managing forest lands, transporting and processing woody biomass for home, business, or institutional applications, and should assist with locating sites for manufacturing facilities (especially production of wood pellets).
13. The town should cooperate in efforts to reach out to electrical contractors and others to provide information about opportunities to sell, install, and service heat pumps. Air source heat pumps are an efficient and cost-effective way to reduce reliance on oil and/or propane fuels in many homes and businesses. Bennington also is well-suited for new geothermal heat pump systems—an option that may be particularly viable for new construction and larger commercial/industrial projects. Developers of such projects should be made aware of the value of geothermal systems and efforts to support development of business that provide geothermal system and support (well drillers, excavators, etc.) and coordination between those businesses and electrical contractors should be supported.

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14. All new commercial and industrial buildings must meet the state mandated Commercial Building Energy Standards. The town should encourage developers of commercial properties to consider using the "Stretch Codes," mandated through Act 250, in any new commercial construction.
15. Commercial and industrial business owners should be encouraged to work with Efficiency Vermont and energy service companies to assess the potential for converting all or part of their space heating and cooling to efficient air source heat pumps.
16. Business owners should be encouraged to obtain the services of an energy auditor who can assist in identifying measures to adjust operations to minimize energy use.
17. Employers should consider alternative ways of commuting to work and employers should provide facilities to encourage bicycling, walking, and carpooling. Local business groups and the town should promote participation in the annual "Way to Go" commuter program.
18. Business should be provided information about electric vehicle charging stations and encouraged to install such facilities to support employees who would like to use electric vehicles for commuting.
19. The town should make sure that incentives offered through Efficiency Vermont are widely publicized to businesses.

Energy Conservation and Efficiency in the Transportation Sector

20. The town should continue to improve and maintain the town's network of off-road bicycle and pedestrian facilities, identifying safety improvement needs, gaps between important destinations, and other needs. The town should continue to seek funding through the VTtrans Bicycle – Pedestrian and Transportation Alternatives programs, as well as from local funds and other sources to plan and implement those projects.
21. The town should ensure that local and state roadway construction and maintenance projects include accommodations for pedestrian and bicycle travel, incorporating "Complete Streets" principles whenever possible. The town should continue to work with the BCRC to plan and implement modifications to local streets to make them more bicycle and pedestrian friendly and to present more attractive streetscapes for all residents and users of the transportation system.
22. The town should work with the Green Mountain Community Network (GMCN) to support wider utilization of the local public transportation system. Employers, shopping centers, and service centers should be contacted and asked to provide information about GMCN routes and services to employees, customers, and clients.
23. Outreach should be conducted through the local school system to encourage greater use of school buses (rather than individual cars) and walking and biking to school.
24. Actively support expansion of intercity bus travel, including the new direct bus connection to the Amtrak rail station in Rensselaer. Work with the Bennington Area Chamber of Commerce and local businesses to ensure that the services are well publicized and that stop and transfer locations are convenient, comfortable, and attractive.
25. Continue to participate in rail planning projects to promote commercial and industrial development that can use rail for freight shipments. Support expenditure of transportation funds on projects to maintain and upgrade rail lines, bridges, crossings, and other critical infrastructure.
26. Actively promote electric vehicle use through cooperation with Drive Electric Vermont and other organizations. Encourage local auto dealers to supply electric and plug-in hybrid electric vehicles.
27. Install EV charging stations in public parking lots and encourage businesses, to install charging stations for their employers and customers. The Bennington Area Chamber and other organizations should highlight the availability and location of EV infrastructure in the community through their websites and other methods.

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28. Promote the Go Vermont website to support carpooling, ridesharing, and other opportunities. Support efforts to broaden participation in the "Way to Go" alternative commuting program.
29. Large new commercial, industrial, and multifamily developments should be required to provide EV charging stations at convenient locations, and to provide a location for a public transportation stop.

Local Food Systems

30. Support efforts to develop a more robust local food and agricultural system; participate in efforts to match food producers with large institutional and other consumers.

Municipal Government Energy Practices

31. Pursue energy audits at municipal buildings focusing on weatherization work at older buildings such as the town office building and old blacksmith shop and heating and electrical upgrades at the police station.
32. Consider alternative energy systems such as a small biomass district heat project to heat public buildings in the downtown, solar hot water production at the recreation center, and a demonstration project with liquid biofuels for some town equipment. Assess the potential for deploying air source heat pumps for heating and cooling in all municipal buildings.
33. Consider purchase of more fuel efficient vehicles, including electric vehicles where practical, for all departments; hybrid sedans and SUVs might be particularly effective for the police department, as would new anti-idling technologies.
34. Publicize the successful LED streetlight conversion and encourage business owners to make similar changes on their external lights.

Energy Use in Schools and Institutions

35. The public schools should regularly participate in the School Energy Management Program reviews and continue to work with Efficiency Vermont to obtain incentives for weatherization and efficiency improvements.
36. All schools should promote and encourage the use of school buses and walking and biking to school—including participation in the Safe Routes to Schools program—to reduce reliance on single-passenger vehicle transport.
37. The Southwestern Vermont Medical Center should continue to work with Efficiency Vermont to improve energy conservation at its campus and should continue to move toward utilization of locally sourced woody biomass fuel for use in its new central boiler plant.
38. Southern Vermont College should investigate development of a central biomass based district heating system for its campus.

General Electricity Conservation and Efficiency Measures

39. Support integration of advanced energy storage in the area through cooperation with utilities and review of town plan policies and land use standards.
40. Support full integration of "smart grid" technology throughout the town and region and use of "smart rate" pricing plans.

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- 41. Cooperate with Green Mountain Power and VELCO to ensure that areas planned for new renewable energy generation are consistent with the capacity of the grid infrastructure and to ensure that any upgrades needed are implemented.

Renewable Energy Development

Biomass and Liquid Biofuels

- 42. The town should support efforts to develop appropriate cost-effective biomass energy resources and help promote combined heat and power biomass projects.
- 43. The town should support efforts to help farmers produce oil seed crops and liquid biofuels that can be used to operate equipment and machinery on their farms, and potentially supply other businesses and the town with renewable fuels.

Hydroelectric Generation

- 44. The town has added hydroelectric generation equipment at its water supply facility and has supported development of the 350 KW hydro generating facility at the "Paper Mill" dam site on the Walloomsac River. The town should continue to look for opportunities to develop small hydro projects to support efficient municipal operations. Additional commercial-scale hydroelectric generation is limited due to the fact that the only existing dam sites (other than the Paper Mill dam) are located on Paran Creek in North Bennington Village, between Lake Paran and the Walloomsac River (Figure 5). The town supports efforts by North Bennington, Bennington College, and involved property owners to develop the hydro potential at that series of small dams on Paran Creek.

Generation from Wind Resources

- 45. Bennington has limited potential for utility-scale wind energy development, as areas with sufficient access to consistent wind are restricted primarily to higher elevations on Mount Anthony and adjacent ridgelines. These areas are relatively close to established residences, and Mount Anthony has been specifically identified as a critical scenic resource for the town in its Scenic Resource Inventory. Development in that area would have a profoundly negative impact on critical viewsheds throughout the community, as the natural profile of the mountain forms an iconic backdrop from both in-town and rural valley locations. The town has consistently objected to and testified against development, including construction of larger telecommunication towers, on and near the summit and ridgeline of Mount Anthony. Because no other locations in Bennington have suitable wind resource, infrastructure availability, or are free from significant environmental constraints (Figure 6), no utility-scale (100 KW capacity or greater) wind energy facilities should be located in the town. Smaller scale wind projects, including residential-scale turbines (generally less than 10 KW) and turbines that may be installed at farms, institutions (such as college campuses), or small businesses, up to 100 KW, may be appropriate as long as noise from the turbines does not adversely affect neighboring residential properties and as long as they are not prominently visible from any town-identified historic district.

Solar Energy Generation

- 46. The town particularly encourages solar energy development, of any scale, on building rooftops.

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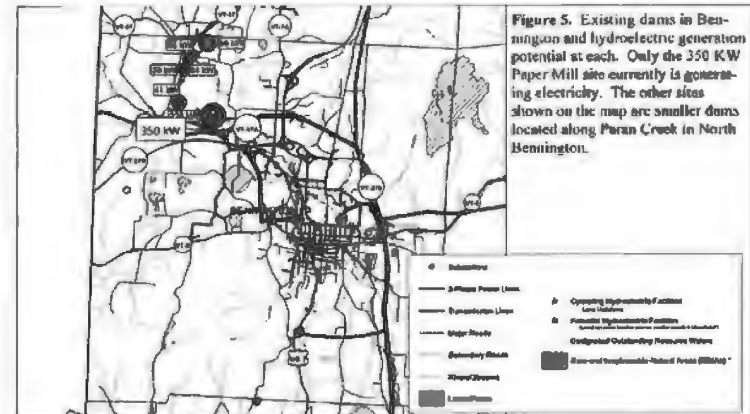


Figure 5. Existing dams in Bennington and hydroelectric generation potential at each. Only the 350 KW Paper Mill site currently is generating electricity. The other sites shown on the map are smaller dams located along Paran Creek in North Bennington.

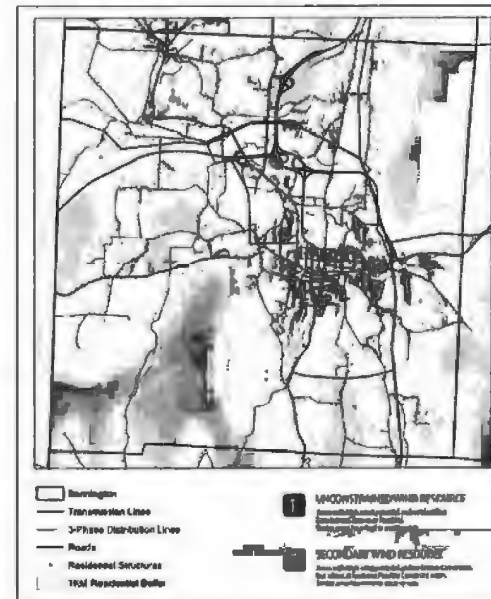


Figure 6. Wind energy resources sufficient for utility-scale generation are limited in Bennington by topography and existing homes and critical environmental resources preclude development in most locations. The summit of Mount Anthony and adjacent ridgelines are unsuitable for wind energy development because of impacts on identified scenic resources. Smaller scale wind turbines generating electricity for residences, small businesses, and institutions may be appropriate at suitable sites that do not violate state noise or environmental standards.

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47. The town strongly supports the development of small-scale (150 KW capacity or less) electricity generation from solar energy at homes, businesses, schools, and other institutions, as well as community solar projects.

Community Solar Projects

Community solar projects offer an opportunity for a range of people, who might not otherwise have access to the benefits of solar energy generation, to participate in a clean energy project. These individuals may include people who do not own property themselves or those who own buildings with limitations caused by shading or the size, orientation, or structural stability of a roof. Moreover, community solar projects offer efficiencies of scale that make individual investments more viable for people of moderate incomes.

Community solar projects, as discussed in this section, are group net metered solar energy installations between 15kW and 150kW in size, with shares in the facility sold to the site owner, neighbors, community members, nonprofit organizations, and local businesses. These energy users buy shares in proportion to their annual electrical usage. When construction is completed, power is fed directly into the grid, and a group net metering document is filed with the utility showing the allocation of shares among the various members. The utility then splits the output of the solar farm among the members in proportion to their share size, crediting their utility accounts.

Community solar projects, as described above, are encouraged and may be located anywhere in town not specifically identified as a "Prohibited (Exclusion) Area" in the Solar Facility Siting Criteria set forth in this section. Moreover, any community solar project located on a site that is not a prohibited/exclusion area shall be considered as being located on a preferred site and eligible for all of the regulatory and financial incentives associated with larger scale solar energy installations pursuant to Public Utility Commission Rule 5.100 and 30 V.S.A. Section 248. The town does encourage community solar projects to be located on sites identified as having high potential for electricity generation based on solar resource availability.

Any larger scale solar development (greater than 150 kW capacity) shall be subject to the following policies, map, siting guidelines, and the town's solar facility screening ordinance.

Solar Energy Facility Siting Policy and Map

The Solar Energy Resource Map (Figure 7) shall serve as a guide for developers wishing to identify land suitable for solar energy generation facilities within the Town of Bennington. This map identifies sites which have been determined by the Town of Bennington, through official action of the Select Board, to be suitable for solar facilities and sites which are preferred sites for solar energy generating facilities. Only sites identified as preferred sites on this map or located in a preferred area, as defined in this section of the Town Plan may be developed with solar generating facilities in excess 150 KW of rated capacity.

The Solar Energy Resource Map (Figure 7) shall be used in concert with the Town's Screening of Solar Facilities Ordinance and the Solar Facility Siting Guidelines (incorporating the Community Standards and Siting Criteria) included in this section of the Town Plan to direct the development and design of solar facilities. Although solar energy development at these preferred sites and locations is an appropriate land use, all such development shall be carefully planned to limit adverse impacts to neighboring properties and to public viewsheds, giving consideration to The Town's Screening of Solar Facilities Ordinance and Solar Facility Siting Guidelines.

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The sites indicated on this map as suitable for solar energy development were selected after a thorough analysis of available geographic data, including an assessment of access to solar energy as well as environmental, aesthetic, cultural, and related regulatory constraints. State-identified environmental constraints are discussed in more detail in the Bennington County Regional Energy Plan, and include the following resource areas:

- Class 1 and 2 wetlands, vernal pools, and hydric soils;
- Mapped river corridors and FEMA-defined floodways;
- Natural communities and rare, threatened, and endangered species;
- Federal wilderness areas;
- "Primary" and "Statewide" significant agricultural soils;
- FEMA-defined special flood hazard areas;
- Lands protected for conservation purposes;
- Deer wintering areas; and
- State-identified high priority "Conservation Design Forest Blocks."

Lands with one or more of the above constraints were excluded from consideration as preferred sites, while areas that did not have any state-identified constraints were carefully analyzed by the Town, and sites most likely to comply with the Town Plan's Community Standards and Siting Standards for Solar Facilities were identified as potentially suitable. Specifically excluded from consideration as sites suitable for development were land located in the Forest or Agriculture land use districts, privately owned land in the Rural Conservation land use district, land within 100 feet of public roads, land within 0.25 miles of any of the three covered bridges, Willow Park, and land within scenic viewsheds identified in the Scenic Resource Inventory of Bennington. Potentially suitable sites were determined to be appropriate for development only if they were likely to be developed with solar generating facilities based on property size, landowner interest, proximity to infrastructure, and community benefit.

Approximately 540 acres of land are shown on the Solar Energy Resource Map as being suitable and preferred for development of these facilities. This acreage, together with projected future development on rooftops and other preferred locations, far exceeds the acreage needed to meet the town's solar energy generation target, 25 MW of capacity by the year 2050, identified in the Bennington County Regional Energy Plan. Moreover, that targeted level of generation includes residential, rooftop, and other small-scale generation that is expected to account for up to 10 MW of capacity by 2050. Therefore, all locations other than those mapped areas and land specifically identified as preferred areas in this Town Plan, are considered unsuitable for solar generating facilities in excess of 150 KW of rated capacity.

Solar Electricity Facility Siting Guidelines

The term "solar facility" shall have the following meaning: a solar electricity generation and transmission facility with a 150kW(AC) or greater capacity, including all on-site and off-site improvements necessary for the development and operation, and on-going maintenance of the facility.

The Town of Bennington has developed community standards and siting standards for the development of solar facilities for reference and use by facility developers and local property owners and for consideration in Section 248 proceedings (30 VSA §248). These standards are set forth below. In addition, The Bennington Planning Commission, in consultation with the Bennington County Regional Commission, has identified and mapped (Figure 7) those areas of Bennington that are most suitable for solar facility development based on facility siting requirements and municipal energy, conservation, and development policies and objectives set forth in the Bennington Town Plan, the Bennington Screening of Solar Facilities Ordinance, and the Bennington Land Use and Development Regulations.

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Pursuant to 30 VSA Sec. 248, prior to the construction of a solar facility, the VT Public Utility Commission (PUC) must issue a Certificate of Public Good. A Section 248 review addresses environmental, economic, and social impacts associated with a particular project, similar to Act 250. In making its determination, the PUC must give due consideration to the recommendations of municipal planning commissions and their respective plan(s). Accordingly, it is appropriate that Bennington's Town Plan address these land uses and provide guidance to town officials, regulators, and facility developers.

The Town of Bennington may participate in the Public Utility Commission's review of new and expanded generation facilities to ensure that local energy, resource conservation, and development objectives are identified and considered in proposed utility development. This may include joint participation and collaboration with other affected municipalities and the Bennington County Regional Commission for projects that may have significant regional impact. It is acknowledged that the PUC's primary focus is on administering state public policy and regulating actions that are directed at ensuring that utility services promote the general good of the state.

The Planning Commission, in consultation with the Bennington Select Board, should develop guidelines to direct local participation in Section 248 proceedings related to solar facilities located in Bennington or in neighboring communities which may affect the town. The guidelines should reflect levels of participation or formal intervention in relation to the type, location, scale, operation, and magnitude of a proposed project, and its potential benefits, detriments to, and impacts on the community.

Community Standards

The following community standards are to be considered in undertaking municipal solar electricity projects and programs, in updating Bennington's Land Use and Development Regulations to address solar facilities subject to local regulation, and in the review of new or upgraded solar facilities by the Town of Bennington and the Public Service Board (Section 248 review).

- **Plan Conformance:** New solar facilities and proposed system upgrades should be consistent with the Vermont Comprehensive Energy Plan, the Vermont Long-Range Transmission Plan, and utilities Integrated Resource Planning (IRP).
- **Benefits:** A demonstrated statewide public need that outweighs adverse impacts to local residents and resources must be documented for municipal support of new solar facilities located within or which may otherwise affect Bennington. Facility development must benefit Town of Bennington and State residents, businesses, and property owners in direct proportion to the impacts of the proposed development.
- **Impacts:** New solar facilities must be evaluated for consistency with community and regional development objectives and shall avoid undue adverse impacts to significant cultural, natural, and scenic resources and aesthetic values identified by the community in the Bennington Town Plan and the Scenic Resources Inventory. When evaluating impacts of a proposed solar facility under the criteria set forth in this Town Plan, the cumulative impact of existing solar facilities, approved pending solar facilities and the proposed solar facility shall be considered. It is explicitly understood that a proposed solar facility which by itself may not have an adverse impact may be deemed to have an adverse impact when considered in light of the cumulative impacts of the proposed solar facility and existing solar facilities and pending already approved solar facilities.
- **Decommissioning:** All facility certificates shall specify conditions for system decommissioning, including required sureties (bonds) for facility removal and site restoration to a safe, useful, and aesthetically

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ronmentally stable condition. All hazardous materials and structures, including foundations, pads and accessory structures, must be removed from the site and safely disposed of in accordance with regulations and best practices current at the time of decommissioning.

Solar Facility Siting Criteria

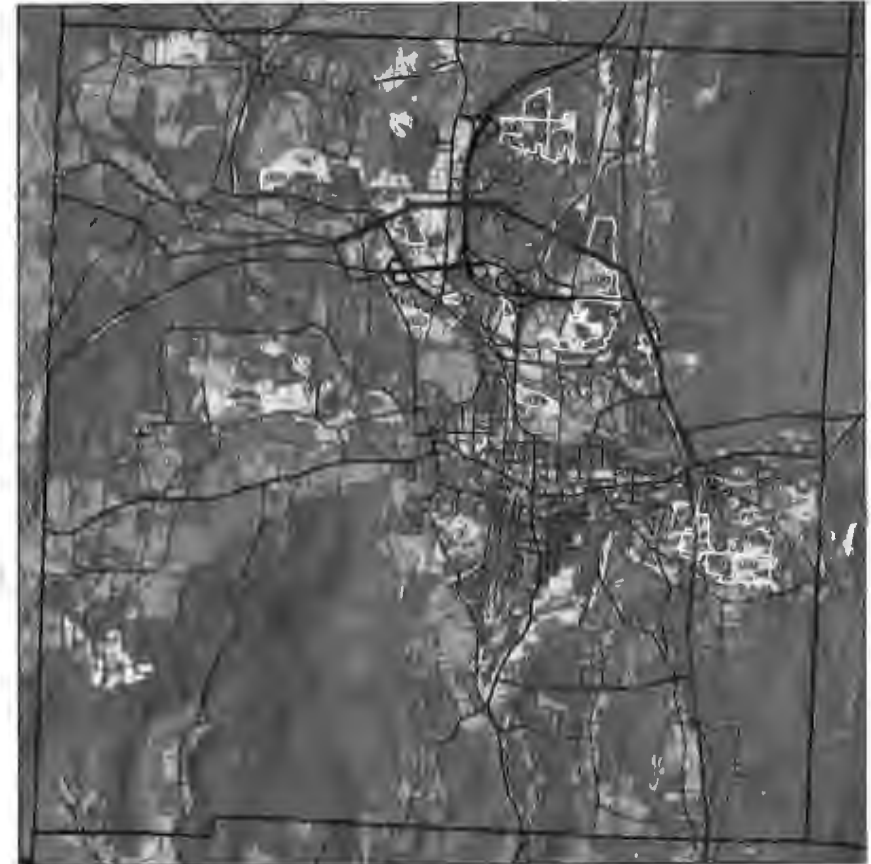
Bennington supports development of solar energy generation facilities consistent with the policies and guidelines set forth in this plan. It recognizes that financial considerations require projects to be located in close proximity to electric power lines capable of distributing the load proposed to be generated and to have convenient access from major transportation networks for construction. However, the town desires to maintain the open landscape and scenic views important to Bennington's sense of place, tourism economy, and rural cultural aesthetic. Not all solar facilities proposed can meet this standard. Projects must meet the following criteria in order to be supported by this Town Plan:

- **Siting Requirements:** New solar facilities shall be sited in locations that do not adversely impact the community's traditional and planned patterns of growth, of compact (downtown/village) centers surrounded by a rural countryside, including working farms and forest land. Solar facilities shall, therefore, not be sited in locations that adversely impact scenic views, roads, or other areas identified in the Scenic Resources Inventory, nor shall solar facilities be sited in locations that adversely impact any of the following scenic attributes identified in the Scenic Resource Inventory: views across open fields, especially when those fields form an important foreground; prominent ridgelines or hillsides that can be seen from many public vantage points and thus form a natural backdrop for many landscapes; historic buildings and districts and gateways to historic districts; and, scenes that include important contrasting elements such as water. The impact on prime and statewide agricultural soils currently in production shall be minimized during project design.
- **Preferred Areas:** The following areas are specifically identified as preferred areas for solar facilities, as they are most likely to meet the siting requirements:
 - ◊ Roof-mounted systems;
 - ◊ Systems located in proximity to existing large scale, commercial or industrial buildings;
 - ◊ Proximity to existing hedgerows or other topographical features that naturally screen the entire proposed array;
 - ◊ Reuse of former brownfields;
 - ◊ Facilities that are sited in disturbed areas, such as gravel pits, closed landfills, or former quarries;
 - ◊ Areas specifically identified as suitable for solar facilities on the Solar Energy Resource Map (Figure 7).
- **Prohibited (Exclusion) Areas:** In addition to those areas that do not meet the siting requirements set forth above, development of solar generating facilities shall be excluded from (prohibited within), and shall not be supported by the Town, in the following locations:
 - ◊ Floodways shown on Flood Insurance Rate Maps (FIRMs);
 - ◊ Fluvial erosion hazard areas (river corridors) as shown in the Town of Bennington Land Use and Development Regulations;
 - ◊ Class I or II wetlands;
 - ◊ A location that would significantly diminish the economic viability or potential economic viability of the town's working landscape, including productive forest land and primary

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agricultural soils (as defined in Act 250 and as mapped by the U.S. Natural Resource Conservation Service);

- ◊ Rare, threatened, or endangered species habitat or communities as mapped or identified through site investigation, and core habitat areas, migratory routes and travel corridors;
- ◊ Ridgelines: Mount Anthony, Whipstock Hill, Bald Mountain (Green Mountains);
- ◊ Steep slopes (>25%)
- ◊ Surface waters and riparian buffer areas (except for stream crossings);
- ◊ Topography that causes a facility to be prominently visible against the skyline from public and private vantage points such as roads, homes, and neighborhoods;
- ◊ A site in proximity to and interfering with a significant viewshed identified in the Scenic Resource Inventory;
- ◊ A site on which a solar facility project cannot comply with Bennington’s prescribed siting and screening standards, including the screening requirements set forth in Bennington’s Screening of Solar Facilities Ordinance;
- ◊ A site that causes adverse impacts to historical or cultural resources, including state or federal designated historic districts, sites and structures, and locally significant cultural resources identified in the municipal plan. Prohibited impacts to historical and cultural resources include:
 - removal or demolition;
 - physical or structural damage, significant visual intrusion, or threat to the use;
 - significant intrusion in a rural historic district or historic landscape with a high degree of integrity;
 - significant visual intrusion into a hillside that serves as a backdrop to a historic site or structure;
 - creating a focal point that would disrupt or distract from elements of a historic landscape;
 - a significant intrusion in a rural historic district or historic landscape that has a high degree of integrity;
 - impairing a vista or viewshed from a historic resource that is a significant component of its historic character and history of use;
 - visually overwhelming a historic setting, such as by being dramatically out of scale;
 - isolating a historic resource from its historic setting, or introducing incongruous or incompatible uses, or new visual, audible or atmospheric elements
- Mass and Scale: Except for projects located on preferred sites, solar facilities larger than 10 acres, individually or cumulatively, cannot be adequately screened or mitigated to blend into the municipality’s landscape and are, therefore, explicitly prohibited.



— Transmission Lines
 Preferred Solar Sites
 Unconstrained Solar Resource
 Secondary Solar Resource

0 0.25 0.5 1 1.5 2 Miles

N

Figure 7. Solar Energy Resource Map. Outlined areas show preferred sites: solar energy facilities in excess of 150 KW of capacity shall be restricted to these sites and to building rooftops and other locations specifically identified in this section as preferred areas for solar energy development; other sites are considered unsuitable for solar energy development in excess of 150 KW of capacity. All facility siting is subject to the specific Siting Guidelines set forth in this section of the Town Plan.

