

**STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD**

In Re THOMAS MELONE,
(Thomas Melone, Respondent)

PRB File No. 25-120

**RESPONDENT’S MOTION TO DISQUALIFY THE LAW FIRM OF
WOOLMINGTON, CAMPBELL, BENT & STASNY, P.C. AND MOTION TO STRIKE
THE MOTION TO QUASH THE TOWN OF BENNINGTON’S MOTION TO QUASH
SUBPOENAS TO DANIEL MONKS, SHANNON BARSOTTI, and JEANETTE
JENKINS**

Respondent THOMAS MELONE (“Respondent”) hereby submits this Motion to Disqualify the Law Firm of Woolmington, Campbell, Bent & Stasny, P.C. (the “Bent Firm”) pursuant to Rule 3.7(b) of the Vermont Rules of Professional Conduct, and Motion to Strike the “MOTION TO QUASH THE TOWN OF BENNINGTON’S MOTION TO QUASH SUBPOENAS TO DANIEL MONKS, SHANNON BARSOTTI, and JEANETTE JENKINS.”

Pursuant to VRCP 7(b)(6)¹, Respondent requests an evidentiary hearing at which Respondent will call John Stasny and Merrill Bent to testify as to Ms. Bent’s involvement in this case and the underlying complaint that Ms. Bent filed. Such evidence, further described below, will establish that no one in the Bent Firm can represent any person in this case, and that the Motion to Quash filed by Stasny in violation of the Rules of Professional Conduct should be stricken.

INTRODUCTION

Purportedly on behalf of the Town of Bennington (the “Town”), on March 2, 2026, John

¹ (6) Evidentiary Hearings. Except for motions governed by Rule 56, the court shall provide an opportunity to present evidence if requested, unless the court finds that an evidentiary hearing is not necessary. The request for an opportunity to present evidence shall include a statement of the evidence which the party wishes to offer. When a moving party wishes to request an opportunity to present evidence the request shall be submitted with the motion to which it applies or within 7 days of service of the memorandum in opposition. A request by an opposing party for an opportunity to present evidence shall be submitted with the memorandum in opposition. When this rule requires a motion to be in writing, the request for an opportunity to present evidence shall be in writing.

Stasny of the Bent Firm filed a motion to quash the deposition subpoenas issued by Respondent on February 9, 2026 to Daniel Monks, Shannon Barsotti and Jeanette Jenkins (collectively, the “Bennington Recipients”). The filing was signed by John Stasny of the Bent Firm as well as the Bennington Recipients.

Rule 3.7(b) of the Vermont Rules of Professional Conduct (the “VRPC”) allows a lawyer to act as an advocate in a trial in which another lawyer in the lawyer’s firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9 (*i.e.*, situations involving a conflict of interest). Comment 7 from Rule 3.7(b) of the VRPC reads as follows:

Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). **If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.**

(Emphasis added)

Merrill Bent is a partner in the Bent Firm. Ms. Bent is the complainant in these proceedings and is “likely to be called as a witness.” Ms. Bent appears on Mr. Hanley’s witness list and on Respondent’s witness list. Respondent alleges, *inter alia*, that the bar disciplinary machinery is being used to retaliate against Respondent 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.

Shortly after Respondent 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 Respondent, putting the bar disciplinary machinery in action in order to retaliate against Respondent and to chill the exercise of his First Amendment rights. Merrill Bent’s pressure campaign on Respondent using the bar disciplinary process worked to produce a settlement of the various litigation that was pending in May 2025. Attorney Bent was thus successful in using the

machinery of the Bar disciplinary process to squash further investigation into the government malfeasance of the Town disclosed by Respondent and Ms. Bent's firm's potential role in it. Also squashed were the challenges to whether Ms. Bent was properly hired by the Town as an attorney to oppose the two solar projects in Bennington that in 2018 the Town agreed not to oppose, or was in fact acting in a vengeful and rogue manner on her own. Also squashed were the challenges to the Benn High project itself, which, as described in *RESPONDENT'S OPPOSITION TO ZACHERY HALE'S MOTION TO QUASH SUBPOENA*, not only included Respondent's alleged environmental and financial issues, but concerns of legislators, such as Bennington's own Mary Morrissey.