MEMO

TO: Town of Bennington Planning Commission

FROM: Brad Wilson, Project Developer
Ecos Energy LLC, P.H.I.L.L.C., Otter Creek Solar LLC,
Chelsea Solar LLC, and Apple Hill Solar LLC

RE: Comments on August 7, 2017 Draft Energy Plan

DATE: October 31, 2017

I am sending these comments in advance of the scheduled November 6, 2017 meeting of the Bennington Planning Commission. This meeting will be a public hearing regarding the proposed draft of an energy plan amendment to the Bennington Town Plan. My comments describe issues with the draft amendment that should be addressed and corrected before the Planning Commission recommends the amendment to the Select Board for approval and adoption.

Act 174, passed into law by the Vermont State Legislature in 2016, encourages towns in Vermont to design and adopt new energy plans (as amendments to their town plans). If a new energy plan is written in a certain way, a town may have their energy plan certified for compliance with state standards. Once a town receives certification of such a plan, that town will receive substantial deference in future proceedings before the Vermont Public Utility Commission ("PUC"). Substantial deference means that a town's plan will be given more weight when deciding the outcome of PUC cases such as the siting/permitting of renewable energy facilities.

Certification will only be granted if the energy plan adopted by the Town is written in compliance with specific standards that have been set forth by the Vermont Department of Public Service ("DPS"). DPS has issued very clear guidance and standards that describe what a new energy plan must and must not contain in order to be certified. These standards must be followed completely and exactly or certification cannot be granted.

I fully support Bennington's goal of achieving certification and gaining substantial deference before the PUC. That goal will not be achieved if the Bennington Select Board adopts the current draft of the energy plan amendment. The current draft includes a number of mistakes and omissions that clearly fail to meet the required plan standards. I assume that the Planning Commission has no interest in recommending a draft plan to the Select Board that is not capable of passing certification review. I respectfully request your consideration of my comments and, if you agree that my comments have merit, that you be willing to rule that the draft plan needs additional work before it can be recommended to the Select Board.

I understand how much time, effort, and resources have gone into bringing the draft plan to its current state. I have great respect for that effort, and I truly wish for that effort to ultimately succeed. Nonetheless, that effort must be performed in compliance with required standards. It is not my intent to introduce arbitrary roadblocks. I don't raise these issues for sport, pleasure, or

profit, as may be suggested by other public commenters. It is true that I represent a renewable energy developer that has business interests which could be affected by the draft plan; I would not have reviewed the draft plan otherwise. Still, I don't believe my professional affiliation has any effect on the facts that I will present to you, and I appreciate your unbiased review of my comments.

NOTE: In my comments, I will reference a number of other documents. I have included copies of these documents with this memo:

- ("Energy Plan") *Town of Bennington Draft Town Plan Energy Element, dated 11.06.17*
- ("Act 174") *Vermont State Legislature Act 174, enacted 06.13.16*
- ("Standards Overview") *A narrative overview of the required standards for municipal energy plans, prepared by DPS*
- ("Standards Guidance") *A guidance document prepared by DPS to assist towns in drafting municipal energy plans*
- ("Standards Checklist") *A checklist of the formal standards that are required for a municipal energy plan to receive certification of compliance*

Problem: Method for identification of unsuitable areas for commercial-scale solar energy facilities

(falls Municipal Standards 13A and 13B)

The Energy Plan identifies a vast and overwhelming majority of properties and acres in the Town as unsuitable for commercial-scale solar energy facilities (solar generating facilities in excess of 150 kW of rated capacity). The Energy Plan identifies these properties as unsuitable by stating that the Energy Plan has identified a sufficient area of preferred sites for commercial scale solar; therefore, all other properties in Town are unsuitable. See the specific language spanning pages 22 and 23 of the Energy Plan:

"Approximately 540 acres of land are shown on the Solar Energy Resource Map as being suitable and preferred for development of these facilities. This acreage, together with projected future development on rooftops and other preferred locations, far exceeds the acreage needed to meet the town's solar energy generation target, 25 MW of capacity by the year 2050, identified in the Bennington County Regional Energy Plan. Moreover, that targeted level of generation includes residential, rooftop, and other small-scale generation that is expected to account for up to 10 MW of capacity by 2050. **Therefore, all locations other than these mapped areas and land specifically identified as preferred areas in this Town Plan, are considered unsuitable for solar generating facilities in excess of 150 kW of rated capacity.**" *(Energy Plan, pages 22 and 23)*

The Standards Guidance and Standards Checklist encourage towns to identify unsuitable areas for particular types or sizes of energy generation. However, those unsuitable areas must be identified using a specific methodology, and the method used in the Energy Plan is grossly out of compliance with the requirements.

A complete reading of the Standards Overview, Standards Guidance, and Standards Checklist makes it clear how unsuitable areas for any type or size of renewable energy generator must be identified. Please review these relevant sections:

“Unsuitable Areas: When municipalities designate areas as unsuitable for certain types and scales of renewable energy generation, having clear policies becomes particularly important. Municipalities must treat renewable energy generation facilities in a similar manner to other types and scales of development, in terms of allowable land uses in particular areas. This will not be reflected in the maps, but must be articulated in the policies. For example, if a plan designated certain land as unsuitable for all development because it is above 1,700 feet and within priority forest blocks necessary for landscape scale connectivity, it would therefore be acceptable to designate as unsuitable for a type and/or scale of renewable energy technology.”
(Standards Guidance, Pages 19 and 20)

This section alone communicates a couple of key points. First, a town may designate certain areas or sites as unsuitable for particular types or scales of renewable energy generation, but such a designation must be tied to clearly articulated land use policies that exist elsewhere in the Town Plan. For example:

- 1) “Commercial-scale solar facilities are not allowed in this area because there are enough preferred areas identified elsewhere.”

or

- 2) “Commercial-scale solar facilities are not allowed in this area because the committee that wrote this section of the plan doesn’t feel that commercial-scale solar belongs there.”

Examples 1 and 2 are not tied to articulated land use policies that apply to other development and are therefore not valid methods for identifying unsuitable areas. Now see Example 3:

- 3) “Development within highest priority forest and connectivity blocks is not allowed within the Forest District described in Chapter 3 of the Town. Therefore, these are unsuitable areas for commercial-scale solar facilities.”

Example 3 identifies an unsuitable area by using a clearly articulated land use policy. I hope that the difference between Examples 1/2 and Example 3 is easy to understand.

The second key point communicated in the Standards Guidance section above is also critical. Per the Guidance, areas may only be identified as unsuitable for particular types or sizes of renewable

energy generation as long as those areas are also off-limits for all other similar types or sizes of development under the Town Plan. Commercial-scale solar cannot be singled out as prohibited in an area if other types of development are allowed. Let’s examine another example:

- 4) “Commercial-scale solar facilities are not allowed on privately owned properties within the Rural Conservation District.”

Example 4 fails the standard because it prohibits commercial-scale solar in an area where other types of development of similar scale are allowed. A 150 kW solar facility may have a footprint size of around 1.2 acres. A look at the Bennington Land Use Regulations for the Rural Conservation District reveals a list of allowed uses (with DRB approval) that could easily exceed a development footprint of 1.2 acres, including Extraction of Earth Resources, Golf Course, Cemetery, or College/University.

Again, a particular type or size of energy generator cannot be prohibited in an area where other types of development with similar (or greater) scale are allowed. This section of the Guidance is very clear on this when it says that, “*Municipalities must treat renewable energy generation facilities in a similar manner to other types and scales of development, in terms of allowable land uses in particular areas.*”

Going back to Example 3, above; this example conforms to the requirements of the Guidance and Standards because it restricts all types of development in the identified area. There is no type of development that is similar in scale to commercial solar (greater than 1.2 acres) that is allowed; therefore, it is acceptable to designate this area as unsuitable for commercial-scale solar.

These two points are further supported by other language within the Standards and Guidance. Turning to the Standards Checklist itself; this document contains requirements that *must* be met in order for an energy plan to receive certification. The Checklist contains standards that deal directly with identification of unsuitable areas, and these items are *not optional*.

“The attached regional and municipal determination standards are constructed as a checklist-based application form. [...] The standards measure whether the submitted plan meets the statutory requirements for enhanced energy planning [...] **if Not Applicable is not available as an option, the standard must be marked “Yes” in order for the plan to receive an affirmative determination of energy compliance.**”
(Standards Checklist, page 2)

Pasted below is an image of requirements 13, 13A, and 13B from the Standards Checklist. Please review them carefully:

<p>13 Does the plan identify areas that are unsuitable for siting renewable energy resources or particular categories or sizes of those resources? <i>Either Yes or No ("No" if the plan chooses not to designate any areas as unsuitable) is an acceptable answer here. "Resources" is synonymous with "generators."</i></p>	<p><input type="checkbox"/> Yes ("Yes" for A and B must also be selected below)</p>	<p><input type="checkbox"/> No</p>
<p>A. Are areas identified as unsuitable for particular categories or sizes of generators consistent with resource availability and/or land use policies in the regional or municipal plan applicable to other types of land development (answer only required if "Yes" selected above, indicating unsuitable areas have been identified)? <i>If areas are considered unsuitable for energy generation, then the land use policies applicable to other forms of development in this area should similarly prohibit other types of development. Please note these policies in the Notes column.</i></p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No <input type="checkbox"/> N/A (if no unsuitable areas are identified)</p>
<p>B. Does the plan ensure that any regional or local constraints (regionally or locally designated resources or critical resources, from 12b 12c above) identified are supported through data or studies, are consistent with the remainder of the plan, and do not include an arbitrary prohibition or interference with the intended function of any particular renewable resource size or type? <i>Please explain in the Notes column.</i></p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>

(Standards Checklist, pages 13 and 14)

The method in the Energy Plan for identifying unsuitable areas for commercial-scale solar clearly fails standard 13A. There is no way that 13A could possibly be checked "Yes" if the Energy Plan includes its current methodology. That methodology broadly identifies an overwhelming majority of properties in the Town as unsuitable for commercial-scale solar. These are properties within every Land Use District in the Town, and these are properties where a wide variety of other types of development of similar or larger scale are allowed. If 13A is checked "No," then the Energy Plan cannot receive certification of compliance.

The Energy Plan also clearly fails standard 13B. This standard expands upon the earlier discussion regarding clearly articulated land use policies. This standard protects against a Town arbitrarily designating a site or area as unsuitable; instead it requires a designation of unsuitable to be supported by clear and specific land/resource conservation policies contained in the Town Plan. Again, this standard must be checked "Yes" to receive certification. The Energy Plan's approach for identifying unsuitable areas for commercial-scale solar clearly does not meet this standard.

Standard 13B is not the only standard in the Checklist that addresses the need for clearly articulated (and universally applied) policies when identifying unsuitable areas. Portions of Section 9 of the

Standards Guidance address the development of "constraints" that would lead to the identification of certain areas as unsuitable (or possibly unsuitable).

"9E Does the plan include statements of policy to accompany maps (could include general siting guidelines), including statements of policy to accompany any preferred, potential, and unsuitable areas for siting generation (see 11 and 12 under Mapping, below)?"

Land Conservation Measures: While the maps are extremely important to show where resources, constraints, and unsuitable areas exist, it is also necessary to include text in the plan that describes these mapped elements. Specifically, plans must include descriptions of land conservation measures as well as specific policies that say where development should and shouldn't happen, and why. These are what the Public Service Board will review when they are looking to understand whether a project will interfere with orderly development of the region, which is one of the criteria reviewed during the Section 24B process. Moreover, it is essential that such land conservation measures and policies are not only specific but also written in clear and unqualified language, articulating mandatory terms, for example by using the terms shall (not should) and must (not may). Both the locations and the reasoning behind their selection (for either preferred, potential, or unsuitable areas) should be described in the plan and reflected in the policies." (Guidance, page 19)

Unsuitable areas for commercial-scale solar are identified in the Energy Plan with a single sentence:

"Therefore, all locations other than these mapped areas and land specifically identified as preferred-areas in this Town Plan, are considered unsuitable for solar generating facilities in excess of 150 KW of rated capacity." (Energy Plan, page 21)

This does not meet the level of detailed land conservation measures and specific policies that the Guidance requires.

Standards 12B and 12C on the Standards Checklist include the following language, respectively:

"If areas are constrained for the development of renewable energy due to the desire to protect a locally designated critical resource (whether a natural resource or a community-identified resource), then the land use policies applicable to other forms of development in this area must be similarly restrictive; for this category, policies must prohibit all permanent development." (Standards Checklist, page 11, section 12B)

"If locations are constrained for the development of renewable energy due to the desire to protect a locally designated resource (whether or natural resource or community-identified resource, like a view), then the land use policies applicable to other forms of development must be similarly restrictive." (Standards Checklist, page 12, section 12C)

These sections further illustrate the requirement for any constraints that lead to a designation of unsuitable area must be universally applied to other forms of development and not just to the type or size of renewable generator in question. The method for identifying unsuitable areas for commercial-scale solar in the Energy Plan fails to do so; other forms of development are not restricted.

Wrapping up discussion on this issue, here's a bit of my own personal opinion, and you can take it or leave it. The unsuitable area designation is powerful. When implemented, it restricts certain land development rights from private landowners. I think the Guidance and Standards make it clear that the State intends it to be quite difficult for a Town to identify any area as unsuitable, and in order to do so, such a decision must be supported by detailed land use policy that is objective, based upon data and studies, and not discriminatory towards a single type of development (commercial-scale solar in this case). Whether or not you agree with this, I hope you are able to see the problems with the Energy Plan's method for identifying unsuitable areas for commercial-scale solar. If the current draft of the Energy Plan is adopted by the Select Board, it will fail compliance review for the reasons described above. The Planning Commission should recommend that this element of the Energy Plan should be re-designed before it can be sent on to the Select Board.

Problem: Method for excluding sites from consideration as suitable for development

(fails Municipal Standards 12B and 12C)

Page 22 of the Energy Plan describes the process by which the map of preferred sites for solar facilities (page 27) was generated. This process generally seems to follow the methods outlined in the Standards Guidance and Standards Checklist. That is, beginning with the Town map provided by the Regional Commission that identifies solar resources along with areas of state-identified resource constraints (such as wetlands, river corridors, or endangered species). Next, identifying sites that would be potentially suitable for commercial-scale solar by excluding other sites if they contain one or more state- or local-level constraints that were selected by the committee that worked on the map. Any sites left over after the exclusions were marked potentially suitable and further evaluated for identification as preferred sites (or not). Here is the text on page 22:

"The sites indicated on this map as suitable for solar energy development were selected after a thorough analysis of available geographic data, including an assessment of access to solar energy as well as environmental, aesthetic, cultural, and related regulatory constraints. State-identified environmental constraints are discussed in more detail in the Bennington County Regional Energy Plan, and include the following resource areas:

(List omitted – See Energy Plan page 27 for full text)

Lands with one or more of the above constraints were excluded from consideration as preferred sites, while areas that did not have any state-identified constraints were carefully analyzed by the Town, and sites most likely to comply with the Town Plan's Community

Standards and Siting Standards for Solar were identified as potentially suitable. Specifically excluded from consideration as sites suitable for development were land located in the Forest or Agriculture land use districts, privately owned land in the Rural Conservation land use district, land within 100 feet of public road, land within 0.25 miles of any of the three covered bridges, Willow Park, and land within scenic viewsheds identified in the Scenic Resource Inventory of Bennington. Potentially suitable sites were determined to be appropriate for development only if they were likely to be developed with solar generating facilities based on property size, landowner interest, proximity to infrastructure, and community benefit."
(Energy Plan, page 22)

While this approach seems to generally comply with the method described in the Guidance and Standards, there are serious problems with some of the constraints or criteria that were selected and used to exclude properties from consideration as potentially suitable (or preferred) sites. The Guidance and Standards allow towns to choose their own locally-identified constraints, but the Guidance and Standards are also very clear about what types of constraints cannot be used. Using constraints that are clearly not allowed will result in the Energy Plan failing standards 12B and 12C on the standards checklist. The Energy Plan uses constraints that are clearly not allowed.

There is some overlap here with the previous discussion regarding unsuitable areas. Specifically, the sections of Standards 12B and 12C stating that locally-identified constraints can only be used if the Town Plan also applies those constraints to other types of development (not just commercial-scale solar, in this case). A number of constraints identified in the Energy Plan clearly do not meet this requirement. Standards 12B and 12C are mandatory requirements. Again, the text from 12B and 12C:

"If areas are constrained for the development of renewable energy due to the desire to protect a locally designated critical resource (whether a natural resource or a community-identified resource), then the land use policies applicable to other forms of development in this area must be similarly restrictive; for this category, policies must prohibit all permanent development."

(Standards Checklist, page 11, section 12B)

"If locations are constrained for the development of renewable energy due to the desire to protect a locally designated resource (whether or natural resource or community-identified resource, like a view), then the land use policies applicable to other forms of development must be similarly restrictive."

(Standards Checklist, page 12, section 12C)

The Guidance also calls for locally-identified constraints to be supported by significant detail in the plan. This text is from section 9D in the Guidance:

"Municipalities may add locally designated resources or critical resources to the known and possible constraint layers in the Mapping Standards. [...] These will ultimately flow through to the Primary and Secondary Resource Potential maps, and can have the effect

of designating areas as possibly or likely unsuitable for renewable energy development. [...] Providing maps, narratives, and even supporting documentation (like natural or scenic resource inventories) describing locally designated resources and the analysis of generation potential (Standard 9B) is critical for this criteria. (Standards Guidance, page 19)

Please note the language used here. Providing this type of supporting information and detail for locally-identified constraints is *critical*. In the Energy Plan, the locally-identified constraints are simply listed, and there is no explanation or supporting detail given for how each one was selected or why each one is valid for the purpose of restricting commercial-scale solar development.

The Energy Plan identifies a number of locally-identified constraints that resulted in properties being excluded from consideration as possibly suitable sites or preferred sites for commercial-scale solar. Because of the way the Energy Plan identifies unsuitable areas, these constraints directly resulted in properties being deemed unsuitable for commercial-scale solar (and this compounds the problems with how the constraints were identified). Identified constraints that are clearly problematic include:

1) "Primary and Statewide Significant agricultural soils"

The Energy Plan includes "Primary and Statewide Significant agricultural soils" on a list of constraints that would result in a property being excluded as a preferred site (and therefore being identified as an unsuitable site). However, the Bennington Town Plan does not prohibit any other type of development in any area of town on the basis of Primary and Statewide Significant agricultural soils. The use of this constraint in this manner clearly fails standards 12B and 12C. This particular use of agricultural soils to discriminate solely against solar facilities is also addressed specifically in the PUC *Cold River Solar* case (Docket # 8188) and the corresponding Vermont Supreme Court Decision (*In re Petition of Rutland Renewable Energy, LLC*).

2) "Lands with one or more of the above constraints were excluded from consideration as preferred sites, while areas that did not have any state-identified constraints were carefully analyzed by the Town, and sites most likely to comply with the Town Plan's Community Standards and Siting Standards for Solar were identified as potentially suitable."

This item states that only sites which were determined to be most likely to comply with the Town Plan's Community Standards and Siting Standards for Solar were identified as potentially suitable (and therefore eligible to be selected as preferred sites). This item would not necessarily be problematic, if not for the fact that the Energy Plan goes on to deem all non-preferred sites to be unsuitable. As such, the likelihood of compliance with the Solar Siting Standards becomes a constraint. There are two problems here. First, there is zero information given about the process used to determine "likelihood of compliance." Second, for obvious reasons, this is not a standard that is applied to any other type of development in the Town. The Solar Siting Standards certainly have their place in the

Town Plan, but not as a constraint in this exercise. The use of this constraint in this manner clearly fails standards 12B and 12C.

3) "Privately owned land in the Rural Conservation land use district"

This constraint appears in the Energy Plan without any supporting information or justification, which is odd because it is clearly discriminatory against landowners in a specific land use district. Why not private landowners in Rural Residential, or Village Commercial? Why not all privately-owned land? Or, why the focus on privately owned land in the first place? The Energy Plan goes on to identify as preferred sites a number of properties in the Rural Conservation district that are owned by the Town of Bennington, and it should be apparent that there are serious problems with the Town restricting private landowners in a certain area but giving the Town itself preferential treatment in that same area.

Additionally, this constraint fails to meet the requirements set forth in the Checklist under Standards 12B and 12C. As I've previously mentioned, the Town Plan and Town Land Use Regulations allow a number of other types of development with equal or greater scale to commercial solar facilities on privately owned land in the Rural Conservation district. The use of this constraint in this manner clearly fails standards 12B and 12C, and it cannot be included in the Energy Plan.

4) "Land within 100 feet of public roads"

There are a wide variety of other uses in the Town Plan and Town Land Use Regulations that carry no such restriction. I am aware that Vermont state law requires a 100-foot setback from public roads for solar generation projects (30 V.S.A. § 248(s)) but that same law also allows solar project developers to seek an agreement of reduced setback with towns and adjoining landowners on a project-by-project basis. The use of this constraint in this manner clearly fails standards 12B and 12C.

5) "Land within scenic viewsheds identified in the Scenic Resource Inventory of Bennington"

You may officially think of me as a broken record at this point. The Town Plan includes no such restriction on other types of development. It is true that the Town Plan suggests that development within these viewshed areas is performed in a manner that is sensitive to scenic resources, but development is not outright prohibited in these areas. The use of this constraint in this manner clearly fails standards 12B and 12C.

This is not to suggest that the Town couldn't use these types of criteria to assist in their selection of preferred sites for commercial-scale solar. However, big problems arise because the Energy Plan designates all non-preferred properties as unsuitable for commercial-scale solar. These constraints are not simply being used to help identify preferred sites; rather, they are being used to identify unsuitable sites where development of commercial-scale solar is prohibited. As such, compliance with standards 12B and 12C becomes critical. If the Energy Plan is adopted by the

Select Board in its current form, it will fail standards 12D and 12C for the reasons described above. The Planning Commission should require that the Energy Plan only include constraints that are compliant with 12B and 12C.

Problem: The Energy Plan does not identify potentially suitable areas for commercial-scale solar

(fails Municipal Standard 12)

In multiple locations, the Standards Guidance and the Standards Checklist refer to the need to identify three types of areas for the siting of renewable energy generators; preferred areas, potentially suitable areas, and unsuitable areas. The Energy Plan only results in two types of areas for commercial-scale solar; preferred and unsuitable. It is clear that the Guidance and Checklist consider "potential" and "preferred" areas to be separate and distinct and that a compliant map of solar resources sites would include all three designations.

"The Mapping standards lay out a sequence of steps for planners to examine existing renewable resources and to identify potential (and preferred) areas for renewable energy development, and to identify likely unsuitable areas for development, by layering constraint map layers on to raw energy resource potential map layers."
(Standards Checklist, page 10)

"Does the plan analyze generation potential through the mapping exercise (see Mapping standards, below), to determine potential from preferred and potentially suitable areas in the municipality?"
(Standards Checklist, page 9, standard 9B)

"Does the plan include statements of policy to accompany maps (could include general siting guidelines), including statements of policy to accompany any preferred, potential, and unsuitable areas for siting generation (see 12 and 13 under Mapping, below)?"
(Standards Checklist, page 9, standard 9E)

"For ground-mounted solar, municipalities should estimate the amount of solar that could be developed in their preferred and potentially suitable areas."
(Standards Guidance, page 16)

"Capacity (megawatts, or MW) = acres available in preferred and potentially suitable areas / 8 acres per MW of solar"
(Standards Guidance, page 16)

"In Standard 9B, above, municipalities identified solar and wind resource potential from preferred and potentially suitable areas. [...] In order to account for the fact that land in the preferred and potentially suitable areas may ultimately be available or suitable for siting

solar, municipalities should build a contingency into their calculations..." (Standards Guidance, page 16)

"A municipality may restrict development in certain areas, but there must be sufficient land left in the preferred and potentially suitable areas to meet selected targets."
(Standards Guidance, page 19)

"Both the locations and the reasoning behind their selection (for either preferred, potential, or unsuitable areas) should be described in the plan and reflected in the policies."
(Standards Guidance, page 19)

"The identification of both preferred and unsuitable – along with the middle ground of 'potential' – areas also lays out a vision for future energy development in your municipality that can be understood and applied in a regulatory proceeding."
(Standards Guidance, page 20)

This example is particularly informative:

"Furthermore, municipalities are being asked under this standard to demonstrate a commitment to prioritizing renewable generation in preferred locations. This can be done not only by identifying preferred locations (generally, as well as specific parcels), but also by having a discussion in the plan of the relative amount of the municipality's renewable generation target that could potentially be sited in such location, alleviating siting pressure on the unsuitable and even the potential (but not preferred) locations."
(Standards Guidance, page 20)

The mapping exercise described on page 22 of the Energy Plan seems to begin in the correct way (although it uses invalid constraints as discussed earlier). It begins with a raw resource potential map and then attempts to exclude clearly unsuitable areas based on identified constraints. The result is a map of potentially suitable areas (for commercial-scale solar in this case). Then, the potentially suitable areas are further evaluated, and preferred sites are selected.

Up to this point, the Energy Plan generally follows the prescribed steps, but from here it takes a wrong turn. At this point, once the preferred sites are identified, the Energy Plan then designates all remaining potentially suitable sites as unsuitable, solely because they are not preferred sites. This leaves the resulting map of commercial solar resource locations with only two types of site; preferred and unsuitable. This approach is not supported by any element of the Standards Guidance or Standards Checklist, and the resulting lack of the third "potentially suitable" area is not compliant with the required process for the mapping exercise.

A map prepared the correct way includes all three elements:

- **Preferred Areas** – Project developers strongly encouraged to focus their efforts here and they can reasonably count on the support of the Town for facilities proposed on these sites
- **Potentially Suitable Areas** – Maybe the Town will support a project on one of these sites, maybe it won't. It will depend on an objective project-specific review of the proposed facility's compliance with the Town Plan and all relevant design standards. This is not fundamentally different than the status quo under current rules.
- **Unsuitable Areas** – Projects proposed in these areas will not be supported by the Town, count on it.

If the 12B and 12C standards regarding allowable constraints are followed, such a map would consist primarily of Potentially Suitable Areas. Preferred Areas and Unsuitable Areas represent smaller portions of the map; these are special areas that were selected objectively, carefully, and deliberately. Projects proposed in the Potentially Suitable Areas aren't guaranteed the support of the Town, but they aren't outright prohibited either. Projects in these areas can continue to be evaluated on a case-by-case basis with the expectation that relevant sections of the Town Plan are adhered to.

Under this scenario, over 90 percent of the land in the Town would not be wholesale off-limits to commercial scale solar. And under that type of scenario, the Energy Plan would have a better chance of meeting Act 174 requirements.

It may very well be that outright prohibiting commercial-scale solar on over 90 percent of the land in the Town was a specific goal of the volunteers who worked on the draft map and plan. However, the Standards Guidance and Standards Checklist were designed to create a very high bar for any town seeking to implement such broad and sweeping restrictions. The approach taken in the Energy Plan does not clear the bar. The Planning Commission should require a re-working of how Potentially Suitable Areas for commercial-scale solar are handled in the Energy Plan.

Problem: The Energy Plan does not identify sufficient land for solar energy generation

(fails Municipal Standards 9C and 12E)

Both the Standards Guidance and Standards Checklist are clear that the Energy Plan must identify sufficient land in the Town for renewable energy development to reasonably reach the year 2050 targets contained in the Regional Energy Plan for renewable electric generation. The Energy Plan fails to meet this requirement, although it includes an attempt at doing so. However, any attempt must be performed in accordance with the requirements. Here are the specific requirements of Standard 9C:

"Does the plan identify sufficient land in the municipality for renewable energy development to reasonably reach 2050 targets for renewable electric generation, based on population and energy resource potential (from potential resources identified in the

Mapping exercise, below), accounting for the fact that land may not be available due to private property constraints, site-specific constraints, or grid-related constraints?" *(Standards Checklist, page 9, standard 9C)*

The Guidance goes into more detail regarding this requirement:

"Sufficient Land for Solar: In Standards 9B, above, municipalities identified solar and wind resource potential from preferred and potentially suitable areas. For ground-mounted solar, an estimate of potential was based on an average of 8 acres/MW. In order to account for the fact that the land in the preferred and potentially suitable areas may not ultimately be available or suitable for siting solar, municipalities should build a contingency into their calculations of whether they have identified sufficient land in these areas to meet targets. One method to determine sufficient land for ground-mounted solar is to adopt a contingency figure of 60 acres per MW of target generation. By substituting "60" for "8" in the ground-mounted solar potential calculation above, you will be able to determine whether you have identified enough land in preferred and suitable areas to meet your selected targets. This allows for the fact that some property owners may not be interested in hosting solar, that interconnection costs may be high in some locations, that competition between possible sites will encourage low-cost and thoughtful siting, that some suitable areas may be small or awkwardly shaped, etc."

(Standards Guidance, page 18)

The attempt in the Energy Plan to meet this requirement is described on pages 22 and 23:

"Approximately 540 acres of land are shown on the Solar Energy Resource Map as being suitable and preferred for development of these facilities. This acreage, together with projected future development on rooftops and other preferred locations, far exceeds the acreage needed to meet the town's solar energy generation target, 25 MW of capacity by the year 2050, identified in the Bennington County Regional Energy Plan. Moreover, that targeted level of generation includes residential, rooftop, and other small-scale generation that is expected to account for up to 10 MW of capacity by 2050."

(Energy Plan, pages 22 and 23)

This element of the Energy Plan fails to meet the required standard (9C) in two primary ways. The first mistake is the conclusion that the identification of 540 acres of land for solar is sufficient to meet the standard. Per the guidance given on page 18 of the Standards Guidance, towns should multiply their year 2050 solar capacity goal by a contingency factor of 60 acres per MW to generate a number of acres that would realistically be capable of supporting the goal. In the Energy Plan, the Town assigns 10 MW to expected future residential, rooftop, and other small-scale generation, leaving 15 MW to be accounted for. The Energy Plan contains no detail or basis for the 10 MW assumption. Assuming for a moment that 15 MW is a reasonable number, 15 MW multiplied times 60 acres per MW equals 900 acres, a significantly larger number than 540 acres. There is no description in the Energy Plan regarding how the 540 acre number was determined to "far exceed" the required capacity, and there is no indication whatsoever that the required contingency calculations were implemented.

The second mistake is that the 540 acres that were identified do not actually total 540 acres of suitable land for commercial-scale solar development. Many of the properties that were identified as preferred contain one or more features that would not allow construction of a solar facility on a portion of the property in question. Yet, the undevelopable portions of these properties are being counted as part of the 540 acres that the Energy Plan says would be available to meet the year 2050 goals. Standard 12E specifically prohibits this:

"The locations identified as preferred must not be impractical for developing a technology with regard to the presence of the renewable resource and access to transmission/distribution infrastructure."
(Standards Checklist, pages 12 and 13, standard 12E)

I will illustrate this point with three examples. I would be happy to provide additional examples if requested.

(examples follow on next three pages)



Figure 1: This is an aerial view of a 44.5 acre property that is identified as a preferred site for commercial-scale solar in the Energy Plan. Notice the yellow shape, which is a mapped Class II wetland that covers approximately half of the property and divides the non-wetland portions of the property into smaller disjointed chunks. Due to the Class II wetland, most of this property is undevelopable for commercial-scale solar, yet the entire 44.5 acres is being counted towards the 540 acres that the Energy Plan identifies as sufficient to meet the Act 174 requirements.

(Figure 2 next page)

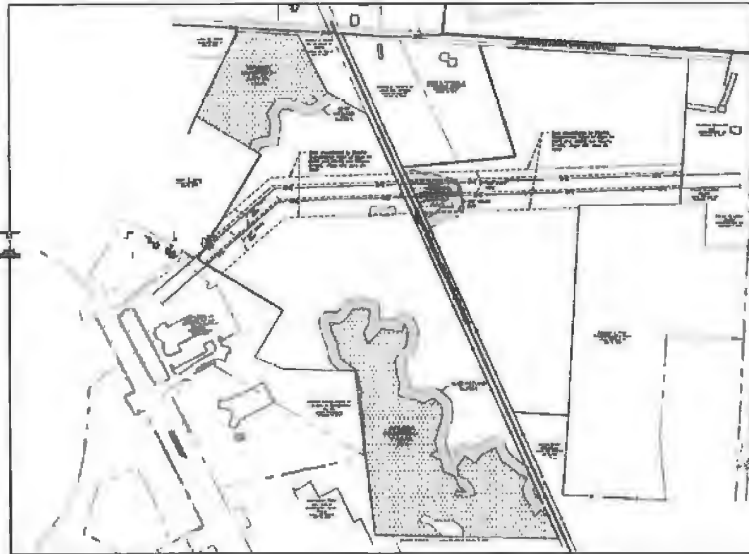


Figure 2: This is an image of a 40.6-acre property; the southern-most 28.8 acres have been identified as a preferred site for commercial-scale solar in the Energy Plan. The 28.8 acre portion includes an approximately 3-acre area that is being used as a transmission line corridor, and these 3 acres are not developable for solar. Also, notice the dotted blue area, which is a delineated Class II wetland along with the solid blue area that represents a required 50-foot buffer around the wetland perimeter. These wetland and buffer areas are undevelopable for commercial-scale solar. The wetland and buffer areas account for nearly half of the 28.8 acres, yet the entire 28.8 acres is being counted towards the 540 acres that the Energy Plan identifies as sufficient to meet the Act 174 requirements.

(Figure 3 next page)



Figure 3: This is an aerial view of a 9.8 acre property that is identified as a preferred site for commercial-scale solar in the Energy Plan. Notice the green shape, which is a mapped high priority habitat block covers approximately a third of the property, not to mention the Route 279 corridor that bisects the property. Due to these features, a significant portion of this property is undevelopable for commercial-scale solar, yet the entire 9.8 acres is being counted towards the 540 acres that the Energy Plan identifies as sufficient to meet the Act 174 requirements.

It is clear that the 540 acres of preferred area for commercial solar identified in the Energy Plan do not actually represent 540 acres that could be developed for commercial scale solar. These types of site-specific limitations are exactly why the standards require the implementation of the contingency calculations that were previously discussed.

It should be noted that the standards do not require a town to identify "sufficient land for solar" in preferred areas only. Land within potentially suitable areas would also apply, which further highlights the need for the Energy Plan's treatment of potentially suitable areas to be re-evaluated.

Request for Information: Why are two specific properties not identified as preferred areas for commercial-scale solar and therefore identified as unsuitable areas for commercial-scale solar?

PLH LLC owns two properties in the Town of Bennington that were not identified as preferred areas for commercial-scale solar. It appears that language in the current draft of the Energy plan attempts to designate these two properties as unsuitable sites for commercial-scale solar.

Under current rules, commercial-scale solar facilities are not prohibited on these properties, and the property owner has the right to propose commercial-scale solar facilities that are in compliance with relevant state/local rules and regulations. The current draft of the Energy Plan attempts to eliminate this property development right on these two parcels.

Every member of the volunteer committee that worked on designing the preferred sites map (and by extension designating all other properties unsuitable sites) is familiar with PLH/Allen and is well aware of our ownership of these two properties and our intent to potentially use these properties for commercial-scale solar facilities. For this committee to design policy that intends to strip us of our currently-held development rights on these properties without even reaching out to us for comment or discussion is highly inappropriate.

We must now use the public hearing process to be heard, and I formally request a deliberate reconsideration of these properties as preferred sites, or at the very least not designating them as wholesale unsuitable for commercial-scale solar.

The first property is a 27.18-acre parcel located between North Bennington Road and Harwood Hill Road that we commonly refer to as the "Battle Creek 2" site. This property is bisected by a VELCO transmission line corridor. Approximately 11 acres south of the transmission corridor is zoned Industrial, and the remainder of the property is zoned Rural Residential. The parcel number for this property is 23501600. An aerial view of this property is shown on the next page. The aerial view also shows the neighboring "Battle Creek 1" site that is also owned by PLH LLC.

The second property is a 27.3-acre parcel located adjacent to the Route 279 / Route 7 interchange that we commonly refer to as the "Chelsea / Apple Hill" site. This property sits within the Rural Conservation zoning district. The parcel number for this property is 29503100. An aerial view of this property is also shown on the next page.



Figure 4: Aerial view of the "Battle Creek 2" site and the neighboring "Battle Creek 1" site



Figure 5: Aerial view of the "Chelsea / Apple Hill" site

The Battle Creek 2 Site

- 1) I hereby request that the Planning Commission produce a detailed list of all constraints, criteria, and any other evaluations that were used to exclude the Battle Creek 2 site from the list of preferred sites.
- 2) The Battle Creek 2 site sits directly adjacent to the neighboring Battle Creek 1 site. The 28.8-acre Industrial-zoned portion of the Battle Creek 1 site was identified as a preferred site for commercial-scale solar. I hereby request that the Planning Commission explain why this portion of the Battle Creek 1 site was designated as preferred while the Industrial-zoned portion of the Battle Creek 2 site was not. What constraints, criteria, and any other evaluations are different between these two parcels that led to completely different designations?
- 3) The Planning Commission should add the Industrial-zoned portion of the Battle Creek 2 site as a preferred site for commercial-scale solar. None of the (valid) constraints or criteria described in the Energy Plan would result in this portion of the Battle Creek 2 site being excluded.

This portion of the Battle Creek 2 site is zoned Industrial, and it is surrounded on three sides by existing Industrial and Commercial development. It is difficult to imagine how the Town could support a variety of significant-impact Industrial and Commercial uses on this parcel while declaring the site unsuitable for solar panels. Furthermore, a nearly identical property (the adjacent "Battle Creek 1" site) was designated as a preferred site. Please reconsider the exclusion of the Battle Creek 2 site from the list of preferred sites.

The Chelsea / Apple Hill Site

- 1) I hereby request that the Planning Commission produce a detailed list of all constraints, criteria, and any other evaluations that were used to exclude the Chelsea / Apple Hill site from the list of preferred sites.
- 2) The Planning Commission should add the Chelsea / Apple Hill site as a preferred site or potentially suitable for commercial-scale solar. None of the (valid) constraints or criteria described in the Energy Plan would result in this site being excluded.

This parcel sits within the Rural Conservation zoning district and is located within a transitional area between the heavily developed Route 279 / Route 7 interchange and a residential area to the north. The policy in the Energy Plan that prohibits commercial-scale solar on all privately-owned property within the Rural Conservation zoning district is clearly not allowed under the Guidance and Standards for Act 174 compliance. Act 174 has not changed the fact that Vermont State Law prohibits Town's from introducing zoning-by-law-style restrictions on energy generation projects.

The Town's attorney is on record as saying that the Town Plan doesn't prohibit commercial-scale solar in the Rural Conservation zoning district, as long as facilities are

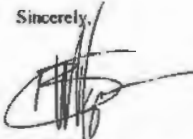
proposed in compliance with the relevant design standards, and those design standards can be met on this property. Furthermore, the solar resource map in the Bennington County Regional Energy Plan identifies this site as one of the very best solar generation resource locations in the entire Town. That map doesn't guarantee a site is ultimately suitable, but a Town should have lawful and valid reasons for excluding such a site. Please reconsider the exclusion of the Chelsea / Apple Hill site from the list of preferred sites.

Conclusion

Thank you for reading the entirety of my comments. I appreciate your fair and deliberate consideration of the issues that I have described and the requests that I have made. I will attend the Planning Commission's public hearing on November 6, 2017, where I will summarize these comments during the public comment period. In the interest of making the most efficient use of time at the November 6 hearing, please do not hesitate to contact me via email with any questions or discussion you may have in advance.

Bennington is a leader in the State, one of the first municipalities to attempt drafting an Act 174-compliant Energy Plan. How Bennington pursues this goal will be used as an example in other communities. Bennington must do it right, and the Planning Commission should not ignore legitimate problems that have been identified with the first draft.

Sending the Energy Plan back to committee for additional work will not be a popular decision with some members of the audience at the November 6 hearing. Still, I hope the Planning Commission can see that there are clear issues with the current draft of the Energy Plan. As currently written, the Energy Plan completely fails multiple required standards for Act 174 compliance certification. Please vote that the Energy Plan needs revisions and repair before it can be recommended to the Select Board.

Sincerely,


Brad Wilson
Project Developer, Ecos Energy LLC
brad.wilson@ecosrenewable.com
(612) 460-8605

EXHIBIT 12

**TOWN OF BENNINGTON
PLANNING COMMISSION**

Bennington Fire Facility, 3rd Floor
130 River Street, Bennington, Vermont

Monday, October 16, 2017

6:00 p.m.

AGENDA

1. **Public Hearing: Amendment to Town Plan – Revised Energy Section of Bennington Town Plan**
2. **Other Business**

EXHIBIT 13



TOWN OF BENNINGTON

MEMORANDUM

To: Bennington Select Board
From: Daniel W. Monks
Date: November 9, 2017
Re: Adoption of Amendment of Town Plan of Bennington – Energy Section

With this memorandum, the Planning Commission is submitting for review and adoption an amendment to the Town Plan for the Town of Bennington. Attached is the proposed amendment to the Town Plan as approved by the Planning Commission on November 6, 2017. The amendment – a new Energy Section - was prepared by the Bennington County Regional Commission with input regarding solar siting issues from a committee of Select Board members and citizens.

In general, the actions required of the Select Board to adopt the Town Plan are as follows:

1. Acknowledge receipt of proposed Town Plan amendment from Planning Commission.
2. Schedule Public Hearings for Town Plan amendment review (dates for two public hearings must be set - must be held not less than 30 nor more than 120 days after Town Plan submitted to Select Board by Planning Commission).
3. Hold Public Hearings (if substantial changes are made to the Town Plan, new public hearings must be warned).
5. Adopt resolution adopting Town Plan.

A suggested timetable for the Select Board's Town Plan adoption process is enclosed. Please contact me if you have any questions.

Enclosures

- Suggested Timeline for Select Board adoption process
- Proposed Town Plan amendment

**TOWN OF BENNINGTON
TOWN PLAN AMENDMENT ADOPTION
SUGGESTED ADOPTION SCHEDULE AND PUBLIC HEARING TIME LINE**

SELECT BOARD

Acknowledge receipt of proposed Town Plan Amendment. 11/13/17

Schedule Public Hearings re: adoption of Town Plan Amendment.
(Public Hearings could be held at Select Board Regular Meetings
on 1/08/18 and 1/22/18 or at special meetings.) 11/13/17

Send Warning of Public Hearings to Bennington Banner
for publication. 21 days
before first
hearing

1st and 2nd Public Hearing warning published in the
Bennington Banner. 15 days
before first
hearing

Post public Hearing notice (both meetings.) 15 days
before first
hearing

Select Board holds 1st Public Hearing. TBD

Select board holds 2nd Public Hearing. TBD

Select Board adopts Town Plan Amendment. TBD

NOTES:

1. The Select Board adopts the Plan amendment at a meeting which is held after the 2nd public hearing; the amendment becomes effective immediately.

2. 1st Public Hearing must be held no less than 30 days but not more than 120 days from submittal. If Select Board makes additional, substantial changes at any time after a Public Hearing, another two Public Hearings are required.

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

I. Introduction

The Town of Bennington recognizes that it is necessary to work toward a sustainable energy future in a manner that minimizes environmental impacts and supports the local economy. The purpose of this energy element is to further those goals and recommended actions by increasing public awareness of energy issues, assessing local energy use and conservation opportunities, reducing the number of energy-related dollars exported from the town, and evaluating the potential for utilization of various renewable energy resources to meet the town's stated goals of:

- Reducing our dependence on non-renewable and imported energy sources;
- Promoting energy conservation and efficiency in residential, commercial, and industrial structures and operations;
- Reducing energy consumption in all taxpayer funded buildings and operations; and
- Developing sustainable, local renewable energy resources.

These goals are consistent with Vermont's energy goals and policies, including:

- ◊ Obtaining 90% of energy for all uses from renewable sources by 2050;
- ◊ Reducing greenhouse gas emissions to 50% below 1990 levels by 2028 and 75% by 2050;
- ◊ Relying on in-state renewable energy sources to supply 25% of energy use by 2025;
- ◊ Improving the energy efficiency of 25% of homes by 2020;
- ◊ Meeting the Vermont Renewable Energy Standard through renewable generation and energy transformation.

A thorough understanding of energy and a plan to address future challenges is essential because energy is critical to every aspect of our lives. At the most basic level, we need the energy we obtain from food to survive. And it is the energy contained in oil, propane, and wood that heats our homes and the energy in gasoline and diesel fuel that moves our vehicles. Energy also generates the electricity that runs our appliances, machinery, computers, and telecommunication systems.

Most of the energy that we use, and have come to rely upon, is derived from "nonrenewable" fossil fuels and, to a lesser extent, nuclear fuels. This energy has been abundant and cheap, but supplies are becoming scarcer and oil, natural gas, coal, and uranium will become increasingly expensive to obtain. Moreover, serious and longstanding environmental concerns with coal mining, offshore oil drilling, acid rain, and other pollution resulting from fossil fuel use are now overshadowed by potentially catastrophic global climate change that is driven by the release of tens of millions of years of stored carbon in just a few decades.

Fortunately, alternative energy sources such as solar, wind, hydroelectric, and biomass-based fuels can provide significant amounts of clean energy well into the future. Developing these resources is extremely important, but the total amount of energy that can be extracted from such resources is markedly less than what we currently obtain from fossil fuels. To maintain a good quality of life, vibrant communities, and prospering economies, we will have to develop conservation strategies and improve energy efficiency as we transition to the widespread use of renewable energy.

II. Energy Use in Bennington

Bennington County Regional Energy Plan contains a detailed review of regional and statewide energy data. It shows that total energy consumption in Vermont has risen over the past 50 years and that during that time, the transportation sector eclipsed the residential sector as the largest consumer of energy (Figure 1). Over \$150 million is spent annually in the region on energy for space and

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

water heating, transportation, and electricity – with most of that money leaving the area to pay for imported fuels. The following section will provide estimates of current energy use by sector as well as projections illustrating the magnitude of conservation, efficiency, and transition to alternative fuels needed to meet Bennington’s energy goals.

Residential Sector Energy Demand

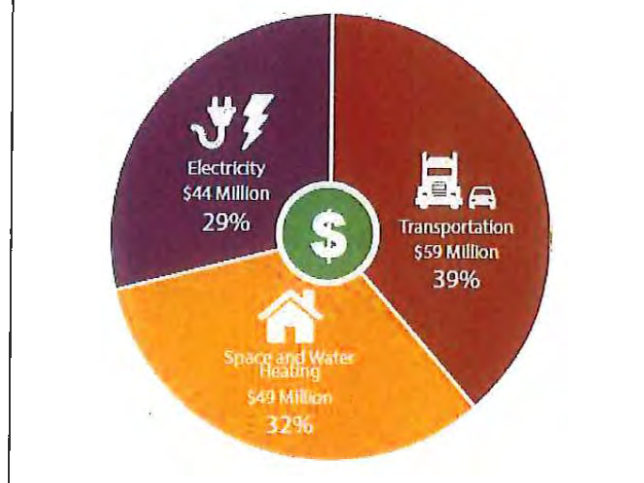
With over 6,000 residential units in Bennington, space and water heating and electricity usage for lighting and appliances consumes a large amount of energy and offers opportunities for considerable energy savings in the future. A majority of home heating in Bennington continues to rely on oil, although fuel switching to wood (particularly wood pellets in recent years) has been observed to occur with oil prices increase. Transportation energy demand also is influenced by the location of residential development, and that data will be presented separately in the discussion of the transportation sector.

The magnitude of residential energy consumption in Bennington can be estimated by considering the fuel usage of a typical Vermont home. An average single family home in the northeast requires approximately 60,000 Btu (British Thermal Units) of energy per square foot for annual space heating. A gallon of home heating oil contains approximately 140,000 Btu of energy. The average annual heating oil consumption of a Vermont home – 850 gallons – (based on an average house size of 2,000 square feet) is consistent with this data. An evaluation of the composition of Bennington’s housing stock and heating fuel and electricity usage provides an estimate of total residential energy consumption (Table 1).

It is useful to consider scenarios illustrating how this level of energy demand and accompanying mix of fuels may change over time in a way that would allow the town to meet its energy goals. The BCRC, working with the Vermont Energy Investment Corporation, made use of the Long-range Energy Alternatives Planning (“LEAP”) computer modeling tool to assess how the region’s energy demand profile might change over time based on a realistic trajectory toward achieving 90% of all energy from renewable sources by 2050.

The model first was run at the statewide level, and then adjusted based on regional conditions and the output customized for the Bennington Region. The resulting regional data was then used to provide town-level estimates (consequently, the data in Table 1 will not align perfectly with the LEAP data, but the trends and the magnitude of the changes are clear). Several key points become clear when looking at the overall residential energy demand for the Bennington County region (Figure 2). Of particular importance is the significant reduction in the total amount of energy used. The reduction displayed on the graph assumes continuing and effective deployment of existing conservation and efficiency programs plus additional measures that result in a further increase in the number of existing homes that are weatherized and additional efficiency gains from advanced heating and cooling systems (the “Avoided vs. Reference” blocks on the chart). The transitions in fuel usage (for space and water heating; i.e., not including non-thermal electric use) within the Town of Bennington that correlate with the regional LEAP scenario are outlined in Tables 2 and 3.

Figure 1. Energy Use by Sector in the Bennington Region.
Source: 2017 Bennington County Regional Energy Plan.



Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

Table 1. Estimate of Bennington’s annual residential energy use and cost.

	Residential Units	Total Oil Use (gallons)	Total LP Gas Use (gallons)	Total Wood Use (pellet bags)	Electric Use for Heat (kWh)	Non-heat Electric Use (kWh)
Single Family	3,508	2,414,850	501,800	44,280	3,080,000	24,556,000
Two-Family	638	335,900	69,160	6,096	425,600	3,828,000
Multi-Family	1,722	627,750	130,221	11,448	797,650	8,610,000
Mobile Home	510	265,200	55,328	4,925	345,800	2,550,000
Total	6,378	3,643,700	756,509	66,749	4,649,050	39,544,000
Cost Factor		\$2.50/gal	\$3.50/gal	\$5.00/bag	\$0.15/kWh	\$0.15/kWh
Total Cost		\$9,109,250	\$2,647,782	\$333,745	\$697,358	\$5,931,600

This data provides a rough estimate of total residential energy consumption and costs for Bennington. The combined total cost of residential purchases of heating oil, LP gas, wood/pellets, and electricity is \$18,719,735; with a population of 15,764, the per capita cost of residential energy use (not including transportation energy costs) is \$1,187. Data was obtained from the 2010 US Census, the Vermont State Data Center—Housing Statistics, and the US Energy Information Administration. The following assumptions were used in the calculations: average single-family house size of 2,000 square feet, two-family dwelling unit of 1,500 square feet, and multi-family dwelling unit at 1,000 square feet (estimates of fuel usage rounded to nearest 50 gallons of oil/lp gas and ratios used for wood and electric heating use calculations. Heating fuel usage for mobile homes were generated based on the two-family dwelling unit (larger than a typical mobile home) because of generally lower insulation values and inefficient heating geometry for mobile homes. Electric use estimated at 7,000 kWh per year for a single-family home, 6,000 kWh per year for a two-family dwelling unit, and 5,000 kWh per year for a multi-family dwelling unit and mobile home. Energy use for domestic hot water production assumed included in the space heating and/or electric usage data. “Wood” heat includes both cord wood and wood pellet fuel; for simplicity, quantities and cost are presented using only wood pellet data.

Trends evident in the LEAP projections (Figure 2) include a large-scale reduction in total energy use driven by conservation and efficiency, an increased reliance on electricity and liquid biofuels (such as biodiesel), and a larger share of remaining energy use from renewable wood products (cord wood and wood pellets). Under this LEAP scenario, these changes result from development of much more efficient buildings, through construction that meets or exceeds energy codes and weatherization of existing buildings, and greater reliance on electricity and liquid biofuels for home heating and cooling in the residential sector (as well as in the transportation sector, discussed later in this chapter).