Ms. Bent was and is extensively and personally involved in every aspect of the underlying controversies described in the Petition for Misconduct ("Petition") against Respondent. Because Merrill Bent would herself be disqualified from representing the Town in these proceedings, so too are all attorneys within her firm. *See Matter of Diet Drug Litig. v. Wyeth-Ayerst Labs.*, 180 A.D.3d 483, 119 N.Y.S.3d 94 (App. Div. 2020) (applying Rule 3.7(a) to all associate attorneys that practice within the same firm as the potential witness pursuant to rule 3.7(b)(1)).

Comment 6 to Rule 3.7 includes the following language:

Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. **In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7.** See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent." (emphasis added).

Comment 10 to Rule 1.7 includes the following language:

The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. **For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.** (emphasis added).

In such a case (as here), the lawyer will be precluded from seeking the client's consent. In other words, this particular conflict is not waivable by the Town.

As explained below and in previous filings in these proceedings, the probity of Merrill Bent's own conduct is front and center. In 2018, Respondent and the Town entered into a settlement agreement in which the Town agreed not to oppose either of two solar projects proposed to be located in Bennington. 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, Respondent 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). To Respondent's surprise, Attorney Merrill Bent (asserting that she was representing the Town) filed opposition to those petitions for a CPG to build those projects.

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

In a filing on January 10, 2025, with the PUC (which filing constitutes the entirety of the Misconduct Petition's evidence to support Count I of the disciplinary charges), Respondent exposed governmental malfeasance of the Town related to the expiration of the Town Plan. In a subsequent filing with the PUC on January 29, 2025, (which filing relates to Counts VI and VIII), Respondent 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." Respondent alleges that the alleged legal opinion

was from Merrill Bent’s law firm.² Respondent’s filing thus exposed Ms. Bent’s potential role in the Town’s malfeasance and the covering up of the Town’s malfeasance.

Respondent then brought suit against the Town in federal court in the District of Vermont (case 2:25-cv-00469-wks) to declare that the Bennington Town Plan had expired in October 2023. Relatively contemporaneously with that suit, Respondent 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.

I. THE PROBITY OF MERRILL BENT’S CONDUCT IS IN SERIOUS QUESTION.

This case was initiated by a complaint filed by Attorney Merrill Bent during the middle of adversarial proceedings against her opponent—the Respondent. Ms. Bent filed the complaint shortly after two things happened. *First*, Respondent made a filing on January 10, 2025 (the “January 10 Comments”) with PUC *publicly* disclosing alleged Town government malfeasance (which filing forms the sole evidence for Count I of the Complaint). The alleged malfeasance focused on the expiration of the Bennington Town plan and, *inter alia*, the actions of various government officials to cover up the expiration of the Town Plan. *Second*, in a subsequent filing with the PUC on January 29, 2025, Respondent disclosed that then Bennington Town Manager, Stuart Hurd, implicated an attorney in the alleged cover-up involving the expiration of the Bennington Town Plan (which filing relates to Counts VI and VIII of the Complaint), 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.”

Respondent’s January 29, 2025, filing stated that “presumably” the opinion is from Merrill Bent. In her reply, Merrill Bent stated: “Petitioner speculates that this must mean that the undersigned counsel has provided a legal opinion to the Town relating to the validity of the Town

² Merrill Bent’s law partner Attorney John Stasny’s filing in this PRB case dated December 11, 2025, against Respondent strongly implied that the “legal opinion” was in fact given by Merrill Bent or someone in her firm. *See* Stasny motion 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.”)

Plan. Town Counsel’s communications with its client are protected by attorney-client privilege.” Attorney Bent neither admitted nor denied that she provided the legal opinion that Mr. Hurd claimed that it had. Merrill Bent’s law partner Attorney John Stasny’s recent motion to quash in this case, however, strongly implies that the “legal opinion” was in fact given by Merrill Bent or someone in her firm. *See* Stasny motion 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.”) Mr. Hurd’s stated reliance on the legal opinion may have waived any attorney-client privilege that may have otherwise applied.³ And if Ms. Bent was in fact involved in furthering the town’s alleged malfeasance, then the crime-tort-fraud exception to the attorney-client privilege may apply in any event.⁴

In any case, a clear conflict of interest is apparent given that the probity of Merrill Bent’s own conduct is in serious question. As per the email from Stu Hurd, the Town was relying on a legal opinion in defense against accusations from Ned Perkins, a citizen of Bennington, that the Town was operating without a town plan in place. We know the gist of that “opinion”, which is best summarized in an email from Bill Colvin (executive director of the Bennington County Regional Commission) to Ned Perkins:

“Given the comprehensive nature of the rewrite with the enhanced energy plan's impact on nearly all elements of the overall town plan, the RPC considered the January 2018 action by the town an amendment *and readoption* of the plan under 24 VSA 4350, thereby establishing a new expiration date.”

(*See* **Exhibit 1**).

This argument was parroted by various members of the Select Board and Stu Hurd several times:

<u>Date</u>	<u>Link</u>	<u>Time</u>
9/9/24	https://www.youtube.com/watch?v=Ocnv_ROqfvE	2:49:00 through 2:52:00

³ *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir.) (criminal defendant waived privilege when he asserted that he had a good faith belief that his actions were legal), *cert. denied*, 502 U.S. 813, 116 L. Ed. 2d 39, 112 S. Ct. 63 (1991).

⁴ *See, e.g., United States v. Spinosa*, No. 21 CR 206, 2021 U.S. Dist. LEXIS 120141, *14-15 (S.D.N.Y. 2021).

9/23/24	https://www.youtube.com/watch?v=iyxiawhARHA	2:00:00; and 2:21:30 through 2:23:17
10/14/24	https://www.youtube.com/watch?v=URE8DggHDcw	0:20:00; 38:40 through 39:16
10/28/24	https://www.youtube.com/watch?v=So5FKFdhMec	0:11:00 through 12:22; 1:53:30 through 1:55:30
11/11/24	https://www.youtube.com/watch?v=_g490-ZVOtl&list=PLdXvmfaqL6tgGAh8DsxqzWQ7OWrfh1nPt&index=2	1:53:00 through 2:00:00
10/27/25	https://m.youtube.com/watch?v=MkN9YZ3nA90&list=PLdXvmfaqL6tgGAh8DsxqzWQ7OWrfh1nPt&index=5&pp=iAQB	1:21:20 through 1:23:20

We also know that this particular legal theory is spurious as neither BCRC nor any regional commission has the statutory authority to readopt a town plan on its own. This was confirmed by the general counsel to the Agency of Commerce and Community Development Maxwell I. Krieger, Esq., (who is on Respondent’s witness list). See **Exhibit 2**. In summary, any “legal opinion” that argues that the BCRC could readopt the Town Plan without the Town ever going through the readoption process itself would be legally deficient and baseless. Because the Town has stated that it was relying on this deficient and baseless legal opinion in continuing to operate the Town without a Town Plan, Merrill Bent would be put in a position as a witness to have to defend her legal opinion, which enabled the continuing malfeasance of the Town. That situation is untenable vis-à-vis the Town because Bent would either have to continue to support a position unsupported by law and in violation of Rule 3.3 of the VRPC (lack of candor toward the tribunal) or she would be forced to denigrate her work and admit that she was wrong regarding the Town Plan expiration (a position that directly conflicts with her client’s position). With respect to the latter, if the lawyer's testimony will be adverse to the client's interest, then a conflict arises that extends to the lawyer's firm and is not waivable. *Aleynu, Inc. v. Universal Prop. Dev. &*

Acquisition Corp., 564 F. Supp. 2d 751 (E.D. Mich. 2008).

Case law demonstrates that in such a situation Merrill Bent would be conflicted out from representing the Town without exception. *See also Lesko v. Secretary Pa. Dep't of Corrections*, 34 F.4th 211, 226 (3d Cir. 2022) (“forcing trial counsel to prove [counsel's] own ineffectiveness’ create[s] a conflict of interest.”), quoting *United States v. Del Muro*, 87 F.3d 1078, 1080 (9th Cir. 1996) (per curiam) (surveying additional such decisions). In so holding, the court in *Lesko* likewise relied in part on the principle that “if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.” *Lesko, supra*, quoting American Bar Association Model Rules of Professional Conduct 1.7 comment 10. *See, e.g., Christeson v. Roper*, 574 U.S. 373, 378–379 (2015) (petitioner entitled to new substitute counsel where counsel could not “reasonably be expected to” denigrate counsel's own performance in arguing for tolling of statute of limitations based on counsel's miscalculation of deadline); *State v. Taylor*, 1 S.W.3d 610, 612 (Mo. Ct. App. 1999) (“An accused is entitled to representation which is uncluttered by counsel's efforts to vindicate his own conduct” [citation omitted]).