The transition in home heating anticipated by the LEAP model is dramatic; by 2050 oil will have been phased out as a heating fuel and propane use will have been reduced by about 70 percent. Inefficient electric resistance heating systems also will be phased out, but efficient air source heat pumps, and some geothermal source heat pumps for new construction, will become a primary heating and cooling technology used in over 40 percent of the town’s housing units. Heat pumps represent a particularly valuable technology because they are powered by electricity that can be generated from renewable sources such as solar, wind, and hydro. Existing houses and apartments also can be converted relatively easily, and at moderate cost, from fossil fuel based heating systems to heat pumps. Heat pumps may need to be supplemented with alternative heating systems in extremely cold weather, but when combined with thorough weatherization, heat pumps can provide for most of a residential building’s heat load.

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

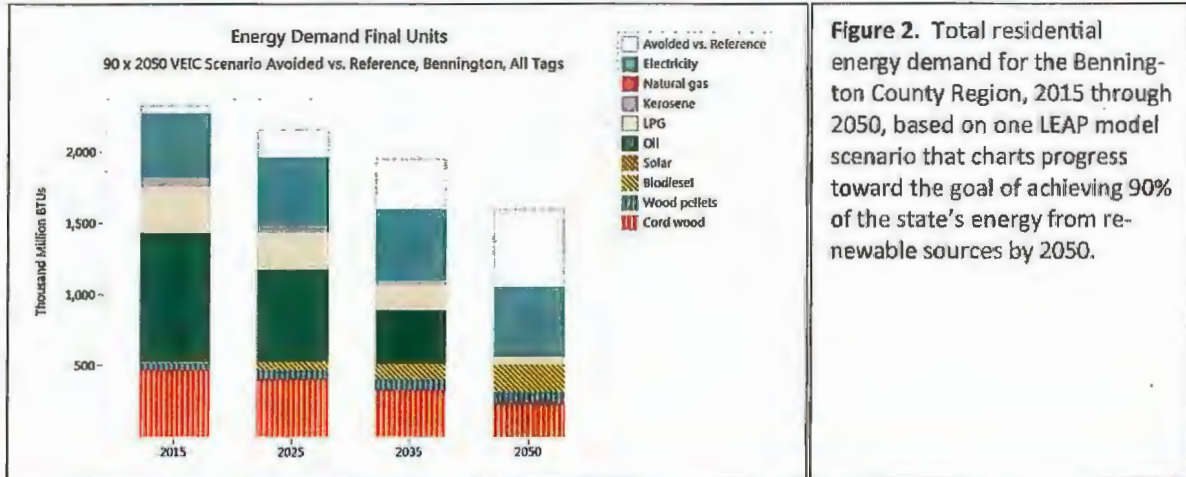


Figure 2. Total residential energy demand for the Bennington County Region, 2015 through 2050, based on one LEAP model scenario that charts progress toward the goal of achieving 90% of the state’s energy from renewable sources by 2050.

**Table 2 Total Residential Thermal Energy Demand By Fuel
Town of Bennington—LEAP 90x2050 Model Projections
Standard Fuel Measurement Units**

Fuel	2015	2025	2035	2050
Biodiesel (gallons)	35,691	191,434	347,177	590,525
Cord Wood (cords)	9,750	8,321	6,790	4,782
Wood pellets (tons)	1,179	1,656	1,907	2,158
Electric Resistance (kWH)	8,978,898	7,765,533	4,368,113	1,213,365
Heat Pump (kWH)	1,941,383	10,313,599	19,413,834	26,087,339
Kerosene (gallons)	196,267	138,000	82,800	-
LPG (gallons)	1,582,950	1,265,383	845,217	254,054
Oil (gallons)	2,723,466	1,944,043	1,134,527	-

**Table 3 Total Residential Thermal Energy Demand By Fuel
Town of Bennington - Number of Households**
Derived from Regional 90X2050 LEAP projections and adjusted to increase the number of households using heat pumps as a primary heat source.

Fuel	2015	2025	2035	2050
Biodiesel	35	199	432	1,144
Cord Wood	1,501	1,356	1,323	1,451
Wood pellets	150	223	307	540
Electric Resistance	236	216	145	63
Heat Pump	51	896	1,560	2,570
Kerosene	204	152	109	-
LPG	1,033	874	698	327
Oil	2,885	2,179	1,521	-
Total	6,095	6,095	6,095	6,095

Table 2 illustrates how the mix of fuels used to heat homes could change in Bennington consistent with meeting state energy goals and Table 3 shows how the number of households using each fuel source for heating changes over the same timeframe. Because of Bennington’s dense development, household heat pump use shown in Table 3 is increased beyond the level projected by the fuel comparison shown in Table 2.

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

Another fuel that may contribute to a relatively straightforward transition away from oil and propane based heating systems is biodiesel—with similar properties to petroleum diesel, but produced from oil crops such as canola, sunflower, and even algae. While efficiencies in production technologies are needed to make these fuels affordable and to meet renewable standards, once developed (an assumption built into this LEAP scenario), biodiesel powered furnaces and boilers can take advantage of existing fuel delivery infrastructure and in-home ductwork and plumbing.

Vermont has an abundant supply of wood that can be used for space heating. The LEAP scenarios project an increased reliance on wood as a thermal energy source for the residential sector, even though the total amount of wood energy use declines slightly (attributable to building efficiency improvements). The use of wood pellets, produced in or near the region, is expected to expand significantly, either as a primary home heating fuel or as a cold-weather supplement to air source heat pumps. Larger multifamily residential buildings and residential complexes such as apartment/condominium developments, dormitories, and even mobile home parks may convert to pellet or wood-chip based heating systems. A recent example of this efficient and renewable energy based residential “district heating” is the replacement of 29 oil-burning boilers at the 104 unit Applegate Apartment complex with a single efficient biomass boiler (together with major weatherization improvements to the buildings).

Commercial and Industrial Energy Demand

Bennington is an important center of business activity in southwestern Vermont so it is not surprising that energy consumption in those sectors is substantial. Annual expenditures on energy in the local commercial and industrial sectors are estimated to approach \$30 million (Table 4). In addition to on-site energy use, many businesses rely on shipments of raw materials to their facilities, exports of finished products to markets, and/or transportation of people to the region and to their

	Estimated Floor Area (square feet) (1)	Annual Electricity Consumption (KwH) (2)	Annual Oil/Gas Consumption (gallons) (2)
Manufacturing	1,234,000		
Commercial	4,721,624		
Total Consumption		89,957,000	5,404,216
Cost Factor (3)		\$0.15/KwH	\$3.00/gallon
Total Cost		\$13,493,550	\$16,216,390

(1) Floor area estimates were computed by multiplying the number of employees in each sector (2010 Vermont Department of Labor Covered Employment data) by 766 square feet (US EPA estimate of average commercial/industrial floor space per employee).

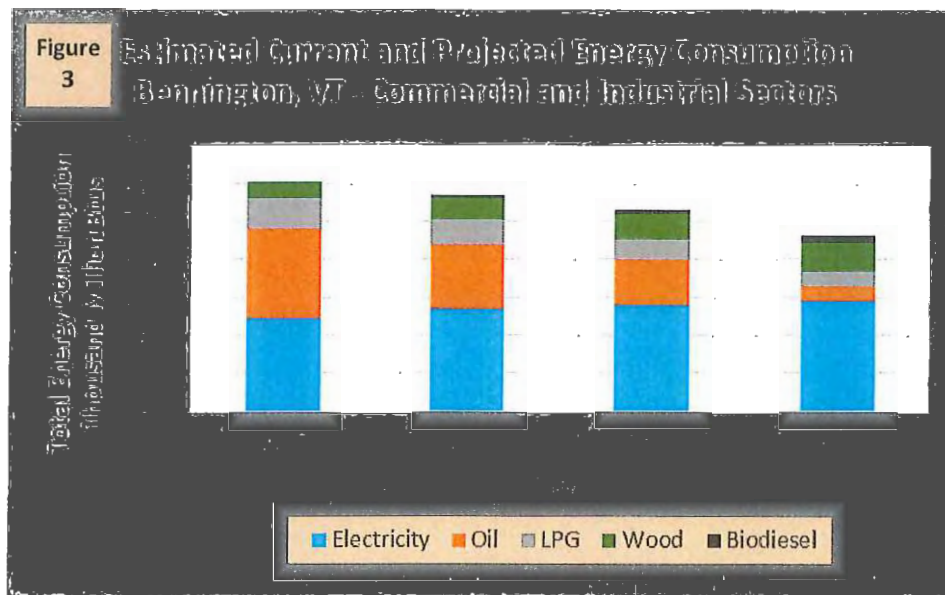
(2) Total manufacturing sector energy consumption was calculated by multiplying total floor area by 450,000 Btu/square foot (average of low and high estimates for various types of industries—data developed by E Source Companies, LLC “Managing Energy Costs in Manufacturing Facilities). Total commercial sector energy consumption was calculated by multiplying total floor area by 90,500 Btu/square foot (average for all commercial uses, US Energy Information Administration). For Oil and LP gas were combined for the analysis and Btu content used in the calculations (125,000 Btu/gallon is an average weighted slightly toward the Btu content of oil).

(3) Electricity consumption data obtained from Efficiency Vermont, based on actual metered usage. A cost factor of \$0.15 was used to be consistent with the residential rate, although varying commercial rates apply. Because oil and gas were combined, a conservative cost factor of \$3.00 was used in the calculations.

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

establishments. Those energy demands are accounted for in the transportation sector—which has seen a very large increase in consumption of fossil fuels in recent years.

The LEAP energy forecasting models project a decrease of over 20 percent in overall commercial and industrial energy demand in Bennington through 2050 (Figure 3). This reduction is achieved through both conservation and deployment of more efficient systems, often utilizing alternative fuels. Use of petroleum oil is expected to decline by over 80 percent during this period, while propane (LPG) use is expected to fall by over 50 percent. On the other hand, use of woody biomass, a locally available fuel, is projected to nearly double, while biodiesel consumption is expected to begin to become a regionally significant fuel in these sectors. Electricity use will displace much of the current nonrenewable fuel demand in these sectors while contributing to the overall reduction in energy consumption through use of more efficient electrical systems.



Municipal and Institutional Energy Usage

Local government, schools, colleges, and other institutional uses such as the Southwestern Vermont Medical Center all are major users of energy. The costs associated with energy use by those entities has a direct bearing on taxes and critical issues such as the cost of education and health care. Energy conservation and the use of alternative energy systems in this sector have the potential to produce significant savings and to promote economic development.

Municipal Government

The Town of Bennington relies on energy to provide services to the community. The town owns and operates several buildings, a large fleet of vehicles and equipment, and is responsible for other services such as the provision of water, disposal of wastewater, and street lighting. The town already has taken steps to reduce its energy use through use of more efficient lighting and equipment in office buildings, installation of a hydroelectric generator at the water treatment facility, and by pursuing other initiatives through Efficiency Vermont and other resources. An assessment of municipal energy use was conducted recently and is reported in this section.

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

Municipal Buildings and Infrastructure

Energy consumption data at five municipal buildings was gathered through a project coordinated by EPA's Energy Star initiative. Those buildings support a variety of services and are used in significantly different ways, so opportunities for energy savings in each will differ. Each of the buildings requires energy for space heating (and in the case of the Recreation Center, pool water heating) and electricity for lighting, air conditioning, office equipment, and other functions. Information on energy use at the water and wastewater facilities was obtained from recent municipal records. Total energy use and estimated costs for these buildings and related infrastructure is presented in Table 5.

Building	Oil / Cost (gallons @\$2.50)	Propane / Cost (gallons @\$3.50)	Electricity / Cost (kWh, rate specific to use)	Total Cost
Fire Station	6,222 \$15,555	154 \$539	99,624 \$13,947	\$30,041
BBC/BCIC	1,150 \$2,875	- -	12,432 \$1,492	\$4,367
Police Station	- -	18,420 \$64,470	212,940 \$27,684	\$92,154
Recreation Center	- -	54,000 \$189,000	173,400 \$36,414	\$155,677
Town Offices	2,961 \$7,403	<100 -	66,612 \$9,651	\$17,054
Water Department/ Filtration Plant	8,239** \$20,598	1,196** \$4,186	- \$32,911	\$57,695
Water Infrastructure*	- -	- -	- \$33,052	\$33,053
Wastewater Plant	6,216** 15,540	647** \$2,265	- \$171,671	\$189,476
Wastewater Infrastructure *	- -	- -	- \$5,705	\$5,705
Total	24,788 \$61,970	54,312 \$260,460	- \$332,527	\$654,957

* Infrastructure includes facilities such as pumping stations and other equipment that utilize electricity.
** Gallons imputed from cost information obtained from municipal records.

The Bennington Fire Station is a relatively new building, located on River Street. It houses the Bennington Fire Department's vehicles, equipment, and support offices and facilities. A large meeting room on the third floor is used for public meetings by local government and other organizations. Although the largest of the town-owned buildings surveyed, much of the building is not used on a daily basis and it includes a large garage area that is not heated to the level of the rest of the structure. As a consequence, heating fuel use is relatively low, averaging 6,222 gallons of oil per year. Electricity use at the building is significant, although the total cost is below the space heating expense. The monthly average of 8,320 kWh is typically exceeded by 50 percent during summer months (and is generally consistently lower the rest of the year), indicating that air conditioning probably is driving a significant portion of the electricity demand during warm weather. The Fire Station also uses a small amount of propane (approximately 150 gallons per year).

The "Blacksmith Shop" at the corner of South and Elm Streets, is leased to the Bennington Downtown Alliance (BDA). It encompasses 3,600 square feet and includes offices for several people on the first and second floors, a meeting room, and a visitor welcome center/display area. As a renovated

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

The Police Station must remain active around the clock every day, contributing to a high rate of electricity usage.

historic building with a high heating cost per square foot, it can be assumed that there exist significant opportunities for weatherization. Electricity use for the building averages approximately 1,036 kWh per month.

The Police Department is housed in the historic stone building on South Street that used to serve as a federal building. It includes 10,360 square feet of space, numerous office and meeting rooms, and significantly—from an energy perspective—is occupied twenty-four hours per day. The structure is heated with a propane-fired system that consumes an average of 18,420 gallons of that fuel each year. Although from a cost standpoint, propane use is the most significant at the building, it is the electricity consumption at the building that is most striking. The Police Station uses twice as much electricity per square foot as the Town Office Building and far more than the

Blacksmith Shop—attributable, in part, to its non-stop operation, but moisture, especially in the basement, requires constant use of pumps and dehumidifiers. The existing heating and air conditioning systems, and the design of the ductwork, results in further inefficiencies.

The Recreation Center, located on Gage Street, provides residents with access to a fitness center and an indoor swimming pool. The facility uses a considerable amount of propane, with demand highest in the winter months, but substantial year-round. Approximately 54,000 gallons of propane were used in 2012 (Table 5), but installation of two high-efficiency propane boilers and a high-efficiency propane pool heater has reduced propane use to 29,350 gallons.

The Town Office Building, located on South Street, includes the Town Clerk's office and most of the administrative activities that support the full range of services offered by the municipal government. The offices are housed in a renovated historic house—with additions—that occupies 6,214 square feet. Space heating is provided by an oil-fired system that, during the sampling period, used an average of 2,961 gallons of oil per year. Electricity use at the building is fairly consistent year-round, averaging just over 5,000 kWh per month.

The town operates public water supply and wastewater disposal systems that cover defined areas, primarily in the state-designated growth center. This infrastructure is essential to allow the type of concentrated development pattern that is consistent with the Town Plan and which leads to long-term energy savings. Both functions require considerable energy inputs, both to heat buildings and to operate equipment (Table 5). The water system, for example, utilizes numerous pumping stations that require a considerable amount of electrical energy and the wastewater treatment plant uses more electricity than any other municipal facility. As noted earlier, the town has taken steps to limit energy consumption; the hydroelectric generator at the water filtration plant and the decision to compost biosolids at the wastewater treatment plant are two examples. Efficiency Vermont has assigned an energy efficiency expert to work on a range of municipal projects, including planned improvements to the wastewater facilities which are expected to significantly improve overall energy efficiency.

Municipal Vehicles and Equipment

The town operates a sizeable fleet of vehicles and heavy equipment that use gasoline and diesel fuel. Total expenditures on fuel in a recent 12-month period were over \$200,000 (Table 6), and with

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

rising costs that number can be expected to increase significantly in the current and ensuing years. Several municipal departments (Fire, Recreation, Senior Center, Planning and Code Enforcement), use relatively little fuel for transportation and to operate their equipment, but others (Police, Highway, Water, and Wastewater) depend heavily on those fuels to accomplish their work.

Table 6. Fuel cost - municipal vehicles and equipment.

Department	Inventory	Annual Fuel Cost
Police	9 vehicles	\$54,607
Fire	6 trucks and one sedan	\$3,348
Recreation	1 pickup truck and 2 mowers	\$3,350
Senior Center	2 vans	\$2,904
Highway	10 dump trucks, 9 pickup trucks 16 pieces heavy equipment	\$113,291
Water	6 pickup trucks, 1 dump truck, 2 pieces heavy equipment	\$16,293
Wastewater	4 pickup trucks 5 pieces heavy equipment	\$9,194
Planning and Code Enforcement	1 sedan	\$547
Total		\$203,534

The Bennington Police Department has specific requirements for the types of vehicles it operates. The department has indicated a preference for SUVs because of their capacity and greater durability; use of hybrid SUVs and battery systems that allow for reduced idling might achieve significant fuel savings. Some limited patrols also are conducted on foot. The Highway Department, with its dump trucks, pickup trucks, and array of heavy equipment is the largest user of transportation fuel in the local government. Consequently, its costs will rise more rapidly than any other department as gasoline and diesel fuel costs increase. The Water and Wastewater Departments also rely on vehicles and heavy equipment, together spending over \$25,000 per year on transportation fuels.

Streetlighting

The town recently took advantage of a program coordinated by Efficiency Vermont whereby it replaced all of its old (mostly 150W high pressure sodium) streetlights with new energy efficient LED streetlights (the town also has identified 12 streetlights that are not necessary and which were removed altogether). The new LED streetlights are much more energy efficient, with 52W units replacing the old 150W high pressure sodium units. The light from the LED units also is much more "natural" and is distributed evenly, with very little wasted light or areas of overlapping illumination between adjacent lights. This streetlight replacement program has reduced electricity



New LED streetlights like this one have been installed throughout the town, saving energy, and saving the town about \$30,000 per year.

Bennington Town Plan Energy Element—approved by the Planning Commission—November 6, 2017

use by approximately 50% while saving the town over 20% on its streetlighting bill. The electric distribution company, Green Mountain Power, also benefits because it achieves comparable savings on the amount of electricity it must purchase.

Public Schools

The Bennington School District maintains three public elementary schools in town and the Mount Anthony Union District maintains the local public middle school and high school. The schools are of varying age and the relative energy efficiency of each is partially attributable to the original design and construction of the buildings (Table 7). Each of the schools has participated in at least one Efficiency Vermont and/or Vermont School Energy Management Program review, and a number of efficiency improvements have been implemented in the past, with major improvement projects being completed at the three elementary schools this year (summer of 2017). The transportation section of this plan considers the energy and health related benefits of walking, bicycling, carpooling, and use of school buses rather than personal vehicles.

Table 7. Recent annual energy use at Bennington's public schools (prior to current efficiency upgrades).									
School	Oil (gallons)	Oil Cost	Woodchips (Tons)	Woodchip Cost	Electricity (KWH)	Electricity Cost	Propane (gallons)	Propane Cost	Total Cost
Bennington Elementary	21,000	\$67,059	-	-	180,000	\$35,302	-	-	\$102,361
Molly Stark	14,000	\$54,238	-	-	380,000	\$59,911	-	-	\$114,149
Monument	9,000	\$29,250	-	-	120,000	\$19,429	-	-	\$48,679
MAUMS	13,000	\$43,137	810	\$52,555	958,000	\$114,476	3,500	\$5,100	\$215,268
MAUHS	20,000	\$76,590	1,100	\$65,924	1,600,000	\$185,686	6,900	\$11,843	\$340,043
Total	77,000	\$270,274	1,910	\$118,479	3,118,120	\$414,804	10,400	\$16,943	\$820,500
Notes									
Square feet of floor space in each school: Bennington Elementary—41,200; Molly Stark—52,000; Monument—24,000; MAUMS—150,000; MAUHS 225,000.									
Fuel and electricity consumption data obtained from the facilities director for each school district; in some cases consumption was averaged over more than one year. Cost data was obtained from annual reports using actual expenses.									

One of the most obvious differences between the schools has been the cost of heating the buildings. The three elementary schools are older than the middle school and high school, and the elementary schools have relied solely on oil for space heating. The secondary schools, on the other hand, each derive a significant portion of their heat from wood chip (biomass) based boilers that greatly reduce the utilization of more expensive heating oil. Annual heating costs at both the middle school and high school average approximately \$0.63 per square foot, while annual heating costs at the elementary schools have ranged from \$1.04 per square foot at Molly Stark to \$1.63 per square foot at Bennington Elementary.

All of the schools have benefited from some lighting system upgrades, with older interior fluorescent lights being replaced with energy-saving T-5 and T-8 lights, and inefficient exterior floodlights replaced with highly efficient LED lights. Estimated energy savings from these upgrades amounted to 153,000 KWH, and \$25,000, annually between the three elementary schools and an additional



EXHIBIT 14

Group by Municipality

All Documents

Plans & Bylaws home view

Find a file

-   Name Adoption Date RPC Date of Public Hearing Number of Likes

- Municipality : (4)**

- Municipality : ADDISON (2)**

- Municipality : ALBANY (1)**

- Municipality : ALBURGH (4)**

- Municipality : ANDOVER (6)**

- Municipality : ARLINGTON (7)**

- Municipality : ATHENS (2)**

- Municipality : BAKERSFIELD (6)**

- Municipality : BALTIMORE (5)**

- Municipality : BARNARD (6)**

- Municipality : BARNET (9)**

- Municipality : BARRE CITY (9)**




- Municipality : BARRE TOWN (11)**

- Municipality : BARTON (3)**

- Municipality : BELVIDERE (4)**

Municipality : BENNINGTON (22)

	Name	Adoption Date	RPC	Date of Public Hearing	Number of Likes
	Bennington_Adopted_(LandUse and Development)Bylaw_February_2004	2/23/2004	BCRC		Like
	Bennington_Adopted_LandUseMap_June_2022	5/23/2022	BCRC		Like
	Bennington_Adopted_MunicipalPlan_June_2024	6/24/2024	BCRC		Like
	Bennington_Adopted_MunicipalPlan_October_2010	10/11/2010	BCRC		Like
	Bennington_Adopted_MunicipalPlan_October_2015	10/6/2015	BCRC		Like
	Bennington_Adopted_SolarScreeningOrdinance_November_2015	11/9/2015	BCRC		Like
	Bennington_Adopted_ZoningBylawAmendments_June_2024	6/24/2024	BCRC		Like
	Bennington_AdoptedAmendment_Energy_MunicipalPlan_February_2018	1/2/2018	BCRC		Like
	Bennington_Proposed_LandUseDevelopmentRegulations_March_2024		BCRC	3/28/2024	Like
	Bennington_Proposed_MunicipalPlan_April_2015		BCRC	5/4/2015	Like
	Bennington_ProposedAmendments_LUDR_January_2021		BCRC	2/18/2021	Like
	Bennington_ProposedAmendment_LandUseDevelopmentRegulations_January_2022		BCRC	3/3/2022	Like
	Bennington_ProposedAmendment_MunicipalPlan_August_2017		BCRC		Like
	Bennington_ProposedAmendment_MunicipalPlan_January_2016		BCRC	2/15/2016	Like
	Bennington_ProposedAmendmentNotice_MunicipalPlan_August_2017		BCRC		Like
	Bennington_ProposedAmendments_LandUseandDevelopmentRegulations_January_2016		BCRC	2/1/2016	Like
	Bennington_ProposedLUDR_April8_2013		BCRC	4/8/2013	Like
	NorthBennington_Proposed_MunicipalPlan_September_2018		BCRC	10/23/2018	Like
	NorthBennington_ProposedAmendments_ZoningBylaw_April_2025		BCRC	4/16/2025	Like

	OldBenningtonVillage_ProposedAmendment_ZoningBylaw_April_2014	BCRC	4/24/2014	Like
	OldBenningtonVillage_ProposedAmendment_ZoningBylaw_November_2019	BCRC	12/12/2019	Like
	VillageNorthBennington_ProposedAmendments_MunicipalPlan_April_2025	BCRC	4/16/2025	Like

Municipality : **BENSON** (7)

Municipality : **BERKSHIRE** (7)

Municipality : **BERLIN** (16)

Municipality : **BETHEL** (8)

Municipality : **BOLTON** (12)

Municipality : **BRADFORD** (8)

Municipality : **BRAINTREE** (6)

Municipality : **BRANDON** (20)

Municipality : **BRATTLEBORO** (10)

Municipality : **BRIDGEWATER** (4)

Municipality : **BRIDPORT** (1)

Municipality : **BRIGHTON** (7)

Municipality : **BRISTOL** (5)

Municipality : **BROOKFIELD** (4)

Municipality : **BROOKLINE** (3)

Municipality : **BROWNINGTON** (4)

Municipality : **BRUNSWICK** (2)

Municipality : **BUELS GORE** (2)

Municipality : **BURKE** (8)

Municipality : **BURLINGTON** (54)

Municipality : **CABOT** (6)

Municipality : **CALAIS** (14)

Municipality : **CAMBRIDGE** (9)

Municipality : **CANAAN** (5)

Municipality : **CASTLETON** (14)

Municipality : **CAVENDISH** (5)

Municipality : **CHARLESTON** (2)

Municipality : **CHARLOTTE** (14)

Municipality : **CHELSEA** (10)

EXHIBIT 15

RESOLUTION FOR VCDP GRANT APPLICATION AUTHORITY

Single Applicant

WHEREAS, the Town _____ of Bennington _____ (hereinafter "Applicant") is applying for a Grant under the Vermont Community Development Program VCDP planning grant (PG) for Shires Housing merger _____; and WHEREAS, it is necessary that an application be made and agreements be entered into with the State of Vermont.