In this case, the Town is clearly entitled to conflict free representation which is “uncluttered” by Bent’s efforts to vindicate her own conduct of misrepresenting the expiration date of the Town Plan (either through a legal opinion or her false statements made on behalf of the Town to the PUC in Case No. 24-3517-PET where she falsely claimed that the expiration date of the Town Plan was January 22, 2026, *see* page 2 of **Exhibit 3**). *See also* N.Y.R.P.C. 1.7. cmt. 10 (“[I]f the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.”); *Gleason v. Zocco*, 941 F. Supp. 32, 35 (S.D.N.Y. 1996) (disqualifying counsel because of his “extensive personal involvement in every aspect of the underlying controversies”); *Decker v. Nagel Rice LLC*, 716 F. Supp. 2d 228, 234-35 (S.D.N.Y. 2010) (explaining that defendants' intention to name plaintiff's counsel as third-party defendant supported disqualifying counsel from representing plaintiff); *cf. U.S. v. Fulton*, 5 F.3d 605, 611 (2d Cir. 1993) (concluding that a per se unwaivable

conflict exists “when an attorney is implicated in the crimes of his or her client”).

II. THE PROBITY OF MERRILL BENT’S CONDUCT WITH RESPECT TO HER REPRESENTATION OF THE TOWN BEFORE THE PUC IS IN SERIOUS QUESTION.

In Vermont, the authority to engage legal counsel for a town generally rests with the Selectboard, who has general supervision over the affairs of the town. That is as true in Bennington as it is anywhere else as the Bennington Town Charter specifically states that the authority to hire counsel rests with the Select Board (*See Exhibit 4 hereto, §103-303 (7)*). Respondent alleges that the Bennington Select Board never took formal action to engage Attorney Bent with respect to certain matters pending before the PUC. As such, with respect to Count VI, the fact that Attorney Bent knowingly took certain actions on behalf of the Town without ever being properly engaged and authorized to do so (as alleged by Respondent) would demonstrate violations of rules of the Rules of Professional Conduct. With respect to Count VII, the fact that the Town never properly engaged Attorney Bent (as alleged by Respondent) would demonstrate that Respondent’s emails to the Town were not in violation of Rule 4.2 (even if Rule 4.2 could apply to such communications with government officials).

30 V.S.A. § 248(a)(4)(H) authorizes the legislative body and the planning commission for the municipality in which a facility is located the right to appear as a party in a section 248(a) proceeding for a certificate of public good before the PUC. That right belongs solely to the legislative body and the planning commission and the exercise of such right requires that such municipal entities vote to make an affirmative determination to intervene. Nowhere in the Vermont statutes or in the Bennington Charter is that right to intervene delegated to any other person. In this case, neither the Bennington Select Board nor the Planning Commission properly voted to intervene in Case No. 24-3517-PET.

From the Town’s perspective, it seems that they are arguing that it is sufficient that Attorney Bent’s law firm is listed on the exceptions to their purchasing policy. Whether or not the Town’s formal bidding process for professional services applies to Attorney Bent’s law firm has

nothing to do 30 V.S.A. § 248(a)(4)(H). Neither the Bennington Select Board nor the Planning Commission ever voted to intervene in the PUC prior to Attorney Bent doing so. This was specifically admitted to during a Special Meeting of the Town's Select Board on February 21, 2025, when they Select Board voted to "ratify" previous actions of the "Town Staff" to direct Attorney Bent to intervene⁵. That attempted ratification of the action of "Town Staff" was also done in violation of Vermont's Open Meeting Law so is invalid. See **Exhibit 5** hereto. In any case, even if the ratification of the action of "Town Staff" was valid, at that point in time, it was too late as 30 V.S.A. § 248(a)(4)(H) had already been violated. Attorney Bent had already taken the unauthorized action of intervening on behalf of the Town. It is also entirely unclear who the "Town Staff" was that purportedly directed Attorney Bent to intervene in the PUC proceedings and oppose the Respondent's solar project. Regardless of the identity of the "Town Staff", however, under 24 V.S.A. § 1236, not even the Town Manager can "sign orders on the general fund of the town", which the purported hiring of Ms. Bent would entail.

Similar to the issue regarding the expiration of the Town Plan, the Town is clearly entitled to conflict free representation which is "uncluttered" by Bent's efforts to vindicate her own conduct of intervening in certain proceedings before the PUC without proper authorization to do so. Efforts, that are memorialized on video and cannot be disputed.⁶

CONCLUSION

Because Merrill Bent is likely to be a witness in these proceedings and would herself be precluded from representing the Town or any of the Bennington Recipients in these proceedings under VRPC 1.7, so too are any of her associates or partners under VRPC 3.7(b). Based on the foregoing, pursuant to VRCP 7(b)(6) the Respondent's request for an evidentiary hearing should be granted, the Bent Firm should be disqualified and the Motion to quash should be stricken. See *Aleynu, Inc. v. Universal Prop. Dev. & Acquisition Corp.*, 564 F. Supp. 2d 751 (E.D. Mich. 2008); *Matter of Diet Drug Litig. v. Wyeth-Ayerst Labs.*, 2020 NY Slip Op 00993, 180 A.D.3d 483, 119

⁵ <https://www.youtube.com/watch?v=Eo2CgxUbi2g> at 12:50.

⁶ *Id.*

N.Y.S.3d 94 (App. Div. 2020) (applying Rule 3.7(a) to all associate attorneys that practice within the same firm as the potential witness pursuant to rule 3.7(b)(1)).

Dated: March 16, 2026

Respectfully submitted,

/s/Thomas Melone

Thomas Melone

601 S. Ocean Blvd.

Delray Beach, FL 33483

Telephone: (212) 681-1120

Facsimile: (801) 858-8818

Thomas.Melone@AllcoUS.com

EXHIBIT 1

From: Bill Colvin <bcolvin@bcrcvt.org>
Date: October 2, 2024 at 6:30:06 PM EDT
To: Ned Perkins <EdwardNPerkins@gmail.com>
Subject: Re: Freedom of Information Act - Public Records Request

Dear Mr. Perkins,

Given the comprehensive nature of the rewrite with the enhanced energy plan's impact on nearly all elements of the overall town plan, the RPC considered the January 2018 action by the town an amendment *and readoption* of the plan under 24 VSA 4350, thereby establishing a new expiration date.

The BCRC conducted reviews of the plan pursuant to the Municipal and Regional Planning and Development Act (Chapter 117) compliance, Act 174 compliance for an enhanced energy plan, and Act 171 compliance concerning forest blocks and habitat connectors. The BCRC conducted these reviews prior to holding the public hearing for RPC approval on March 15, 2018.

Two subsequent minor amendments to Bennington's plan have been approved, but did not adjust the January 2026 expiration date.

The documentation you requested is attached.

Best,

Bill

William Colvin

Director

Bennington County Regional Commission

210 South Street, Suite 6

Bennington, VT 05201

802-442-0713 x.301

From: Ned Perkins <edwardnperkins@gmail.com>

Date: Tuesday, October 1, 2024 at 4:13 PM

To: Bill Colvin <bcolvin@bcrcvt.org>

Subject: Freedom of Information Act - Public Records Request

Hello Bill,

Please forward copies of all minutes and other documentation which certify that the BCRC duly extended the term of the Bennington Town Plan at its March 2018 meeting and that an extension of the term of the plan by the regional planning commission without an action by the Town Select Board to re-adopt the plan is an authorized action.

Thank you,

Ned Perkins
2229 South Stream Road
Bennington, VT 05201
802-442-9660 (h)
802-733-7149 (c)

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

**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) Case No. 24-3517-PET
the “Apple Hill Solar Project,” a 2.0 MW solar)
Electric generation facility located off Willow)
Road in Bennington, Vermont)

**TOWN OF BENNINGTON’S REPLY MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE**

Petitioner’s opposition misstates the law and is without support. It should be disregarded and the motion to strike should be granted.

I. Petitioner’s allegations are not relevant to this matter.

The Town’s motion did not need to be lengthy, as the content of Petitioner’s filings speaks for itself. The Town specifically identified the offending components of the pleading as “ad hominem attacks on members of the public who are not involved in this docket, town officials and elected officials . . . which were neither responsive nor relevant to the matters raised before the PUC.” This description was sufficient to put Petitioner on notice of the offending aspects of its pleadings without repeating them, and Petitioner did, in fact, identify the Town’s concern and responded.¹ This Commission’s rules require that:

All factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) The petition, motion, or other filing is not being done for delay or any other inappropriate purpose.

¹ Petitioner’s opposition also contains a multitude of arguments that were not responsive to the motion, and which the Commission need not address to adjudicate it.

Rule 2.203(C). Petitioner’s submissions fail this test.