Now, THEREFORE, BE IT RESOLVED as follows:

1. that Applicant possesses the legal authority as defined in the State Act [10 VSA §683(8)] to apply for the grant and to administer the program; and
2. that Applicant apply for a grant under the terms and conditions of said program and agree hereby to enter into Certifications and Assurances there of; and
3. the Applicant has a duly adopted and current Municipal Plan from October 6, 2015 (Date Adopted) and that the project is consistent with said plan; and
4. the Applicant has received documentation from the Regional Planning Commission that the project is consistent with the "Regional Plan; and
5. that Shannon Barsotti _____ is hereby authorized to be Contact Person and as such to provide, on behalf of Applicant, all documents and information necessary for the completion of said application and to provide such coordination as may be necessary for said application; and
6. that (Name) Stuart Hurd _____ Title Bennington Town Manager _____ who is either the Chief Executive Officer (CEO), as defined by 10 VSA §683(8), or is the Town Manager, the City Manager, or the Town Administrator, is hereby designated to serve as the Municipal Authorizing Official (MAO) for the Grants Management On-line System, Intelligrants; and
7. that it is understood that, if the application is funded, the receipt of CDBG funds, as federal funds passed through the State of Vermont, may require that an audit of the Applicant be conducted under the provisions of the Single Audit Act, as amended, and that CDBG funds may be used to fund only a limited portion of the audit cost.

Passed this 26 day of August, 2024.

LEGISLATIVE BODY

The above resolution is a true and correct copy of the resolution as adopted at a meeting of the Legislative Body held on the 26 day of August, 2024, and duly filed in my office.

IN WITNESS WHEREOF, I hereunto set my hand this 26 day of August, 2024.

 Clerk

 Signature

RESOLUTION FOR VCDP GRANT APPLICATION AUTHORITY

Single Applicant

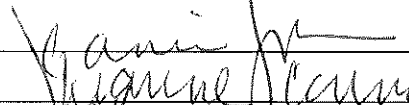

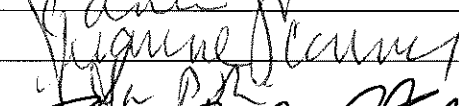
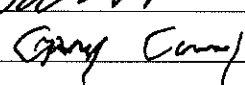
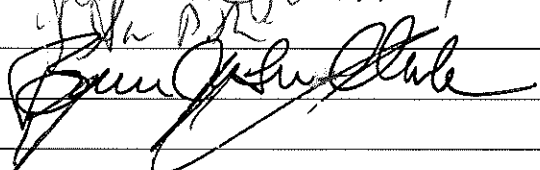
WHEREAS, the Town of Bennington (hereinafter "Applicant") is applying for a Grant under the Vermont Community Development Program; and
WHEREAS, it is necessary that an application be made and agreements be entered into with the State of Vermont.

Now, THEREFORE, BE IT RESOLVED as follows:

1. that Applicant possesses the legal authority as defined in the State Act [10 VSA §683(8)] to apply for the grant and to administer the program; and
2. that Applicant apply for a grant under the terms and conditions of said program and agree hereby to enter into Certifications and Assurances there of; and
3. the Applicant has a duly adopted and current Municipal Plan Oct. 2015 (Date Adopted) and that the project is consistent with said plan; and
4. the Applicant has received documentation from the Regional Planning Commission that the project is consistent with the "Regional Plan; and
5. that Shannon Barsothi is hereby authorized to be Contact Person and as such to provide, on behalf of Applicant, all documents and information necessary for the completion of said application and to provide such coordination as may be necessary for said application; and
6. that (Name) Stuart Hurd Title Town Manager who is either the Chief Executive Officer (CEO), as defined by 10 VSA §683(8), or is the Town Manager, the City Manager, or the Town Administrator, is hereby designated to serve as the Authorizing Official (AO) for the Grants Management On-line System, Intelligrants; and
7. that it is understood that, if the application is funded, the receipt of VCDP funds, as federal funds passed through the State of Vermont, may require that an audit of the Applicant be conducted under the provisions of the Single Audit Act, as amended, and that VCDP funds may be used to fund only a limited portion of the audit cost.

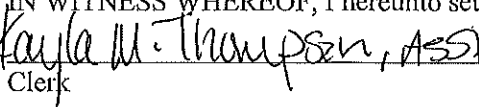
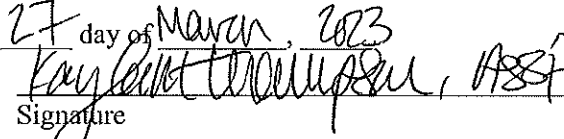
Passed this 27th day of March, 2023.

LEGISLATIVE BODY

The above resolution is a true and correct copy of the resolution as adopted at a meeting of the Legislative Body held on the 27th day of March, 2023, and duly filed in my office.

IN WITNESS WHEREOF, I hereunto set my hand this 27 day of March, 2023

	
Clerk	Signature

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: PLH Vineyard Sky LLC and Apple Hill Solar LLC
(b) County of Residence of First Listed Plaintiff: Palm Beach, FL
(c) Attorneys: Michael Melone, Allco Renewable Energy, 157 Church St., 19th Fl., New Haven CT 06510
DEFENDANTS: Town of Bennington, Vermont
County of Residence of First Listed Defendant: Bennington, VT
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known): Merrill Bent, Woolmington, Campbell, Bent, P.C., 4900 Main St., Manchester Ctr., VT 05244 merrill@greenmtlaw.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 2
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
CIVIL RIGHTS: 440 Other Civil Rights, 441 Voting, 442 Employment, 443 Housing/Accommodations, 445 Amer. w/Disabilities - Employment, 446 Amer. w/Disabilities - Other, 448 Education
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 2201, 2202
Brief description of cause: Declaratory Judgment Action concerning expiration of the Bennington Town Plan on October 6, 2023

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: May 2, 2025 SIGNATURE OF ATTORNEY OF RECORD: /s/ Michael Melone

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

EXHIBIT 10

Ethical Grounds

The Unofficial Blog of Vermont's Bar Counsel

ABA opinion concludes that the "no-contact" rule applies to self-represented lawyers. Should we amend Vermont's rule?

© SEPTEMBER 29, 2022 APRIL 16, 2024 👤 MICHAEL 💬 5 COMMENTS

The issue of whether a self-represented lawyer is subject to Rule 4.2's "no-contact" provision is not one with which I have much experience. Whether as disciplinary counsel or when I was the screener, if I ever reviewed a single complaint alleging such a violation, I don't remember it. Nor has the topic ever been broached in the context of an ethics inquiry. My only real work on the topic was in this post (<https://vtbarcounsel.wordpress.com/2016/12/22/tbt-1990-is-a-self-represented-lawyer-subject-to-rule-4-2/>), about the first decision ever issued after Vermont adopted a formal professional responsibility program.^[1]

Yesterday, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 502: Communication with a Represented Person by a Pro Se Lawyer (https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-502.pdf). The Committee concluded that a self-represented lawyer is bound by Rule 4.2. That is, when self-representing, a lawyer cannot communicate about the matter with another person who the lawyer knows to be represented in the matter without the consent of the represented person's lawyer or unless the communication is otherwise authorized by law.

I appreciate the opinion for several reasons.



(<https://vtbarcounsel.wordpress.com/wp-content/uploads/2022/01/legal-ethics.jpg>).

For one, the opinion is well-researched and provides interesting and informative detail about the history of the debate as to whether Rule 4.2 applies to a self-represented lawyer. For another, I don't necessarily disagree with the conclusion. As the Committee notes, "[t]he key evils intended to be managed by Model Rule 4.2 are (1) overreaching and deception; (2) interference with the integrity of the client-lawyer relationship; and (3) elicitation of uncounseled disclosures, including inappropriate acquisition of confidential lawyer-client communications." Thus, it makes sense to apply the rule to a self-represented lawyer.

Still, the opinion gives me pause. While I support the general conclusion, I'm drawn to the dissenting members' view. That pull leaves me wondering if we should amend V.R.Pr.C. 4.2. Alas, before I discuss the dissent, a bit more background is required.

Comment [4] to both the ABA Model Rule and Vermont's rule includes the following statement:

- "Parties to a matter may communicate directly with each other and a lawyer is not prohibited from advising a client concerning a communication that the client is legally justified to make."

The tension between this statement and the text of the rule drives the debate. Is the self-represented lawyer fish or fowl? That is, a "lawyer" subject to Rule 4.2? Or a "party" to whom Comment [4] applies? In Formal Opinion 502, the Committee answered by stating:

- "It is not possible for a pro se lawyer to 'take off the lawyer hat' and navigate around Rule 4.2 by communicating solely as a client."

Again, I don't necessarily disagree. However, as I indicated, I remain drawn to the dissent.

Like me, the dissent doesn't disagree with the Committee's conclusion, stating:

- "It is not the result I object to, it is the mode of rule construction that I cannot endorse. Self-representation is simply not 'representing a client,' nor will an average or even sophisticated reader of these words equate the two situations."

The dissent continues:

- "When an attorney consults the rule, it is highly unlikely that the phrase "in representing a client" will be considered to include self-representation. If the attorney goes further and consults Comment [4], the Comment will assure the attorney that, 'Parties to a matter may communicate directly with each other.' Given this apparent clarity, what will tip off the attorney that further research is required?"

Perhaps the same could be said for the represented person's lawyer. Which might explain why I don't remember this topic having come up very much over the past 24 years.

Finally, the dissent argues:

- "By leaving this rule in place, we are also leaving in place a trap. The rule should be amended to achieve the result advocated for in the majority opinion."

I tend to agree. And amending the rule wouldn't be difficult.^[2] Here's the relevant portion of Oregon's Rule 4.2, with my emphasis added.

- “In representing a client **or the lawyer’s own interests**, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless: (a) the lawyer has the prior consent of a lawyer representing such other person; (b) the lawyer is authorized by law or by court order to do so . . .”

In any event, that’s why I post today. To raise the question of whether to amend Rule 4.2.

To me, it’s an interesting question. Again, I don’t disagree with the conclusion that a no-contact rule should apply to self-represented lawyers.[3] However, many of the rules include phrases like “when representing a client” or “in representing a client.” If, for the purposes of Rule 4.2, a self-represented lawyer is “representing a client,” it’s interesting to consider the ramifications of construing other rules with like phrases to apply similarly.

I’m at risk of going on and on. So, I’ll stop. Please feel free to share thoughts, either in the comment section or by email to Michael.Kennedy@vermont.gov (<mailto:Michael.Kennedy@vermont.gov>).

As always, let’s be careful out there.

[1] PCB Decision 1 issued in August 1990, the same month that I began my first year in law school. While ostensibly about the application of no-contact rule to a self-represented attorney, the post was an excuse for me to include a picture taken around the same time. In that legions of Vermont lawyers may not now about my former flow, I’m sharing it again.



(<https://vtbarcounsel.wordpress.com/wp-content/uploads/2022/09/image-4.png>).

[2] Nor would it be the first time the rule was amended in response to a debate over its meaning. For many years, the rule prohibited communication with a “represented party.” Indeed, in 1994, the VBA issued this [advisory opinion](https://www.vtbar.org/wp-content/uploads/2021/03/94-03.pdf) (<https://www.vtbar.org/wp-content/uploads/2021/03/94-03.pdf>), in which it stated that “[t]he use of the term ‘party’ . . . read in light of the purpose of the rule is reasonably interpreted as extending to any person represented by counsel in matters closely related to the subject matter of the client’s representation.” The next year, and in response to the debate, the ABA changed the Model Rule to “represented person.” Vermont followed suit when it adopted the Model Rules in 1999.

[3] There are situations that make me wonder if the rule, either as currently written or amended, should include safe harbors that allow a self-represented lawyer to communicate with a represented person in specified situations. For instance, if a lawyer is self-represented in a contested divorce, can the lawyer communicate with their spouse about issues that, arguably, fall under the umbrella of “parental rights & responsibilities” that are at issue in the litigation? The safe harbors are a topic for another day.

☛ COMMUNICATING WITH A REPRESENTED PERSON

5 thoughts on “ABA opinion concludes that the ” no-contact” rule applies to self-represented lawyers. Should we amend Vermont’s rule?”

1.

Monday Morning Honors #262 – Ethical Grounds says:

October 3, 2022 at 9:32 am

[...] with a represented person without the consent of the represented person’s lawyer. See, this blog post. The post generated significant feedback. Then, we had an interesting discussion of [...]

2.

The no-contact rule, represented organizations, and . . . basketball? – Ethical Grounds says:

October 20, 2022 at 11:58 am

[...] ABA Opinion concludes that the no-contact rule applies to a self-represented lawyer. Should we amend... [...]

3.

Update on the no-contact rule and represented organizations. – Ethical Grounds says:

November 16, 2022 at 12:03 pm

[...] ABA Opinion concludes that the no-contact rule applies to a self-represented lawyer. Should we amend... [...]

4.

With an assist from facial recognition software, a lawyer was kicked out of a holiday show at Radio City Music Hall because she works at a firm that is suing the corporation that owns the venue. – Ethical Grounds

says:

January 3, 2023 at 2:33 pm

[...] ABA Opinion concludes that the no-contact rule applies to a self-represented lawyer. Should we amend... [...]

5.

Identified by facial recognition software, a lawyer was kicked out of a holiday show at Radio City Music Hall because she works at a firm that is suing the corporation that owns the venue. – Ethical Grounds

says:

January 3, 2023 at 2:36 pm

[...] ABA Opinion concludes that the no-contact rule applies to a self-represented lawyer. Should we amend... [...]

Comments are closed.

[CREATE A FREE WEBSITE OR BLOG AT WORDPRESS.COM.](#)

EXHIBIT 11

**U.S. District Court
District of Vermont (Rutland)
CIVIL DOCKET FOR CASE #: 5:20-cv-00034-gwc**

Allco Renewable Energy Limited et al v. Volz et al
Assigned to: District Judge Geoffrey W. Crawford
Demand: \$75,000,000
Cause: 42:1983 Civil Rights Act

Date Filed: 03/09/2020
Date Terminated: 03/29/2021
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Allco Renewable Energy Limited

represented by **Thomas M. Melone , Esq.**
Allco Renewable Energy Limited
601 S Ocean Blvd
Delray Beach, FL 33483
212-681-1120
Fax: 801-858-8818
Email: Thomas.Melone@AllcoUS.com
ATTORNEY TO BE NOTICED

Plaintiff

Otter Creek Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Chelsea Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Apple Hill Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

PLH LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

James Volz

represented by **Alison M. Stone , Esq.**
Office of the Vermont Attorney General
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Defendant

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Defendant

Anthony Roisman

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David R. McLean , Esq.
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ATTORNEY TO BE NOTICED

Laura B. Murphy , Esq.
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ATTORNEY TO BE NOTICED

Defendant

Sarah Hofmann

represented by **Alison M. Stone , Esq.**
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David R. McLean , Esq.
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ATTORNEY TO BE NOTICED

Laura B. Murphy , Esq.

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Defendant

Margaret Cheney

represented by **Alison M. Stone , Esq.**
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ATTORNEY TO BE NOTICED

David R. McLean , Esq.
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ATTORNEY TO BE NOTICED

Laura B. Murphy , Esq.
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Vermont Public Utility Commission

represented by **Alison M. Stone , Esq.**
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ATTORNEY TO BE NOTICED

David R. McLean , Esq.
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ATTORNEY TO BE NOTICED

Laura B. Murphy , Esq.
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Phil Scott
*in his official capacity of governor of the
State of Vermont*

represented by **Alison M. Stone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

David R. McLean , Esq.
(See above for address)
ATTORNEY TO BE NOTICED

Laura B. Murphy , Esq.
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Defendant

State of Vermont

represented by **Alison M. Stone , Esq.**
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ATTORNEY TO BE NOTICED

David R. McLean , Esq.
(See above for address)
ATTORNEY TO BE NOTICED

Laura B. Murphy , Esq.

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/09/2020	1	COMPLAINT against Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, VEPP Inc., Vermont Public Utility Commission, James Volz filed by Chelsea Solar LLC, Otter Creek Solar LLC, Allco Renewable Energy Limited, Apple Hill Solar LLC, PLH LLC. Summonses issued. (Attachments: # 1 Civil Cover Sheet) (esb) (Additional attachment(s) added on 3/10/2020: # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C) (law). (Entered: 03/09/2020)
03/09/2020	2	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by Allco Renewable Energy Limited, Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC (esb) (Entered: 03/10/2020)
03/10/2020	3	NOTICE OF DOCKET ENTRY CORRECTION re: 1 Complaint filed by Otter Creek Solar LLC, Chelsea Solar LLC, Apple Hill Solar LLC, PLH LLC, Allco Renewable Energy Limited. Exhibits A - C were omitted at the time of filing. The exhibits are now attached to 1 and this entry. (Attachments: # 1 Exhibit B, # 2 Exhibit C) (law) (Entered: 03/10/2020)
04/14/2020	4	NOTICE OF APPEARANCE by Merrill E. Bent, Esq on behalf of VEPP Inc.. (Attachments: # 1 Certificate of Service)(Bent, Merrill) (Main Document 4 replaced on 4/14/2020) (jlh). (Entered: 04/14/2020)
04/14/2020	5	STIPULATED MOTION for Extension of Time to File Answer filed by VEPP Inc.. (Attachments: # 1 Certificate of Service)(Bent, Merrill) Event/Text clarified on 4/14/2020 (jlh). (Entered: 04/14/2020)
04/14/2020	6	ORDER granting 5 MOTION for Extension of Time to Answer. VEPP Inc. answer due 6/15/2020. Signed by Chief Judge Geoffrey W. Crawford on 4/14/2020. (This is a text-only Order.) (jal) (Entered: 04/14/2020)
04/15/2020	7	NOTICE OF DOCKET ENTRY CORRECTION re: 4 Notice of Appearance filed by VEPP Inc. The incorrect document was uploaded at the time of docketing. The correct document is now attached to 4 as well as this entry. (jlh) (Entered: 04/15/2020)
04/27/2020	8	NOTICE OF APPEARANCE by David R. McLean, Esq on behalf of Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(McLean, David) (Entered: 04/27/2020)
04/27/2020	9	STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(McLean, David) (Entered: 04/27/2020)
04/28/2020	10	ORDER granting 9 MOTION for Extension of Time to Answer. Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission and James Volz answers due 7/16/2020. Signed by Chief Judge Geoffrey W. Crawford on 4/28/2020. (This is a text-only Order.) (jal) (Entered: 04/28/2020)
04/28/2020	11	NOTICE OF APPEARANCE by Laura B. Murphy, Esq on behalf of Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(Murphy, Laura) (Entered: 04/28/2020)
05/15/2020	12	WAIVER OF SERVICE Returned Executed: Margaret Cheney waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)

05/15/2020	13	WAIVER OF SERVICE Returned Executed: Phil Scott waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/15/2020	14	WAIVER OF SERVICE Returned Executed: Sarah Hofmann waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/15/2020	15	WAIVER OF SERVICE Returned Executed: Vermont Public Utility Commission waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/15/2020	16	WAIVER OF SERVICE Returned Executed: Anthony Roisman waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/15/2020	17	WAIVER OF SERVICE Returned Executed: State of Vermont waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/15/2020	18	WAIVER OF SERVICE Returned Executed: James Volz waiver sent on 4/17/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/15/2020	19	WAIVER OF SERVICE Returned Executed: VEPP Inc. waiver sent on 3/19/2020, answer due 7/16/2020.(Melone, Thomas) (Entered: 05/15/2020)
05/29/2020	20	NOTICE OF APPEARANCE by Alison M. Stone, Esq on behalf of Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(Stone, Alison) (Entered: 05/29/2020)
06/30/2020	21	STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(McLean, David) Event/text clarified, link removed on 6/30/2020 (law). (Entered: 06/30/2020)
07/06/2020	22	ORDER granting 21 MOTION for Extension of Time to Answer re 1 Complaint. All Defendants Answers due August 19, 2020. Signed by Chief Judge Geoffrey W. Crawford on 7/6/2020. (This is a text-only Order.) (jal) (Entered: 07/06/2020)
07/16/2020	23	STIPULATED DISCOVERY LETTER SENT re: no stipulated discovery schedule filed; case will be set for a scheduling conference unless stipulated schedule is filed. (pjl) (Entered: 07/16/2020)
07/28/2020	24	STIPULATED MOTION to Stay Discovery filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(McLean, David) (Entered: 07/28/2020)
07/30/2020	25	ORDER granting 24 MOTION to Stay Discovery. Signed by Chief Judge Geoffrey W. Crawford on 7/30/2020. (This is a text-only Order.) (jal) (Entered: 07/30/2020)
08/19/2020	26	STIPULATED MOTION for Leave to Exceed Page Limit re: 27 Motion to Dismiss filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(McLean, David) Link added on 8/20/2020 (jlh). (Entered: 08/19/2020)
08/19/2020	27	MOTION to Dismiss filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I)(McLean, David) (Entered: 08/19/2020)
08/19/2020	28	ORDER granting 26 MOTION for Leave to Exceed Page Limit re: 27 Motion to Dismiss. Signed by Chief Judge Geoffrey W. Crawford on 8/19/2020. (This is a text-only Order.) (jal) Link added on 8/20/2020 (jlh). (Entered: 08/19/2020)

08/19/2020	29	MOTION to Dismiss filed by VEPP Inc.. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H) (Bent, Merrill) (Entered: 08/19/2020)
9/08/2020	30	STIPULATED MOTION for Extension of Time to File Response/Reply as to 27 MOTION to Dismiss , 29 MOTION to Dismiss filed by Allco Renewable Energy Limited, Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC.(Melone, Thomas) (Entered: 09/08/2020)
09/09/2020	31	ORDER granting 30 MOTION for Extension of Time to File Response/Reply as to 27 and 29 MOTIONS to Dismiss. Time extended to November 17, 2020. Signed by Chief Judge Geoffrey W. Crawford on 9/9/2020. (This is a text-only Order.) (jal) (Entered: 09/09/2020)
11/12/2020	32	STIPULATED MOTION for Extension of Time to File Response/Reply as to 27 MOTION to Dismiss , 29 MOTION to Dismiss filed by Allco Renewable Energy Limited, Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC.(Melone, Thomas) (Entered: 11/12/2020)
11/13/2020	33	ORDER granting 32 STIPULATED MOTION for Extension of Time to File Response/Reply re 29 MOTION to Dismiss, 27 MOTION to Dismiss. Response due November 27, 2020; Reply due December 20, 2020. Signed by Chief Judge Geoffrey W. Crawford on 11/13/2020. (This is a text-only Order.) (jal) (Entered: 11/13/2020)
11/27/2020	34	RESPONSE in Opposition re 27 MOTION to Dismiss filed by State Defendants filed by Allco Renewable Energy Limited, Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC. (Melone, Thomas) (Entered: 11/27/2020)
11/27/2020	35	RESPONSE in Opposition re 29 MOTION to Dismiss filed by VEPP Inc. filed by Allco Renewable Energy Limited, Apple Hill Solar LLC, Chelsea Solar LLC, Otter Creek Solar LLC, PLH LLC. (Melone, Thomas) (Entered: 11/27/2020)
12/18/2020	36	REPLY to Response to 27 MOTION to Dismiss filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz. (McLean, David) (Additional attachment(s) added on 12/18/2020: # 1 Exhibit A, # 2 Exhibit B) (jlh). (Entered: 12/18/2020)
12/18/2020	37	STIPULATED MOTION for Leave to Exceed Page Limit re 36 Reply to Response to Motion filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman, Phil Scott, State of Vermont, Vermont Public Utility Commission, James Volz.(McLean, David) (Entered: 12/18/2020)
12/18/2020	38	NOTICE OF DOCKET ENTRY CORRECTION re: 36 Reply to Response to 27 MOTION to Dismiss filed by Vermont Public Utility Commission, Sarah Hofmann, Margaret Cheney, State of Vermont, Phil Scott, Anthony Roisman, James Volz. Exhibits A and B were not included at the time of filing. The exhibits are now attached to 27 as well as this entry. (Attachments: # 1 Exhibit B) (jlh) (Entered: 12/18/2020)
12/18/2020	39	REPLY to Response to 29 MOTION to Dismiss filed by VEPP Inc.. (Bent, Merrill) (Entered: 12/18/2020)
12/21/2020	40	ORDER granting 37 MOTION to Exceed Page Limit re 36 Reply to Response to 27 Motion to Dismiss. Signed by Chief Judge Geoffrey W. Crawford on 12/21/2020. (This is a text-only Order.) (jal) Link added on 12/22/2020 (jlh). (Entered: 12/21/2020)
02/12/2021	41	NOTICE of Hearing re: 27 , 29 MOTIONS to Dismiss. Motions Hearing set for 2/17/2021 at 2:00 PM in Rutland Courtroom before Chief Judge Geoffrey W. Crawford, by video conference. (pjl) (Entered: 02/12/2021)

02/17/2021	42	MINUTE ENTRY for proceedings held before Chief Judge Geoffrey W. Crawford: Motion Hearing held on 2/17/2021 re: 27 , 29 MOTIONS to Dismiss. T. Melone, Esq. present for all plaintiffs. A. Stone, AAG, D. McLean, AAG & L. Murphy, AAG present for defendants Vermont Public Utility Commission, Sarah Hofmann, Margaret Cheney, State of Vermont, Phil Scott, Anthony Roisman, and James Volz. M. Bent, Esq. present for defendant VEPP Inc. Court makes inquiries and counsel make statements. ORDERED: 27 , 29 MOTIONS to Dismiss are taken under advisement. (Court Reporter: Anne Henry) (pjl) (Entered: 02/17/2021)
03/26/2021	43	ORDER granting 27 Motion to Dismiss; granting 29 Motion to Dismiss. Signed by Chief Judge Geoffrey W. Crawford on 3/26/2021. (kp) (Entered: 03/26/2021)
03/29/2021	44	JUDGMENT - This case is DISMISSED. Signed by Deputy Clerk on 3/29/2021. (Attachments: # 1 Notice to Litigants (appeal period expires 4/28/2021)) (esb) (Entered: 03/29/2021)

PACER Service Center			
Transaction Receipt			
07/22/2025 16:08:47			
PACER Login:	ph0120MFH	Client Code:	
Description:	Docket Report	Search Criteria:	5:20-cv-00034-gwc
Billable Pages:	7	Cost:	0.70

**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:20-cv-00044-kjd**

Allco Renewable Energy Limited et al v. Kulkin et al
Assigned to: Judge Kevin J. Doyle
Demand: \$25,000,000
Cause: 28:1332 Diversity-Libel, Assault, Slander

Date Filed: 03/19/2020
Date Terminated: 02/02/2022
Jury Demand: Defendant
Nature of Suit: 320 Assault Libel & Slander
Jurisdiction: Diversity

Plaintiff

Allco Renewable Energy Limited

represented by **Thomas M. Melone , Esq.**
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601 S Ocean Blvd
Delray Beach, FL 33483
212-681-1120
Fax: 801-858-8818
Email: thomas.melone@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

Otter Creek Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Thomas Melone

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

PLH Vineyard Sky LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Joseph Kulkin

represented by **Joseph Kulkin**
338 Main Street
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Email: jkulkin71@gmail.com
PRO SE

Defendant

Jane Does 1-3

Defendant

John Does 1-3**ENE Evaluator****ENE Evaluator***TERMINATED: 08/16/2021*

represented by **Michael J. Marks , Esq.**
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TERMINATED: 08/16/2021
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TERMINATED: 02/11/2021
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/19/2020	<u>1</u>	COMPLAINT against Joseph Kulkin, Jane Does 1-3, John Does 1-3, filed by Allco Renewable Energy Limited, Otter Creek Solar LLC, Thomas Melone, and PLH Vineyard Sky LLC. Summons issued. LR 73 Forms issued. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet) (eh) (Entered: 03/20/2020)
03/19/2020	<u>2</u>	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by Allco Renewable Energy Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (eh) Modified on 3/20/2020 to correct file date (eh). (Entered: 03/20/2020)
05/08/2020	<u>3</u>	ORDER: On or before 5/26/2020, Plaintiffs shall return executed their Magistrate Judge Assignment Form in accordance with Local Rule 73(c) and shall also file their Corporate Disclosure Statement(s) pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1. Signed by Judge John M. Conroy on 5/8/2020. (eh) (Entered: 05/08/2020)
05/15/2020	<u>4</u>	Entry removed from the docket. (Entered: 05/15/2020)
05/15/2020	5	NOTICE OF DOCKET ENTRY REMOVAL - Document 4 has been removed from the docket as filed in error. (law) (Entered: 05/15/2020)
05/19/2020	<u>6</u>	CONSENT to Direct Assignment by Allco Renewable Energy Limited, Otter Creek Solar LLC, Thomas Melone, and PLH Vineyard Sky LLC. (eh) (Entered: 05/19/2020)
06/11/2020	<u>7</u>	AFFIDAVIT of Service filed by Allco Renewable Energy Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC, Thomas Melone. Joseph Kulkin served on 5/29/2020, answer due 6/19/2020(Melone, Thomas) (Main Document 7 replaced and additional attachment(s) added on 6/12/2020: # <u>1</u> Proof of Service) (law). (Entered: 06/11/2020)
06/12/2020	<u>8</u>	NOTICE OF DOCKET ENTRY CORRECTION re: <u>7</u> Affidavit of Service filed by Otter Creek Solar LLC, Thomas Melone, Allco Renewable Energy Limited, PLH Vineyard Sky LLC. The main document was combined with it's attachment as a singular PDF. Also, the attachment omitted page 1 of 2. The documents have been broken apart and are now

		separately, completely attached to 7 and this entry. (Attachments: # 1 Proof of Service) (law) (Entered: 06/12/2020)
06/18/2020	9	ANSWER to Complaint by Joseph Kulkin. (Attachments: # 1 Public Utility Commission Order) (eh) (Main Document 9 replaced on 6/29/2020) (law). (Entered: 06/19/2020)
06/18/2020	10	CONSENT to Direct Assignment by Joseph Kulkin. (eh) (Entered: 06/19/2020)
06/29/2020	11	NOTICE OF DOCKET ENTRY CORRECTION re: 9 Answer to Complaint filed by Joseph Kulkin. The main document was not signed and has been replaced. The signed document is now attached to 9 and this entry. (law) (Entered: 06/29/2020)
06/29/2020	12	MOTION to Dismiss 1 Complaint filed by Joseph Kulkin. (Attachments: # 1 Certificate of Service) (eh) (Entered: 06/29/2020)
07/06/2020	14	CERTIFICATE OF SERVICE by Joseph Kulkin re 9 Answer to Complaint. (eh) (Entered: 07/17/2020)
07/14/2020	13	ORDER: On or before 7/31/2020, Defendant shall file a Certificate of Service as evidence of service of his 9 Answer to Complaint upon counsel for the Plaintiffs. Signed by Judge John M. Conroy on 7/14/2020. (This is a text-only Order) (eh) (Entered: 07/14/2020)
07/27/2020	15	RESPONSE in Opposition re 12 MOTION to Dismiss filed by Allco Renewable Energy Limited, Thomas Melone, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 07/27/2020)
08/12/2020	16	REPLY to Response to 12 MOTION to Dismiss filed by Joseph Kulkin. (Attachments: # 1 Petitioner's Motion to Resolve Outstanding Issues, # 2 Certificate of Service) (hbc) (Entered: 08/12/2020)
08/18/2020	17	NOTICE of Hearing re: 12 MOTION to Dismiss. Motion Hearing via video conference set for 9/9/2020 9:30 AM before Judge John M. Conroy. (hbc) (Entered: 08/18/2020)
09/09/2020	18	MINUTE ENTRY for proceedings held before Judge John M. Conroy: Motion Hearing held on 9/9/2020 re 12 MOTION to Dismiss filed by Joseph Kulkin. Present via video conference are Atty Thomas Melone on behalf of Pltfs and deflt Joseph Kulkin proceeding pro se. Arguments by counsel. ORDERED: Motion Taken Under Advisement: 12 MOTION to Dismiss. (Court Reporter: Recorded) (hbc) (Entered: 09/09/2020)
11/02/2020	19	OPINION AND ORDER denying 12 Motion to Dismiss. Signed by Judge John M. Conroy on 11/2/2020. (eh) (Entered: 11/02/2020)
11/06/2020	20	STIPULATED DISCOVERY LETTER SENT re: no stipulated discovery schedule filed; case will be set for a scheduling conference unless stipulated schedule is filed. (eh) (Entered: 11/06/2020)
11/06/2020	21	ENE LETTER re: Potential Evaluators sent; responses due by 11/23/2020. (eh) (Entered: 11/06/2020)
11/20/2020	22	EVALUATOR SELECTION Response by Joseph Kulkin (eh) (Entered: 11/20/2020)
11/23/2020	23	STIPULATION AS TO ENE by all parties.(Melone, Thomas) (Entered: 11/23/2020)
11/24/2020	24	ASSIGNED Early Neutral Evaluator: Potter Stewart, Jr., Esq. (eh) (Entered: 11/24/2020)
12/01/2020	25	PROPOSED Stipulated Discovery Schedule/Order by Allco Renewable Energy Limited, Thomas Melone, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 12/01/2020)
12/01/2020	26	STIPULATED DISCOVERY SCHEDULE/ORDER Discovery due by 6/30/2021. Motions due by 8/8/2021. Early Neutral Evaluation set for 1/15/2021 at 10:00 AM. Ready for Trial

		by 11/1/2021. Signed by Judge John M. Conroy on 12/1/2020. (eh) (Entered: 12/01/2020)
02/11/2021	27	REPORT of Early Neutral Evaluator.(Stewart, Jr., Potter) (Entered: 02/11/2021)
02/12/2021	28	DISCOVERY CERTIFICATE - Answer to Interrogatories by Joseph Kulkin.(Kulkin, Joseph) (Main Document 28 replaced on 2/16/2021) (law). (Entered: 02/12/2021)
02/15/2021	29	DISCOVERY CERTIFICATE - Notice of Discovery by Joseph Kulkin. (Kulkin, Joseph) (Main Document 29 replaced and attachment removed on 2/16/2021) (law). (Entered: 02/15/2021)
02/16/2021	30	NOTICE OF DOCKET ENTRY CORRECTION re: 28 and 29 Discovery Certificates filed by Joseph Kulkin. The documents have been replaced to include a caption with the court's name, a title and file number. The corrected documents are now attached to 28 , 29 and this entry. (Attachments: # 1 Document 29) (law) (Entered: 02/16/2021)
03/12/2021	31	MOTION to Quash <i>Subpoena</i> , MOTION for Protective Order , MOTION for Sanctions filed by Annette Smith. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4 # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Certificate of Service)(Dingledine, L.) Attachment descriptions clarified on 3/17/2021 (law). (Entered: 03/12/2021)
03/15/2021	32	AMENDED MOTION to Quash <i>Subpoena</i> , AMENDED MOTION for Protective Order, and AMENDED MOTION for Sanctions filed by Annette Smith. (Attachments: # 1 Exhibit 2, # 2 Certificate of Service)(Dingledine, L.). Clarified event, removed link and Added MOTION for Protective Order, MOTION for Sanctions on 3/16/2021 (law). (Entered: 03/15/2021)
03/15/2021	33	MOTION to Amend 31 MOTION to Quash <i>Subpoena</i> , MOTION for Protective Order, and MOTION for Sanctions filed by Annette Smith. (Attachments: # 1 Redline-Strikeout version of Affidavit, # 2 Certificate of Service)(Dingledine, L.) Link removed, text clarified on 3/16/2021 (law). (Entered: 03/15/2021)
03/24/2021	34	CASE reassigned to Judge Kevin J. Doyle. Judge John M. Conroy is retired effective March 21, 2021 and is no longer assigned to the case. (law) (Entered: 03/24/2021)
03/26/2021	35	RESPONSE in Opposition re 32 AMENDED MOTION to Quash <i>Subpoena</i> , AMENDED MOTION for Protective Order, and AMENDED MOTION for Sanctions, 31 MOTION to Quash <i>Subpoena</i> , MOTION for Protective Order, MOTION for Sanctions filed by Allco Renewable Energy Limited, Thomas Melone, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Affidavit of Thomas Melone)(Melone, Thomas) Link removed on 3/29/2021 (law). (Entered: 03/26/2021)
04/09/2021	36	REPLY to Response to 32 AMENDED MOTION to Quash <i>Subpoena</i> , AMENDED MOTION for Protective Order, and AMENDED MOTION for Sanctions filed by Annette Smith. (Attachments: # 1 Certificate of Service)(Dingledine, L.) (Entered: 04/09/2021)
05/06/2021	37	STIPULATED MOTION to Extend the Discovery Schedule/Order filed by Allco Renewable Energy Limited, Thomas Melone, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) Event/text corrected on 5/7/2021. (hbc) (Entered: 05/06/2021)
05/18/2021	38	STIPULATED MOTION to Hold Case in Abeyance Pending Results of Mediation filed by Annette Smith. (Attachments: # 1 Certificate of Service) (Dingledine, L.) Event/text clarified on 5/18/2021. (hbc) (Entered: 05/18/2021)
05/19/2021	39	ORDER granting 38 STIPULATED MOTION to Hold Case in Abeyance Pending Results of Mediation. Signed by Judge Kevin J. Doyle on 5/19/2021. (This is a text-only Order.) (hbc) (Entered: 05/19/2021)

08/16/2021	40	REPORT of Early Neutral Evaluator. (Attachments: # 1 Certificate of Service)(Marks, Michael) (Entered: 08/16/2021)
08/18/2021	41	CORRECTED/REVISED REPORT of Early Neutral Evaluator. (Attachments: # 1 Certificate of Service) (Marks, Michael) Text clarified on 8/18/2021. (hbc) (Entered: 08/18/2021)
10/06/2021	42	NOTICE of Hearing: Status Conference via video conference set for 10/20/2021 10:00 AM before Judge Kevin J. Doyle. (hbc) (Entered: 10/06/2021)
10/20/2021	43	MINUTE ENTRY for proceedings held before Judge Kevin J. Doyle: Status Conference held on 10/20/2021. Present by video conference are Atty Thomas Melone for Plaintiffs, Defendant Joseph Kulkin, pro se, and Atty L. Brooke Dingledine for Movant Annette Smith. Court makes inquiries. Statements by parties. ORDERED: Parties to file an amended Motion to Extend Discovery Schedule/Order. Hearing on pending motions will be scheduled to occur in November. (Court Reporter: Recorded) (hbc) (Entered: 10/20/2021)
10/29/2021	44	ERRATA re: 32 AMENDED MOTION to Quash <i>Subpoena</i> , AMENDED MOTION for Protective Order, AMENDED MOTION for Sanctions by Annette Smith. (Attachments: # 1 Table of Exhibits, # 2 Certificate of Service)(Dingledine, L.) Text clarified on 10/29/2021 (hbc). (Entered: 10/29/2021)
11/02/2021	45	NOTICE of Hearing re: 31 MOTION to Quash <i>Subpoena</i> , MOTION for Protective Order, MOTION for Sanctions; 32 AMENDED MOTION; and 33 MOTION to Correct. Motion Hearing via video conference set for 11/18/2021 9:00 AM before Judge Kevin J. Doyle. (hbc) (Entered: 11/02/2021)
11/17/2021	46	NOTICE of Additional Production re: 32 AMENDED MOTION to Quash <i>Subpoena</i> , AMENDED MOTION for Protective Order, and AMENDED MOTION for Sanctions filed by Allco Renewable Energy Limited, Thomas Melone, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Exhibit)(Melone, Thomas) Text clarified on 11/21/2021 (law). (Entered: 11/17/2021)
11/18/2021	47	MINUTE ENTRY for proceedings held before Judge Kevin J. Doyle: Motion Hearing held on 11/18/2021 re 31 MOTION to Quash <i>Subpoena</i> , MOTION for Protective Order, MOTION for Sanctions; 32 AMENDED MOTION to Quash <i>Subpoena</i> , AMENDED MOTION for Protective Order, AMENDED MOTION for Sanctions; 33 MOTION to Amend 31 ; and 37 STIPULATED MOTION to Extend the Discovery Schedule/Order. Present by video conference are Atty Thomas Melone for Plaintiffs, Defendant Joseph Kulkin, pro se, and Atty L. Brooke Dingledine for Movant Annette Smith. Court makes inquiries. Arguments by counsel. ORDERED: Motions taken under advisement. (Court Reporter: Recorded) (hbc) (Entered: 11/19/2021)
12/06/2021	48	ORDER: Smith's 33 MOTION to Amend 31 Motion to Quash Subpoena, Motion for Protective Order, and Motion for Sanctions is GRANTED; Smith's initial 31 MOTION to Quash Subpoena, MOTION for Protective Order, and MOTION for Sanctions is DENIED as moot given the granting of 33 Motion to Amend; Smith's 32 AMENDED MOTION to Quash Subpoena is GRANTED; the 32 AMENDED MOTION for Protective Order and AMENDED MOTION for Sanctions are DENIED. 37 STIPULATED MOTION to Extend the Discovery Schedule/Order is DENIED. The parties are ORDERED to confer and file a proposed new discovery schedule/order within 30 days. Signed by Judge Kevin J. Doyle on 12/6/2021. (hbc) (Entered: 12/06/2021)
12/24/2021	49	STIPULATION of Dismissal Without Prejudice by Allco Renewable Energy Limited, Thomas Melone, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 12/24/2021)

PACER Service Center			
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07/22/2025 16:11:22			
PACER Login:	ph0120MFH	Client Code:	
Description:	Docket Report	Search Criteria:	2:20-cv-00044-kjd
Billable Pages:	5	Cost:	0.50

**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:20-cv-00103-mkl**

Allco Finance Limited et al v. Roisman et al
Assigned to: District Judge Mary Kay Lanthier
Cause: Federal Regulation and Development of Power

Date Filed: 07/21/2020
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Allco Finance Limited

represented by **Thomas M. Melone , Esq.**
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ATTORNEY TO BE NOTICED

Plaintiff

Otter Creek Solar LLC

represented by **Thomas M. Melone , Esq.**
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ATTORNEY TO BE NOTICED

Plaintiff

PLH Vineyard Sky LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Anthony Roisman
*in his official capacity as commissioner of
the Vermont Public Utility Commission*

represented by **Alison M. Stone , Esq.**
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Defendant

Sarah Hofmann
*in her official capacity as commissioner of
the Vermont Public Utility Commission
TERMINATED: 10/12/2021*

represented by **Alison M. Stone, Esq.**
(See above for address)
*TERMINATED: 05/18/2021
ATTORNEY TO BE NOTICED*

David R. McLean, Esq.
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Margaret Cheney
*in her official capacity as commissioner of
the Vermont Public Utility Commission*

represented by **Alison M. Stone, Esq.**
(See above for address)
*TERMINATED: 05/18/2021
ATTORNEY TO BE NOTICED*

David Golubock, AUSA
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ATTORNEY TO BE NOTICED

David R. Groff, Esq.
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David R. McLean, Esq.
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Defendant

Riley Allen
*in his official capacity as commissioner of
the Vermont Public Utility Commission*

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David R. Groff, Esq.

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ATTORNEY TO BE NOTICED

David R. McLean , Esq.
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ATTORNEY TO BE NOTICED

ENE Evaluator**ENE Evaluator**

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Date Filed	#	Docket Text
07/21/2020	1	COMPLAINT for Declaratory and Injunctive Relief against Anthony Roisman, Sarah Hofmann, and Margaret Cheney filed by Allco Finance Limited, Otter Creek Solar LLC, and PLH Vineyard Sky LLC. Summonses issued. LR 73 Forms issued. (Attachments: # 1 Civil Cover Sheet) (eh) (Entered: 07/21/2020)
07/21/2020	2	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by Allco Finance Limited, Otter Creek Solar LLC, and PLH Vineyard Sky LLC. (eh) (Entered: 07/21/2020)
08/11/2020	3	NOTICE OF APPEARANCE by David R. McLean, Esq on behalf of Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 08/11/2020)
08/12/2020	4	OBJECTION to Direct Assignment by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (law) (Entered: 08/12/2020)
08/12/2020	5	NOTICE of Case Reassignment pursuant to Local Rule 73(d). Case reassigned to Judge Christina Reiss. Judge John M. Conroy no longer assigned to the case. (law) (Entered: 08/12/2020)
08/20/2020	6	STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 08/20/2020)
08/21/2020	7	ORDER GRANTING 6 Stipulated Motion for Extension of Time to Answer the 1 Complaint. Signed by Judge Christina Reiss on 8/21/2020. (This is a text-only Order.) (ejh) (Entered: 08/21/2020)
09/23/2020	8	STIPULATED MOTION for Leave to Exceed Page Limit for <i>Memorandum of Law</i> re: 9 MOTION for Emergency Preliminary Injunction filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) Text clarified on 9/24/2020 (law). Link added on 9/28/2020 (jlh). (Entered: 09/23/2020)
09/24/2020	9	MOTION for Emergency Preliminary Injunction filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Memorandum in Support, # 2 Declaration of Thomas Melone)(Melone, Thomas) (Attachment 2 replaced on 9/24/2020) (law). (Additional attachment(s) added on 9/24/2020: # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5) (law). (Entered: 09/24/2020)

09/24/2020	10	NOTICE OF DOCKET ENTRY CORRECTION re: 9 MOTION for Emergency Preliminary Injunction filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. The Declaration of Thomas Melone was upload with its exhibits as a singular PDF. The documents have been broken apart and reattached on the docket. They are now separately attached to 9 and this entry. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5) (law) (Entered: 09/24/2020)
09/25/2020	11	ORDER GRANTING 8 Stipulated Motion to Exceed Page Limit re: 9 MOTION for Emergency Preliminary Injunction. Signed by Judge Christina Reiss on 9/25/2020. (This is a text-only Order.) (ejh) Link added on 9/28/2020 (jlh). (Entered: 09/25/2020)
09/25/2020	12	NOTICE of Hearing re: 9 MOTION for Emergency Preliminary Injunction. Motion Hearing set for 10/9/2020 at 01:00 PM, via video conference, in Burlington Courtroom 510 before Judge Christina Reiss.(jbr) (Entered: 09/25/2020)
09/29/2020	13	NOTICE OF APPEARANCE by Alison M. Stone, Esq on behalf of Margaret Cheney, Sarah Hofmann, Anthony Roisman.(Stone, Alison) (Entered: 09/29/2020)
10/08/2020	14	RESPONSE in Opposition re 9 MOTION for Emergency Preliminary Injunction filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(McLean, David) (Entered: 10/08/2020)
10/09/2020	15	MINUTE ENTRY for proceedings held before Judge Christina Reiss: Motion Hearing held on 10/9/2020 re 9 MOTION for Emergency Preliminary Injunction. Present via video conference: Thomas Melone, Esq., for pltf, David McLean, AAG, Alison Stone, AAG, Jake Marin, Esq., Zach Berger, Esq., and Kyle Landis-Marinello, Esq., for dft. The court makes inquiries. Statements by counsel. ORDERED: pltf reply to dft response due by 10/13/2020. Court will take the motion under advisement thereafter. (Court Reporter: Johanna Masse) (jbr) (Entered: 10/09/2020)
10/13/2020	16	REPLY to Response to 9 MOTION for Emergency Preliminary Injunction filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Declaration of Christopher Whitman, # 2 Declaration of Thomas Melone, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6, # 9 Exhibit 7, # 10 Exhibit 8, # 11 Exhibit 9, # 12 Exhibit 10, # 13 Exhibit 11, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14)(Melone, Thomas) (Additional attachment(s) added on 10/16/2020: # 17 Index of Exhibits) (law). (Entered: 10/13/2020)
10/16/2020	17	NOTICE OF DOCKET ENTRY CORRECTION re: 16 Reply to Response to Motion filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. The required Index of Exhibits was not included at the time of filing. The index is now attached to 16 and this entry. (law) (Entered: 10/16/2020)
10/16/2020	18	NOTICE of updated information on PUC's by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC re 9 MOTION for Emergency Preliminary Injunction (Melone, Thomas) (Entered: 10/16/2020)
10/20/2020	19	OPINION AND ORDER denying 9 MOTION for Emergency Preliminary Injunction. Plaintiffs are ordered to show cause within 20 days why this case should not be dismissed for lack of subject matter jurisdiction.Signed by Judge Christina Reiss on 10/20/2020. (kp) (Entered: 10/20/2020)
10/20/2020	20	SECOND STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 10/20/2020)
10/29/2020	21	ORDER GRANTING 20 Second Unopposed Motion for Extension of Time to Answer. Signed by Judge Christina Reiss on 10/29/2020. (This is a text-only Order.) (ejh)

		(Entered: 10/29/2020)
11/09/2020	22	RESPONSE to Order to Show Cause by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Melone, Thomas) (Entered: 11/09/2020)
11/12/2020	23	FIRST AMENDED COMPLAINT for Declaratory and Injunctive Relief against Margaret Cheney, Sarah Hofmann, Anthony Roisman filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(kp) (Entered: 11/12/2020)
11/19/2020	24	STIPULATED MOTION for Extension of Time to Answer re: 23 First Amended Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) Link/text clarified on 11/25/2020 (law). (Entered: 11/19/2020)
11/19/2020	25	ORDER GRANTING 24 Stipulated Motion for Extension of Time to File Answer re: 23 First Amended Complaint. Signed by Judge Christina Reiss on 11/19/2020. (This is a text-only Order.) (ejh) Link added on 11/20/2020 (jlh). Link clarified on 11/25/2020 (law). (Entered: 11/19/2020)
12/07/2020	26	STIPULATED MOTION for Extension of Time to File Answer re 23 Amended Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 12/07/2020)
12/07/2020	27	ORDER GRANTING 26 Stipulated Motion for Extension of Time to Answer 23 the Amended Complaint. Signed by Judge Christina Reiss on 12/7/2020. (This is a text-only Order.) (ejh) (Entered: 12/07/2020)
12/07/2020	28	STIPULATED DISCOVERY LETTER SENT re: no stipulated discovery schedule filed; case will be set for a scheduling conference unless stipulated schedule is filed. (jbr) (Entered: 12/07/2020)
01/12/2021	29	STIPULATED MOTION for Extension of Time to File Response to Plaintiffs' 22 Response to Order to Show Cause, and Extension of Time to Respond to 23 Amended Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) Text clarified on 1/15/2021 (jlb). (Entered: 01/12/2021)
01/12/2021	30	ORDER GRANTING 29 Stipulated Motion for Extension of Time to File Response to Plaintiffs' 22 Response to Order to Show Cause, and Extension of Time to Respond to 23 Amended Complaint . Signed by Judge Christina Reiss on 1/12/2021. (This is a text-only Order.) (ejh) Text clarified on 1/15/2021 (jlh). (Entered: 01/12/2021)
01/29/2021	31	MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman. (Attachments: # 1 Exhibit A) (McLean, David) (Entered: 01/29/2021)
02/22/2021	32	STIPULATED MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 02/22/2021)
02/23/2021	33	ORDER GRANTING 32 Stipulated Motion for Extension of Time to File Response/Reply to 31 Motion to Dismiss 23 Amended Complaint for Failure to State a Claim. Signed by Judge Christina Reiss on 2/23/2021. (This is a text-only Order.) (ejh) (Entered: 02/23/2021)
03/30/2021	34	RESPONSE in Opposition re 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 03/30/2021)

04/05/2021	35	STIPULATED MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 04/05/2021)
04/12/2021	36	ORDER GRANTING 35 Stipulated Motion for Extension of Time to File Response/Reply to 31 Motion to Dismiss 23 Amended Complaint for Failure to State a Claim. Signed by Judge Christina Reiss on 4/12/2021. (This is a text-only Order.) (ejh) (Entered: 04/12/2021)
04/22/2021	37	STIPULATED MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(Stone, Alison) (Entered: 04/22/2021)
04/22/2021	38	ORDER GRANTING 37 Stipulated Motion for Extension of Time to File Response/Reply to 31 Motion to Dismiss 23 Amended Complaint for Failure to State a Claim. Signed by Judge Christina Reiss on 4/22/2021. (This is a text-only Order.) (ejh) (Entered: 04/22/2021)
05/05/2021	39	STIPULATED MOTION for Extension of Time to File Response/Reply as to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 05/05/2021)
05/06/2021	40	ORDER GRANTING 39 Stipulated Motion for Extension of Time to File Response/Reply to 31 Motion to Dismiss 23 Amended Complaint for Failure to State a Claim. Signed by Judge Christina Reiss on 5/6/2021. (This is a text-only Order.) (ejh) (Entered: 05/06/2021)
05/18/2021	41	MOTION to Withdraw as Attorney filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(Stone, Alison) (Entered: 05/18/2021)
05/18/2021	42	ORDER GRANTING 41 Motion to Withdraw as Attorney. Signed by Judge Christina Reiss on 5/18/2021. (This is a text-only Order.) (ejh) (Entered: 05/18/2021)
05/21/2021	43	REPLY to Response to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman. (Attachments: # 1 Attachment A)(McLean, David) (Entered: 05/21/2021)
05/25/2021	44	NOTICE of Hearing re: 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim. Motion Hearing set for 7/2/2021 at 01:00 PM in Burlington Courtroom 510 before Judge Christina Reiss.(jbr) (Entered: 05/25/2021)
06/08/2021	45	MOTION for Leave to File <i>Sur-reply</i> as to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Exhibit 1)(Melone, Thomas) Link corrected on 6/9/2021 (jlh). (Entered: 06/08/2021)
06/30/2021	46	ORDER GRANTING 45 Motion for Leave to File Sur-Reply as to 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim. No opposition filed. Signed by Judge Christina Reiss on 6/30/2021. (This is a text-only Order.) (ejh) (Entered: 06/30/2021)
07/02/2021	47	MINUTE ENTRY for proceedings held before Judge Christina Reiss: Motion Hearing held on 7/2/2021 re 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim. Present via videoconference: Thomas Melone, Esq., present as pro se Plaintiff, David McLean, AAG, present for dft. Court makes inquiries. Statements by counsel.

		ORDERED: Motions Taken Under Advisement: 31 MOTION to Dismiss 23 Amended Complaint for Failure to State a Claim. (Court Reporter: Johanna Masse) (jbr) (Entered: 07/06/2021)
09/16/2021	48	ENTRY ORDER Striking the Plaintiffs' First Amended Complaint, Ordering a More Definite Statement, and Denying as moot Defendants' 31 Motion to Dismiss the First Amended Complaint. Signed by Judge Christina Reiss on 9/16/2021. (jbr) (Entered: 09/16/2021)
09/21/2021	49	STIPULATED MOTION for Extension of Time to File second amended complaint re: 48 Order on Motion to Dismiss for Failure to State a Claim filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 09/21/2021)
09/21/2021	50	ORDER GRANTING 49 Stipulated Motion for Extension of Time to File Second Amended Complaint. Signed by Judge Christina Reiss on 9/21/2021. (This is a text-only Order.) (ejh) (Entered: 09/21/2021)
10/07/2021	51	MOTION for Extension of Time to File Second Amended Complaint filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Attachment 1)(Melone, Thomas) Text clarified on 10/8/2021 (law). (Entered: 10/07/2021)
10/12/2021	52	SECOND AMENDED COMPLAINT for Declaratory and Injunctive Relief against Margaret Cheney, Anthony Roisman, Riley Allen filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Exhibit A, # 2 Attachment I, # 3 Attachment II, # 4 Attachment III, # 5 Exhibit B)(kp) Date filed clarified on 10/14/2021 (law). (Entered: 10/13/2021)
10/22/2021	53	STIPULATED MOTION for Extension of Time to File Answer re 52 Amended Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 10/22/2021)
10/22/2021	54	ORDER GRANTING 51 Motion for Extension of Time to File Second Amended Complaint. No opposition filed. Signed by Judge Christina Reiss on 10/22/2021. (This is a text-only Order.) (ejh) (Entered: 10/22/2021)
10/22/2021	55	ORDER GRANTING 53 Stipulated Motion for Extension of Time to Answer the 52 Second Amended Complaint. Signed by Judge Christina Reiss on 10/22/2021. (This is a text-only Order.) (ejh) (Entered: 10/22/2021)
11/05/2021	56	STIPULATED MOTION for Extension of Time to File Answer re 52 Second Amended Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 11/05/2021)
11/05/2021	57	ORDER GRANTING 56 Stipulated Motion for Extension of Time to Answer the Second Amended Complaint. Signed by Judge Christina Reiss on 11/5/2021. (This is a text-only Order.) (ejh) (Entered: 11/05/2021)
12/06/2021	58	STIPULATED MOTION for Extension of Time to File Answer re 52 Amended Complaint filed by Margaret Cheney, Sarah Hofmann, Anthony Roisman.(McLean, David) (Entered: 12/06/2021)
12/07/2021	59	ORDER GRANTING 58 Stipulated Motion for Extension of Time to Answer the 52 Amended Complaint. Signed by Judge Christina Reiss on 12/7/2021. (This is a text-only Order.) (ejh) (Entered: 12/07/2021)
12/15/2021	60	MOTION to Dismiss 52 Second Amended Complaint filed by Riley Allen, Margaret Cheney, Anthony Roisman.(McLean, David) Link added on 12/15/2021 (jlh) (Entered: 12/15/2021)

01/12/2022	61	STIPULATED MOTION for Extension of Time to File Response/Reply as to 60 MOTION to Dismiss 52 Second Amended Complaint filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 01/12/2022)
01/13/2022	62	ORDER GRANTING 61 Stipulated Motion for Extension of Time to File Response/Reply as to 60 Motion to Dismiss 52 Second Amended Complaint. Signed by Judge Christina Reiss on 1/13/2022. (This is a text-only Order.) (ejh) (Entered: 01/13/2022)
02/03/2022	63	RESPONSE in Opposition re 60 MOTION to Dismiss 52 Second Amended Complaint filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 02/03/2022)
02/09/2022	64	STIPULATED MOTION for Extension of Time to File Response/Reply as to 60 MOTION to Dismiss 52 Second Amended Complaint filed by Riley Allen, Margaret Cheney, Anthony Roisman.(McLean, David) (Entered: 02/09/2022)
02/10/2022	65	ORDER GRANTING 64 Stipulated Motion for Extension of Time to File Response/Reply to 60 Motion to Dismiss the 52 Second Amended Complaint. Signed by Judge Christina Reiss on 2/10/2022. (This is a text-only Order.) (ejh) (Entered: 02/10/2022)
03/15/2022	66	REPLY to Response to 60 MOTION to Dismiss 52 Second Amended Complaint filed by Riley Allen, Margaret Cheney, Sarah Hofmann, Anthony Roisman. (McLean, David) (Entered: 03/15/2022)
07/07/2022	67	OPINION AND ORDER Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint 60 is GRANTED without prejudice and Plaintiffs' request for leave to amend is DENIED. Signed by Judge Christina Reiss on 7/7/2022. (jbr) (Entered: 07/07/2022)
07/11/2022	68	JUDGMENT - case is dismissed without prejudice. Signed by Deputy Clerk on 7/11/2022. (Attachments: # 1 Notice to Litigants (<i>appeal period expires 8/10/2022</i>))(law) (Entered: 07/11/2022)
08/08/2022	69	MOTION to Alter Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 08/08/2022)
08/22/2022	70	RESPONSE in Opposition re 69 MOTION to Alter Judgment filed by Riley Allen, Margaret Cheney, Anthony Roisman. (McLean, David) (Entered: 08/22/2022)
09/20/2022	71	ORDER DENYING 69 Plaintiffs' Rule 59 Motion to Amend the Judgment and for Reconsideration. "It is well-settled that Rule 59 is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple[.]" <i>Analytical Survs., Inc. v. Tonga Partners, L.P.</i> , 684 F.3d 36, 52 (2d Cir. 2012), as amended (July 13, 2012) (internal quotation marks omitted) (quoting <i>Sequa Corp. v. GBJ Corp.</i> , 156 F.3d 136, 144 (2d Cir. 1998)). "Rather, 'the standard for granting a Rule 59 motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked.'" <i>Id.</i> (alteration adopted) (quoting <i>Shrader v. CSX Transp., Inc.</i> , 70 F.3d 255, 257 (2d Cir. 1995)). Because Plaintiffs fail to "point to controlling decisions or data that the court overlooked[.]" their motion fails to meet this "strict" standard. <i>Id.</i> Signed by Judge Christina Reiss on 9/20/2022. (This is a text-only Order.) (ejh) (Entered: 09/20/2022)
10/20/2022	72	NOTICE OF APPEAL as to 71 Order on 69 Motion to Amend the Judgment and for Reconsideration, 68 Judgment, 67 Opinion and Order on 60 Motion to Dismiss by Allco

		Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 10/20/2022)
10/24/2022	73	USCA Appeal Fee received. PAID \$505.00. Receipt Number 4682026722 re 72 Notice of Appeal, filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (gmg) (Entered: 10/24/2022)
10/28/2022	74	TRANSMITTED Circuit No. 22-2726 Index on Appeal re: 72 Notice of Appeal. (gmg) (Entered: 10/28/2022)
08/08/2023	75	MANDATE of USCA Case No 22-2726 as to 72 Notice of Appeal. It is ORDERED that the 68 judgment of the district court is VACATED and the case is REMANDED to the district court for proceedings consistent with this order. (gmg) (Entered: 08/08/2023)
10/03/2023	76	ANSWER to 52 Amended Complaint by Riley Allen, Margaret Cheney, Anthony Roisman.(Groff, David) (Entered: 10/03/2023)
10/17/2023	77	PROPOSED Stipulated Discovery Schedule/Order by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 10/17/2023)
10/18/2023	78	ASSIGNED Early Neutral Evaluator: Potter Stewart, Jr., Esq. (law) (Entered: 10/18/2023)
10/30/2023	79	LETTER SENT re: 77 proposed stipulated discovery schedule filed non-compliance with LR 26(a)(1); case will be set for a scheduling conference unless a compliant stipulated schedule is filed. (law) (Entered: 10/30/2023)
11/03/2023	80	PROPOSED Stipulated Discovery Schedule/Order by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC.(Melone, Thomas) (Entered: 11/03/2023)
11/03/2023	81	STIPULATED DISCOVERY SCHEDULE/ORDER: Discovery due by 6/3/2024; Motions due by 9/24/2024; Early Neutral Evaluation set for 5/9/2024 at 10:00 AM; Ready for Trial by 11/1/2024. Signed by Judge Christina Reiss on 11/3/2023. (law) (Entered: 11/03/2023)
11/15/2023	82	DISCOVERY CERTIFICATE - Initial Disclosures by Riley Allen, Margaret Cheney, Anthony Roisman.(Groff, David) (Entered: 11/15/2023)
01/19/2024	83	MOTION for Summary Judgment filed by Riley Allen, Margaret Cheney, Anthony Roisman (Attachments: # 1 Statement of Undisputed Facts)(Groff, David) (Entered: 01/19/2024)
02/14/2024	84	STIPULATED MOTION for Extension of Time to File Response/Reply as to 83 MOTION for Summary Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 02/14/2024)
02/15/2024	85	ORDER GRANTING 84 Stipulated Motion for Extension of Time to File Response/Reply as to 83 Motion for Summary Judgment. Signed by Judge Christina Reiss on 2/15/2024. (This is a text-only Order.) (ejh) (Entered: 02/15/2024)
03/15/2024	86	DISCOVERY CERTIFICATE - Response to Request to Produce by Riley Allen, Margaret Cheney, Anthony Roisman.(Groff, David) (Entered: 03/15/2024)
03/16/2024	87	STIPULATED MOTION for Extension of Time to File Response/Reply as to 83 MOTION for Summary Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 03/16/2024)
03/18/2024	88	ORDER GRANTING 87 Stipulated Motion for Extension of Time to File Response/Reply as to 83 Motion for Summary Judgment. Signed by Judge Christina Reiss on 3/18/2024. (This is a text-only Order.) (ejh) (Entered: 03/18/2024)

04/02/2024	89	STIPULATED MOTION for Extension of Time to File Response/Reply as to 83 MOTION for Summary Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC(Melone, Thomas) (Entered: 04/02/2024)
04/02/2024	90	ORDER GRANTING 89 Stipulated Motion for Extension of Time to File Response/Reply as to 83 Motion for Summary Judgment. Signed by Judge Christina Reiss on 4/2/2024. (This is a text-only Order.) (ejh) (Entered: 04/02/2024)
04/09/2024	91	NOTICE OF APPEARANCE by David Golubock on behalf of Riley Allen, Margaret Cheney, Anthony Roisman.(Golubock, David) (Entered: 04/09/2024)
04/14/2024	92	MOTION for Summary Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC (Attachments: # 1 Counterstatement of Undisputed Facts, # 2 Declaration of Christopher Little, # 3 Memorandum in Support, # 4 Declaration of Thomas Melone, # 5 Index of Exhibits, # 6 Exhibit 1, # 7 Exhibit 2, # 8 Exhibit 3, # 9 Exhibit 4, # 10 Exhibit 5, # 11 Exhibit 6, # 12 Exhibit 7, # 13 Exhibit 8, # 14 Exhibit 9, # 15 Exhibit 10, # 16 Exhibit 11, # 17 Exhibit 12, # 18 Exhibit 13)(Melone, Thomas) Text clarified on 4/15/2024 (law). (Entered: 04/14/2024)
04/14/2024	93	RESPONSE in Opposition to 83 MOTION for Summary Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Counterstatement of Undisputed Facts, # 2 Declaration of Christopher Little, # 3 Declaration of Thomas Melone, # 4 Index of Exhibit, # 5 Exhibit 1, # 6 Exhibit 20, # 7 Exhibit 3s, # 8 Exhibit 4, # 9 Exhibit 5, # 10 Exhibit 6s, # 11 Exhibit 7, # 12 Exhibit 8, # 13 Exhibit 9, # 14 Exhibit 1, # 15 Exhibit 11, # 16 Exhibit 12, # 17 Exhibit 13)(Melone, Thomas) Text clarified on 4/15/2024 (law). (same documents attached to 92) (Entered: 04/14/2024)
04/17/2024	94	STIPULATED MOTION for Extension of Time to File Response/Reply as to 83 MOTION for Summary Judgment filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 04/17/2024)
04/17/2024	95	ORDER GRANTING 94 Stipulated Motion for Extension of Time to File Response/Reply as to 83 Motion for Summary Judgment. Signed by Judge Christina Reiss on 4/17/2024. (This is a text-only Order.) (ejh) (Entered: 04/17/2024)
05/01/2024	96	STIPULATED MOTION to Postpone ENE filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 05/01/2024)
05/02/2024	97	ORDER GRANTING 96 Stipulated Motion to Postpone ENE. Signed by Judge Christina Reiss on 5/2/2024. (This is a text-only Order.) (ejh) (Entered: 05/02/2024)
06/12/2024	98	RESPONSE in Opposition to 92 MOTION for Summary Judgment filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Attachments: # 1 Statement of Disputed Material Facts)(Golubock, David) (Entered: 06/12/2024)
06/12/2024	99	MOTION to Exclude <i>Inadmissible Evidence</i> filed by Riley Allen, Margaret Cheney, Anthony Roisman (Attachments: # 1 Exhibit A)(Golubock, David) (Entered: 06/12/2024)
06/20/2024	100	STIPULATED MOTION for Extension of Time to File Response/Reply as to 92 MOTION for Summary Judgment , 99 MOTION to Exclude <i>Inadmissible Evidence</i> filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC(Melone, Thomas) (Entered: 06/20/2024)
06/20/2024	101	ORDER GRANTING 100 Stipulated Motion for Extension of Time to File Response/Reply as to 92 Motion for Summary Judgment and 99 Motion to Exclude <i>Inadmissible Evidence</i> . Signed by Judge Christina Reiss on 6/20/2024. (This is a text-only Order.) (ejh) (Entered: 06/20/2024)

07/24/2024	102	STIPULATED MOTION for Extension of Time to File Response/Reply as to 92 MOTION for Summary Judgment , 99 MOTION to Exclude <i>Inadmissible Evidence</i> filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 07/24/2024)
07/29/2024	103	ORDER GRANTING 102 Stipulated Motion for Extension of Time to File Response/Reply as to 92 Motion for Summary Judgment and 99 Motion to Exclude Inadmissible Evidence. Signed by Chief District Judge Christina Reiss on 7/29/2024. (This is a text-only Order.) (ejh) (Entered: 07/29/2024)
07/30/2024	104	RESPONSE in Opposition re 99 MOTION to Exclude <i>Inadmissible Evidence</i> filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Declaration of Thomas Melone, # 2 Attachment A)(Melone, Thomas) Text clarified on 7/30/2024 (law). (Entered: 07/30/2024)
07/30/2024	105	REPLY to Response to 92 MOTION for Summary Judgment filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Objections to Response to Counterstatement of Undisputed Material Facts, # 2 Declaration of Thomas Melone, # 3 Exhibit 1, # 4 Exhibit 2)(Melone, Thomas) Text clarified on 7/30/2024 (law). (Entered: 07/30/2024)
08/08/2024	106	STIPULATED MOTION for Extension of Time to File Response/Reply as to 99 MOTION to Exclude <i>Inadmissible Evidence</i> filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 08/08/2024)
08/16/2024	107	ORDER granting 106 Stipulated Motion for Extension of Time to File Reply 99 MOTION to Exclude Inadmissible Evidence. Signed by Chief District Judge Christina Reiss on 8/16/2024. (This is a text-only Order.) (jbr) (Entered: 08/16/2024)
09/19/2024	108	ORDER REASSIGNING CASE. Case reassigned to District Judge Mary Kay Lanthier for all further proceedings. Chief District Judge Christina Reiss no longer assigned to case. Signed by Chief District Judge Christina Reiss on 9/19/2024. (law) Text clarified on 9/20/2024 (law). (Entered: 09/19/2024)
09/20/2024	109	STIPULATED MOTION for Leave to Exceed Page Limit re 99 MOTION to Exclude <i>Inadmissible Evidence</i> filed by Riley Allen, Margaret Cheney, Sarah Hofmann, Anthony Roisman(Golubock, David) Event/Text clarified on 9/20/2024 (jlm). (Entered: 09/20/2024)
09/20/2024	110	REPLY to Response to 99 MOTION to Exclude <i>Inadmissible Evidence</i> filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Golubock, David) (Entered: 09/20/2024)
09/20/2024	111	ORDER granting 109 Stipulated Motion to Exceed Page Limit re 99 MOTION to Exclude Inadmissible Evidence. Signed by Judge Mary Kay Lanthier on 9/20/2024. (This is a text-only Order.) (mkl) (Entered: 09/20/2024)
10/10/2024	112	ENE LETTER re: past due session; responses due by 10/24/2024. (law) (Entered: 10/10/2024)
10/22/2024	113	RESPONSE re 112 ENE Letter by Riley Allen, Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 10/22/2024)
11/27/2024	114	UNOPPOSED MOTION for Leave to File <i>Notice of Supplemental Authority</i> filed by Riley Allen, Anthony Roisman, Margaret Cheney (Attachments: # 1 Exhibit A) (Golubock, David) Attachment name clarified on 11/27/2024 (jlm). (Entered: 11/27/2024)
11/27/2024	115	ORDER granting 114 Defendants' Unopposed Motion for Leave to File Notice of Supplemental Authority. Plaintiffs shall file any response to Defendants' Notice of

		Supplemental Authority within 14 days. Signed by District Judge Mary Kay Lanthier on 11/27/2024. (This is a text-only Order.) (kap) (Entered: 11/27/2024)
12/10/2024	116	NOTICE of Supplemental Authority Re: 83 Motion for Summary Judgment by Riley Allen, Anthony Roisman, Margaret Cheney (Golubock, David) Clarified text on 12/10/2024 (kp). (Entered: 12/10/2024)
12/24/2024	117	MOTION for Extension of Time to Respond to the Defendants' 116 Notice of Supplemental Authority filed by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC(Melone, Thomas) Clarified text on 12/26/2024 (kp). (Entered: 12/24/2024)
12/30/2024	118	ORDER granting 117 Motion to Extend the Plaintiffs' Deadline to Respond to the Defendants' Notice Re: Supplemental Authority. Plaintiffs' Response to Defendants' Notice Re: Supplemental Authority shall be filed no later than January 14, 2025. Signed by District Judge Mary Kay Lanthier on 12/30/2024. (This is a text-only Order.) (kap) (Entered: 12/30/2024)
01/14/2025	119	RESPONSE re: 116 Notice of Supplemental Authority by Allco Finance Limited, Otter Creek Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) Clarified text on 1/15/2025 (kp). (Entered: 01/14/2025)
06/30/2025	120	MOTION to Withdraw as Attorney filed by Riley Allen, Anthony Roisman, Margaret Cheney(Golubock, David) (Entered: 06/30/2025)
06/30/2025	121	ORDER granting 120 Motion to Withdraw as Attorney. Signed by District Judge Mary Kay Lanthier on 6/30/2025. (This is a text-only Order.) (kap) (Entered: 06/30/2025)

PACER Service Center			
Transaction Receipt			
07/22/2025 16:15:49			
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U.S. DISTRICT COURT
DISTRICT OF VERMONT
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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

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ALLCO FINANCE LIMITED, OTTER
CREEK SOLAR LLC, and PLH
VINEYARD SKY LLC

Case No. 2:20-cv-103

Plaintiffs,

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

v.

ANTHONY ROISMAN, SARAH
HOFMANN and MARGARET CHENEY,
in their official capacities as commissioners
of the Vermont Public Utility Commission.

Defendants.

NATURE OF THE ACTION

1. This case concerns the legality of the refusal of the Defendants' procuring agent, VEPP Inc., a state-created entity ("VEPP"), to execute written contracts for the purchase of electricity from small solar electricity generating facilities owned by the plaintiffs (collectively, "Allco") under Vermont's standard offer program (the "Standard Offer"). See, 30 V.S.A. § 8005a. Under Vermont's Standard Offer program, VEPP acts as a purchasing agent on behalf of Vermont's electric utilities.

2. In 2019 and 2020, Allco committed to provide electricity to VEPP for a 25-year period at rates and under standard contract terms approved by the Vermont Public Utility Commission ("VPUC"). By unconditionally committing to sell their output to VEPP on those standard terms, Allco created a "Legally Enforceable Obligation" ("LEO") under section 210 of the Public Utility Regulatory Policies Act, Pub. L. No. 95-617, 92 Stat. 3117 ("PURPA"), requiring VEPP to purchase all output from Allco's facilities. *Windham Solar LLC*, 157 FERC ¶ 61,134 (2016).

**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:23-cv-00644-wks**

Apple Hill Solar LLC v. Cheney et al
Assigned to: Judge William K. Sessions III
related Case: [2:23-cv-00154-wks](#)
Cause: 42:1983 Civil Rights Act

Date Filed: 11/21/2023
Date Terminated: 08/23/2024
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Apple Hill Solar LLC

represented by **Thomas M. Melone , Esq.**
Allco Renewable Energy Limited
601 S Ocean Blvd
Delray Beach, FL 33483
212-681-1120
Fax: 801-858-8818
Email: thomas.melone@gmail.com
ATTORNEY TO BE NOTICED

V.

Defendant

Margaret Cheney

represented by **David Golubock , AUSA**
United States Attorney's Office
District of Vermont
11 Elmwood Avenue, 3rd Floor
P.O. Box 570
Burlington, VT 05402-0570
802-651-8265
Email: david.golubock@usdoj.gov
ATTORNEY TO BE NOTICED

David R. Groff , Esq.
Office of the Vermont Attorney General
109 State Street, 3rd Floor
Montpelier, VT 05609-1001
(802) 828-1101
Fax: (802) 828-3187
Email: david.groff@vermont.gov
ATTORNEY TO BE NOTICED

Defendant

Anthony Roisman

represented by **David Golubock , AUSA**
(See above for address)
ATTORNEY TO BE NOTICED

David R. Groff , Esq.

Date Filed	#	Docket Text
11/21/2023	1	COMPLAINT against Margaret Cheney, Anthony Roisman filed by Apple Hill Solar LLC. (Attachments: # 1 Civil Cover Sheet)(law) (Entered: 11/22/2023)
11/22/2023		ISSUED Summons as to Margaret Cheney, Anthony Roisman.(law) (Entered: 11/22/2023)
01/30/2024	2	WAIVER OF SERVICE Returned Executed: Margaret Cheney waiver sent on 1/3/2024, answer due 3/4/2024.(Melone, Thomas) (Entered: 01/30/2024)
01/30/2024	3	WAIVER OF SERVICE Returned Executed: Anthony Roisman waiver sent on 1/3/2024, answer due 3/4/2024.(Melone, Thomas) (Entered: 01/30/2024)
02/12/2024	4	NOTICE OF APPEARANCE by David R. Groff, Esq on behalf of Margaret Cheney, Anthony Roisman.(Groff, David) (Entered: 02/12/2024)
02/12/2024	5	NOTICE OF APPEARANCE by David Golubock on behalf of Margaret Cheney, Anthony Roisman.(Golubock, David) (Entered: 02/12/2024)
02/13/2024	6	STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint filed by Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 02/13/2024)
02/14/2024	7	ORDER granting 6 STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint. Signed by Judge William K. Sessions III on 2/14/2024. (This is a text-only Order.) (eae) (Entered: 02/14/2024)
03/18/2024	8	MOTION to Dismiss 1 Complaint for Failure to State a Claim filed by Margaret Cheney, Anthony Roisman. (Golubock, David) (Entered: 03/18/2024)
04/15/2024	9	STIPULATED MOTION for Extension of Time to File Response/Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim filed by Apple Hill Solar LLC. (Melone, Thomas) (Entered: 04/15/2024)
04/16/2024	10	ORDER granting 9 STIPULATED MOTION for Extension of Time to File Response/Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim. Signed by Judge William K. Sessions III on 4/16/2024. (This is a text-only Order.) (eae) (Entered: 04/16/2024)
04/16/2024	11	STIPULATED DISCOVERY LETTER SENT re: no stipulated discovery schedule filed; case will be set for a scheduling conference unless stipulated schedule is filed. (law) (Entered: 04/16/2024)
04/22/2024	12	MOTION to Stay Discovery filed by Margaret Cheney, Anthony Roisman. (Groff, David) Link removed on 4/22/2024 (law). (Entered: 04/22/2024)
04/30/2024	13	RESPONSE in Opposition re 12 MOTION to Stay Discovery filed by Apple Hill Solar LLC. (Attachments: # 1 Exhibit 1)(Melone, Thomas) (Entered: 04/30/2024)
05/15/2024	14	STIPULATED MOTION for Extension of Time to File Response/Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim filed by Apple Hill Solar LLC. (Melone, Thomas) (Entered: 05/15/2024)
05/15/2024	15	ORDER granting 14 STIPULATED MOTION for Extension of Time to File Response/Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim. Signed by Judge William K. Sessions III on 5/15/2024. (This is a text-only Order.) (eae) (Entered: 05/15/2024)

05/31/2024	16	RESPONSE in Opposition re 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim filed by Apple Hill Solar LLC. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6), # 8 Exhibit 7, # 9 Exhibit 8)(Melone, Thomas) Attachment descriptions clarified on 5/31/2024 (law). (Entered: 05/31/2024)
06/11/2024	17	STIPULATED MOTION for Extension of Time to File Response/Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim <i>and</i> STIPULATED MOTION for Leave to Exceed Page Limit on Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim filed by Margaret Cheney, Anthony Roisman. (Golubock, David). Added MOTION for Leave to Exceed Page Limit on 6/11/2024 (law). (Entered: 06/11/2024)
06/12/2024	18	ORDER granting 17 STIPULATED MOTION for Extension of Time to File Response/Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim <i>and</i> STIPULATED MOTION for Leave to Exceed Page Limit on Reply as to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim. Signed by Judge William K. Sessions III on 6/12/2024. (This is a text-only Order.) (eae) (Entered: 06/12/2024)
07/15/2024	19	REPLY to Response to 8 MOTION to Dismiss 1 Complaint for Failure to State a Claim filed by Margaret Cheney, Anthony Roisman. (Golubock, David) (Entered: 07/15/2024)
08/23/2024	20	OPINION AND ORDER granting 8 Motion to Dismiss for Failure to State a Claim; denying as moot 12 Motion to Stay. Signed by Judge William K. Sessions III on 8/23/2024. (law) (Entered: 08/23/2024)
08/23/2024	21	JUDGMENT - case is dismissed with prejudice pursuant to 20 Opinion and Order. Signed by Deputy Clerk on 8/23/2024. (Attachments: # 1 Notice to Litigants (<i>appeal period expires 9/23/2024</i>))(law) (Entered: 08/23/2024)

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**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:23-cv-00645-gwc**

PLH Vineyard Sky LLC v. Town of Bennington, Vermont
Assigned to: District Judge Geoffrey W. Crawford
Cause: 28:1332 Diversity-(Citizenship)

Date Filed: 11/21/2023
Date Terminated: 06/05/2025
Jury Demand: Plaintiff
Nature of Suit: 290 Real Property: Other
Jurisdiction: Diversity

Plaintiff

PLH Vineyard Sky LLC

represented by **Thomas M. Melone , Esq.**
Allco Renewable Energy Limited
601 S Ocean Blvd
Delray Beach, FL 33483
212-681-1120
Fax: 801-858-8818
Email: thomas.melone@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

Chelsea Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Apple Hill Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Allco Finance Limited

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Town of Bennington, Vermont

represented by **Kevin L. Kite , Esq.**
Carroll, Boe & Kite, P.C.
64 Court Street
Middlebury, VT 05753
802-388-6711
Email: kkite@64court.com
ATTORNEY TO BE NOTICED

Merrill E. Bent , Esq.
Woolmington, Campbell, Bernal & Bent,
P.C.

4900 Main Street
P.O. Box 2748
Manchester Center, VT 05255-2748
(802) 362-2560
Fax: (802) 362-7109
Email: merrill@greenmtlaw.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/21/2023	1	COMPLAINT for Declaratory and Injunctive Relief against Town of Bennington, Vermont filed by PLH Vineyard Sky LLC. Summons issued. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Civil Cover Sheet) (sjl) Modified on 11/21/2023 to clarify text (sjl). (Entered: 11/21/2023)
11/21/2023	2	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by PLH Vineyard Sky LLC. (<i>not original signature</i>) (sjl) (Entered: 11/21/2023)
01/02/2024	3	WAIVER OF SERVICE Returned Executed: Town of Bennington, Vermont waiver sent on 12/18/2023, answer due 2/16/2024.(Melone, Thomas) (Entered: 01/02/2024)
01/03/2024	4	NOTICE OF APPEARANCE by Merrill E. Bent, Esq on behalf of Town of Bennington, Vermont. (Attachments: # 1 Certificate of Service)(Bent, Merrill) Modified on 1/3/2024 to clarify attachment (sjl). (Entered: 01/03/2024)
02/16/2024	5	MOTION to Dismiss for Failure to State a Claim <i>and as barred by res judicata</i> filed by Town of Bennington, Vermont (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Certificate of Service) (Bent, Merrill) Modified on 2/20/2024 to clarify attachments (sjl). (Entered: 02/16/2024)
02/16/2024	6	MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss filed by Town of Bennington, Vermont (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Certificate of Service) (Bent, Merrill) Modified on 2/20/2024 to clarify attachments and add Motions to entry (sjl). (Entered: 02/16/2024)
02/28/2024	7	CONSENTED-TO MOTION for Extension of Time to File Response/Reply as to 6 MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss filed by PLH Vineyard Sky LLC (Melone, Thomas) Modified on 2/28/2024 to clarify text (sjl). (Entered: 02/28/2024)
02/29/2024	8	ORDER granting 7 MOTION for Extension of Time to File Response/Reply as to 6 MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss. Time extended to March 21, 2024. Signed by Chief Judge Geoffrey W. Crawford on 2/29/2024. (This is a text-only Order.) (jal) (Entered: 02/29/2024)
03/07/2024	9	FIRST AMENDED COMPLAINT for Breach of Contract, Violation of Civil Rights, Taking, and Declaratory and Injunctive Relief against Town of Bennington, Vermont filed by PLH Vineyard Sky LLC, Chelsea Solar LLC, Apple Hill Solar LLC, and Allco Finance Limited. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7) (Melone, Thomas) Modified on 3/7/2024 to clarify text, filers, and attachments (sjl). (Additional attachment(s) added on 3/7/2024: # 8 Index of Exhibits) (sjl). (Entered: 03/07/2024)
03/07/2024	10	NOTICE OF DOCKET ENTRY CORRECTION re: 9 First Amended Complaint. The Index of Exhibits having been received is now attached to 9 and this entry. (sjl) (Entered: 03/07/2024)

03/21/2024	11	RESPONSE in Opposition re 6 MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3) (Melone, Thomas) Modified on 3/21/2024 to clarify text/attachments (sjl). (Main Document 11 replaced on 3/21/2024) (sjl). (Entered: 03/21/2024)
03/21/2024	12	NOTICE OF DOCKET ENTRY CORRECTION re: 11 RESPONSE in Opposition re 6 MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss by Allco Finance Limited, Chelsea Solar LLC, Apple Hill Solar LLC, PLH Vineyard Sky LLC. The corrected main document having been received has replaced the original filing which had errors. The corrected version is now attached to 11 and this entry. (sjl) (Entered: 03/21/2024)
03/21/2024	13	NOTICE OF APPEARANCE by Kevin L. Kite, Esq on behalf of Town of Bennington, Vermont.(Kite, Kevin) (Entered: 03/21/2024)
03/21/2024	14	MOTION to Dismiss 9 FIRST AMENDED COMPLAINT for Failure to State a Claim filed by Town of Bennington, Vermont (Kite, Kevin) Modified on 3/25/2024 to clarify text (sjl). (Entered: 03/21/2024)
03/26/2024	15	MOTION to Stay Discovery and the Filing of a Stipulated Discovery Schedule filed by Town of Bennington, Vermont(Kite, Kevin) Modified on 3/26/2024 to clarify text (sjl). (Entered: 03/26/2024)
04/04/2024	16	REPLY to Response to 6 MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss filed by Town of Bennington, Vermont. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Bent, Merrill) Modified on 4/5/2024 to clarify text/attachments (sjl). (Entered: 04/04/2024)
04/08/2024	17	MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Stay Discovery and the Filing of a Stipulated Discovery Schedule filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC, PLH Vineyard Sky LLC(Melone, Thomas) (Entered: 04/08/2024)
04/09/2024	18	RESPONSE to 17 MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Stay Discovery and the Filing of a Stipulated Discovery Schedule filed by Town of Bennington, Vermont. (Kite, Kevin) (Entered: 04/09/2024)
04/09/2024	19	ORDER granting 17 Motion for Extension of Time to File Response/Reply re 17 MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Stay Discovery and the Filing of a Stipulated Discovery Schedule , 15 MOTION to Stay Discovery and the Filing of a Stipulated Discovery Schedule response due 4/22/2024. Signed by Chief Judge Geoffrey W. Crawford on 4/9/2024. (This is a text-only Order.) (eh) (Entered: 04/09/2024)
04/22/2024	20	RESPONSE in Opposition re 14 MOTION to Dismiss 9 FIRST AMENDED COMPLAINT for Failure to State a Claim filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC, PLH Vineyard Sky LLC. (Attachments: # 1 Exhibit 1) (Melone, Thomas) Modified on 4/23/2024 to clarify attachment (sjl). (Entered: 04/22/2024)
04/22/2024	21	RESPONSE in Opposition re 15 MOTION to Stay Discovery and the Filing of a Stipulated Discovery Schedule filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC, PLH Vineyard Sky LLC. (Melone, Thomas) (Entered: 04/22/2024)
04/23/2024	22	ORDER granting 15 Motion to Stay Discovery and the Filing of a Stipulated Discovery Schedule. All discovery in this matter, including the filing of a discovery schedule, is

		stayed for 30 days after the court's decision on the pending motions to dismiss. Signed by Chief Judge Geoffrey W. Crawford on 4/23/2024. (sjl) (Entered: 04/23/2024)
05/03/2024	23	REPLY to Response to 14 MOTION to Dismiss 9 FIRST AMENDED COMPLAINT for Failure to State a Claim filed by Town of Bennington, Vermont. (Kite, Kevin) (Entered: 05/03/2024)
09/13/2024	24	ORDER denying 5 MOTION to Dismiss on the basis of claim preclusion; denying 6 MOTION for Sanctions Pursuant to Fed. R. Civ. P. 11, MOTION for Filing Injunction, and MOTION to Dismiss. The court RESERVES ruling on 14 MOTION to Dismiss 9 First Amended Complaint for Failure to State a Claim and requests that the Town file a supplemental brief on the question of abstention within 30 days. Plaintiffs may file a reply within 30 days thereafter. Signed by District Judge Geoffrey W Crawford on 9/13/2024. (eh) (Entered: 09/13/2024)
10/15/2024	25	SUPPLEMENTAL DOCUMENT(S) re: 14 MOTION to Dismiss 9 FIRST AMENDED COMPLAINT for Failure to State a Claim by Town of Bennington, Vermont. (Kite, Kevin) (Entered: 10/15/2024)
11/14/2024	26	MEMORANDUM OF LAW Regarding Abstention re 14 MOTION to Dismiss 9 FIRST AMENDED COMPLAINT for Failure to State a Claim, 5 MOTION to Dismiss for Failure to State a Claim and as barred by res judicata PLAINTIFFS MEMORANDUM OF LAW REGARDING ABSTENTION filed by PLH Vineyard Sky LLC, Chelsea Solar LLC, Apple Hill Solar LLC, Allco Finance Limited. (Melone, Thomas) Modified on 11/15/2024 to clarify text (sjl). (Entered: 11/14/2024)
12/30/2024	27	ORDER on Abstention and on Motion to Dismiss. Under <i>Burford</i> , the court elects to ABSTAIN from exercising jurisdiction in this case pending completion of the § 248 proceedings before the PUC in No. 23-0249-PET. The Town's March 2024 Motion to Dismiss (Doc. 14) is DENIED without prejudice to renewal after conclusion of the § 248 proceedings before the PUC. Signed by District Judge Geoffrey W. Crawford on 12/30/2024. (sjl) (Entered: 12/30/2024)
12/30/2024	28	NOTICE OF APPEAL as to 27 Order on Motion to Dismiss for Failure to State a Claim by PLH Vineyard Sky LLC, Chelsea Solar LLC, Apple Hill Solar LLC, Allco Finance Limited. (Filing fee \$ 605 receipt number AVTDC-2013572) (Melone, Thomas) (Entered: 12/30/2024)
01/08/2025	29	TRANSMITTED Index on Appeal, Circuit No. 25-22, re: 28 Notice of Appeal. (Attachments: # 1 Docket Sheet, # 2 Docket Sheet (sealed), # 3 Clerk's Certification)(kac) (Entered: 01/08/2025)
06/05/2025	30	STIPULATION of Dismissal With Prejudice <i>Except for Count III which is without prejudice</i> by PLH Vineyard Sky LLC, Chelsea Solar LLC, Apple Hill Solar LLC, Allco Finance Limited (Melone, Thomas) (Entered: 06/05/2025)
06/11/2025	31	MANDATE of USCA, Circuit No. 25-22, re: 28 Notice of Appeal; appeal is withdrawn. (kac) (Entered: 06/12/2025)

PACER Service Center			
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07/28/2025 13:46:28			
PACER Login:	ph0120MFH	Client Code:	
Description:	Docket Report	Search Criteria:	2:23-cv-00645-gwc

Billable Pages:	4	Cost:	0.40
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**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:23-cv-00691-gwc**

Allco Finance Limited et al v. Roisman et al
Assigned to: District Judge Geoffrey W. Crawford
Cause: 42:1983 Civil Rights Act

Date Filed: 12/08/2023
Date Terminated: 11/19/2024
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Allco Finance Limited

represented by **Thomas M. Melone , Esq.**
Allco Renewable Energy Limited
601 S Ocean Blvd
Delray Beach, FL 33483
212-681-1120
Fax: 801-858-8818
Email: thomas.melone@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

Chelsea Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Apple Hill Solar LLC

represented by **Thomas M. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Anthony Roisman
*in his official capacity as Chair of the
Vermont Public Utility Commission*

represented by **David Golubock , AUSA**
United States Attorney's Office
District of Vermont
11 Elmwood Avenue, 3rd Floor
P.O. Box 570
Burlington, VT 05402-0570
802-651-8265
Email: david.golubock@usdoj.gov
TERMINATED: 07/14/2025

David R. Groff , Esq.
Office of the Vermont Attorney General
109 State Street, 3rd Floor
Montpelier, VT 05609-1001
(802) 828-1101
Fax: (802) 828-3187

Defendant

Riley Allen
*in his official capacity as Commissioner of
 the Vermont Public Utility Commission*

represented by **David Golubock , AUSA**
 (See above for address)
TERMINATED: 07/14/2025

David R. Groff , Esq.
 (See above for address)
ATTORNEY TO BE NOTICED

Defendant

Margaret Cheney
*in her official capacity as Commissioner of
 the Vermont Public Utility Commission*

represented by **David Golubock , AUSA**
 (See above for address)
TERMINATED: 07/14/2025

David R. Groff , Esq.
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/08/2023	1	COMPLAINT against Riley Allen, Margaret Cheney, Anthony Roisman filed by Allco Finance Limited, Chelsea Solar LLC, Apple Hill Solar LLC. Summonses issued. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Civil Cover Sheet) (sjl) (Entered: 12/08/2023)
12/08/2023	2	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) (<i>Missing original signature</i>) by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC. (sjl) (Entered: 12/08/2023)
01/02/2024	3	CORPORATE DISCLOSURE STATEMENT pursuant to Local Rule 7.1(a) by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC. (<i>original signatures</i>) (sjl) (Entered: 01/05/2024)
01/30/2024	4	WAIVER OF SERVICE Returned Executed: Anthony Roisman waiver sent on 1/3/2024, answer due 3/4/2024.(Melone, Thomas) (Entered: 01/30/2024)
01/30/2024	5	WAIVER OF SERVICE Returned Executed: Riley Allen waiver sent on 1/3/2024, answer due 3/4/2024.(Melone, Thomas) (Entered: 01/30/2024)
01/30/2024	6	WAIVER OF SERVICE Returned Executed: Margaret Cheney waiver sent on 1/3/2024, answer due 3/4/2024.(Melone, Thomas) (Entered: 01/30/2024)
02/12/2024	7	NOTICE OF APPEARANCE by David R. Groff, Esq on behalf of Riley Allen, Margaret Cheney, Anthony Roisman.(Groff, David) (Entered: 02/12/2024)
02/12/2024	8	NOTICE OF APPEARANCE by David Golubock on behalf of Riley Allen, Margaret Cheney, Anthony Roisman.(Golubock, David) (Entered: 02/12/2024)
02/13/2024	9	STIPULATED MOTION for Extension of Time to File Answer re 1 Complaint, filed by Riley Allen, Margaret Cheney, Anthony Roisman(Groff, David) (Entered: 02/13/2024)

02/14/2024	10	ORDER granting 9 MOTION for Extension of Time to Answer re: 1 Complaint; All Defendants' answers due March 18, 2024. Signed by Chief Judge Geoffrey W. Crawford on 2/14/2024. (This is a text-only Order.) (jal) (Entered: 02/14/2024)
03/18/2024	11	MOTION to Dismiss 1 Complaint, for Failure to State a Claim filed by Riley Allen, Margaret Cheney, Anthony Roisman(Golubock, David) (Entered: 03/18/2024)
04/16/2024	12	STIPULATED MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC(Melone, Thomas) (Entered: 04/16/2024)
04/16/2024	13	ORDER granting 12 MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint for Failure to State a Claim. Time extended to May 17, 2024. Signed by Chief Judge Geoffrey W. Crawford on 4/16/2024. (This is a text-only Order.) (jal) (Entered: 04/16/2024)
05/13/2024	14	STIPULATED MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC(Melone, Thomas) (Entered: 05/13/2024)
05/14/2024	15	ORDER granting 14 MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint. Time extended to June 17, 2024. Signed by Chief Judge Geoffrey W. Crawford on 5/14/2024. (This is a text-only Order.) (jal) (Entered: 05/14/2024)
06/04/2024	16	STIPULATED DISCOVERY LETTER SENT re: no stipulated discovery schedule filed; case will be set for a scheduling conference unless stipulated schedule is filed. (sjl) (Entered: 06/04/2024)
06/10/2024	17	STIPULATED MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC(Melone, Thomas) (Entered: 06/10/2024)
06/10/2024	18	ORDER granting 17 MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint for Failure to State a Claim. Time extended to July 1, 2024. Signed by Chief Judge Geoffrey W. Crawford on 6/10/2024. (This is a text-only Order.) (jal) (Entered: 06/10/2024)
06/10/2024	19	MOTION to Stay Discovery filed by Riley Allen, Margaret Cheney, Anthony Roisman(Golubock, David) (Entered: 06/10/2024)
06/24/2024	20	RESPONSE in Opposition re 19 MOTION to Stay Discovery filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2), # 4 Exhibit 3, # 5 Exhibit 4), # 6 Exhibit 5, # 7 Exhibit 6) (Melone, Thomas) Modified on 6/24/2024 to clarify attachments (sjl). (Entered: 06/24/2024)
06/30/2024	21	RESPONSE in Opposition re 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim filed by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2), # 4 Exhibit 3, # 5 Exhibit 4), # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9) (Melone, Thomas) Modified on 7/1/2024 to clarify attachments (sjl). (Attachments 8, 9, and 10 replaced on 7/1/2024) (sjl). (Entered: 06/30/2024)
07/01/2024	22	NOTICE OF DOCKET ENTRY CORRECTION re: 21 RESPONSE in Opposition re 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim. Exhibits 7, 8, and 9 have been replaced to remove illegible PDF headers. The corrected documents are now attached to 21 and this entry. (Attachments: # 1 Exhibit 8, # 2 Exhibit 9) (sjl) (Entered: 07/01/2024)

07/05/2024	23	MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim , 19 MOTION to Stay Discovery <i>and for additional pages</i> filed by Riley Allen, Margaret Cheney, Anthony Roisman(Golubock, David) (Entered: 07/05/2024)
07/08/2024	24	ORDER granting 23 MOTION for Extension of Time to File Response/Reply as to 11 MOTION to Dismiss 1 Complaint for Failure to State a Claim and 19 MOTION to Stay Discovery, and to include ten (10) additional pages. Time extended to July 29, 2024. Signed by Chief Judge Geoffrey W. Crawford on 7/8/2024. (This is a text-only Order.) (jal) (Entered: 07/08/2024)
07/11/2024	25	REPLY to Response to 19 MOTION to Stay Discovery filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 07/11/2024)
07/11/2024	26	REPLY to Response to 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim filed by Riley Allen, Margaret Cheney, Anthony Roisman. (Groff, David) (Entered: 07/11/2024)
07/31/2024	27	NOTICE OF ADDITIONAL AUTHORITY by Allco Finance Limited, Apple Hill Solar LLC, Chelsea Solar LLC re 11 MOTION to Dismiss 1 Complaint, for Failure to State a Claim (Melone, Thomas) (Entered: 07/31/2024)
09/27/2024	28	ORDER granting 19 Motion to Stay Discovery. Signed by District Judge Geoffrey W Crawford on 9/26/2024. (sjl) (Entered: 09/27/2024)
11/19/2024	29	ORDER granting 11 Motion to Dismiss 1 Complaint for Failure to State a Claim. Signed by District Judge Geoffrey W. Crawford on 11/19/2024. (sjl) (Entered: 11/19/2024)
11/19/2024	30	JUDGMENT - This case is DISMISSED WITH PREJUDICE. Signed by Deputy Clerk on 11/19/2024. (Attachments: # 1 Notice to Litigants (<i>appeal period expires 12/19/2024</i>)) (sjl) (Entered: 11/19/2024)
12/18/2024	31	NOTICE OF APPEAL as to 30 Judgment, 29 Order on Motion to Dismiss for Failure to State a Claim by Allco Finance Limited, Chelsea Solar LLC, Apple Hill Solar LLC. (Filing fee \$ 605 receipt number AVTDC-2010229) (Melone, Thomas) (Entered: 12/18/2024)
12/27/2024	32	TRANSMITTED Index on Appeal, Circuit No. 24-3331, re: 31 Notice of Appeal (Attachments: # 1 Docket Sheet, # 2 Docket Sheet (sealed), # 3 Clerk's Certification)(kac) (Entered: 12/27/2024)
07/11/2025	33	MOTION to Withdraw as Attorney filed by Anthony Roisman, Riley Allen, Margaret Cheney(Golubock, David) (Entered: 07/11/2025)
07/14/2025	34	ORDER granting 33 MOTION to Withdraw as Attorney. Signed by District Judge Geoffrey W. Crawford on 7/14/2025. (This is a text-only Order.) (jal) (Entered: 07/14/2025)

PACER Service Center			
Transaction Receipt			
07/22/2025 16:19:02			
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Description:	Docket Report	Search Criteria:	2:23-cv-00691-gwc
Billable Pages:	4	Cost:	0.40

**U.S. District Court
District of Vermont (Burlington)
CIVIL DOCKET FOR CASE #: 2:25-cv-00469-wks**

PLH Vineyard Sky LLC et al v. Town of Bennington
Assigned to: Judge William K. Sessions III
Cause: 28:2201 Declaratory Judgment

Date Filed: 05/02/2025
Date Terminated: 06/05/2025
Jury Demand: Plaintiff
Nature of Suit: 290 Real Property: Other
Jurisdiction: Diversity

Plaintiff**PLH Vineyard Sky LLC**

represented by **Michael J. Melone , Esq.**
Allco Renewable Energy, Inc.
157 Church Street, 19th Floor
New Haven, CT 06510
212-681-6974
Email: mjmelone@allcous.com
ATTORNEY TO BE NOTICED

Plaintiff**Apple Hill Solar LLC**

represented by **Michael J. Melone , Esq.**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant**Town of Bennington**

Date Filed	#	Docket Text
05/02/2025	1	COMPLAINT against Town of Bennington filed by PLH Vineyard Sky LLC, Apple Hill Solar LLC. (Filing fee \$ 405 receipt number AVTDC-2069801) (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Civil Cover Sheet)(Melone, Michael) Text clarified on 5/2/2025 (law). (Attachment 17 replaced on 5/2/2025) (law). (Entered: 05/02/2025)
05/02/2025	2	CASE assigned to Judge William K. Sessions III. (law) (Entered: 05/02/2025)
05/02/2025	3	NOTICE OF DOCKET ENTRY CORRECTION re: 1 Complaint filed by Apple Hill Solar LLC, PLH Vineyard Sky LLC. The JS 44 Civil Cover Sheet has been replaced to remove the instructional page. The corrected document is now attached to 1 and this entry. (law) (Entered: 05/02/2025)
05/05/2025	4	REQUEST for Issuance of Summons as to All Defendants by PLH Vineyard Sky LLC, Apple Hill Solar LLC (Melone, Michael) (Main Document 4 replaced on 5/7/2025) (law). (Entered: 05/05/2025)

05/07/2025	5	NOTICE OF DOCKET ENTRY CORRECTION re: 4 Request for Issuance of Summons filed by Apple Hill Solar LLC, PLH Vineyard Sky LLC. The document has been replaced as a page was omitted. The complete document is now attached to 4 and this entry. (law) (Entered: 05/07/2025)
05/07/2025	6	ISSUED Summons as to Town of Bennington.(law) (Entered: 05/07/2025)
06/05/2025	7	STIPULATION of Dismissal With Prejudice by PLH Vineyard Sky LLC, Apple Hill Solar LLC. (Melone, Michael) (Entered: 06/05/2025)

PACER Service Center			
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07/22/2025 16:10:22			
PACER Login:	ph0120MPH	Client Code:	
Description:	Docket Report	Search Criteria:	2:25-cv-00469-wks
Billable Pages:	2	Cost:	0.20

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THOMAS MELONE

(b) County of Residence of First Listed Plaintiff Palm Beach County FL (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas Melone, 601 S Ocean Blvd., Delray Beach, FL 33483

DEFENDANTS

Michael F. Hanley, Carolyn Anderson, Jon Alexander, Jane Doe, Alexander Shriver, Brian Bannon

County of Residence of First Listed Defendant Grafton County, NH (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983, US Const. Amendments First, Fifth and Fourteenth

Brief description of cause: Civil rights action for violations of Plaintiff's First, Fifth and Fourteenth Amendment rights. Plaintiff seeks declaratory and injunctive relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

2/18/2026 /s/Thomas Melone, pro se

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.