A. Petitioner’s impermissible attempts at intimidation are not germane.

The core of Petitioner’s argument is that the public process the Town undertook in 2018 with regard to its Town Plan was not effective to extend its expiration date to January 22, 2026. Petitioner engages in mere surmise and conjecture to suggest that Town officials have falsely claimed that the Bennington Town Plan was readopted in 2018 in order to prevent Petitioner from participating in the readoption process. Petitioner does not explain what benefit the Town would achieve from avoiding Petitioner’s participation in that process, and indeed there is none. Petitioners would have this Commission accept that the Town chose to risk the validity of its Town Plan by knowingly allowing it to expire. They provide no grounds for this suggestion. The reality is that the Town is presently undergoing the public process of reviewing its Town Plan in anticipation of the Plan’s expiration on January 22, 2026—a process which began in 2023 (when Petitioner asserts the Town engaged in a criminal conspiracy to avoid the very process it commenced).²

Relative to the present motion to strike, speculation about the mental state of

² The Town already has a written agreement with the Petitioner and its affiliates providing that Petitioners

will not develop any solar facilities above 150kw on any site within the Town unless such site is (i) on a mapped Preferred Area under the Energy Amendment and as approve[d] under the Solar Screening Ordinance or (ii) specifically approved by the Town and as to which the Town approves under the Solar Screening Ordinance.

If the preferred site designations have expired as Petitioner claims, then the only path forward under the agreement is entirely subject to the Town’s discretion.

Town officials and inflammatory, unsupported accusations that Town officials have engaged in various crimes such as forgery, counterfeiting, submission of false documents, etc., are not germane to the legal argument about the effect of the process that the Town undertook in 2018, nor do they comport with the respect and dignity of proceedings before this Commission. Because Petitioner’s inflammatory accusations are irrelevant to assessing the parties’ respective legal positions concerning the validity of the Town Plan, and will not be adjudicated by the PUC, they are presented to the Commission for an improper purpose of intimidation in violation of Rule 2.203(C).

B. Petitioner misapprehends the *ad hominem* nature of its unsupported attempts at intimidation.

Petitioner also asserts that its inflammatory assertions are not *ad hominem* attacks. Opposition, at 6–7. Merriam-Webster defines *ad hominem* as “appealing to feelings or prejudices rather than intellect” and “marked by or being an attack on an opponent’s character rather than by an answer to the contentions made.” In its filings, Petitioner levels allegations that town employees and volunteer elected officials conspired to commit numerous crimes. These allegations are bare, personal insults, with no support or legitimate purpose in this proceeding. There can be no question that accusations of a criminal conspiracy are scandalous³ and *ad hominem*.⁴ Given the

³ “Scandalous’ matter is that which improperly casts a derogatory light on someone, most typically on a party to the action.” Wright & Miller, Federal Practice and Procedure, 5C Fed. Prac. & Proc. Civ. § 1382 (Motion to Strike—Redundant, Immaterial, Impertinent, or Scandalous Matter).

⁴ The inclusion of a private citizen’s petition in bankruptcy and accusations of scandalous allegedly fraudulent conduct concerning Town residents who have not even participated in this proceeding, and which are in no way relevant to anything the Commission must adjudicate, plainly meets the definition of an *ad hominem* attack.

context in which they were made—in response to the Town’s initial comment requesting elucidation of threshold issues in this case about solar siting—they are also immaterial and impertinent. Because the offending statements are woven throughout the offending filings, the filings should be stricken.

Petitioner can, in an appropriate manner and setting, present its legal argument relating to alleged deficiencies in the readoption of the Town Plan in 2018, if it can do so without inserting conjectural assertions of criminal machinations.

II. Petitioner’s arguments relative to the town’s legal representation are nonresponsive and incorrect.

This Commission’s rules require that:

The signature of [the filer] constitutes a certification by that person that, based on a reasonable inquiry and a good-faith basis, to the best of their knowledge, information, and belief . . . All legal contentions are supported by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

Rule 2.203(C). Petitioner’s submissions misstate the law and fail this test.

A. Town Counsel has been engaged to represent the Town

Petitioner asserts that undersigned counsel lacks authority to represent the Town in this proceeding absent a public meeting specifically authorizing such representation. Petitioner also suggests that undersigned counsel’s appearance in this matter violates the Open Meeting Law. The argument ignores Vermont case law and statute.

First, the PUC does not have jurisdiction to adjudicate an alleged Open Meeting Law violation and, as such, this argument is improper. *In re Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 104, 214 Vt. 73 (the PUC lacks jurisdiction to adjudicate alleged Open

Meeting Law violations).

Second, the Vermont Supreme Court has considered and rejected Petitioner’s argument as legally unfounded. In *Herron v. Town of Guilford*, the Court held that a Town may engage its legal counsel without first holding a public meeting. *Herron v. Town of Guilford*, No. 23-AP-402, 2024 WL 3461206, *2 (Vt. July 12, 2024) (mem.).⁵ The *Herron* Court relied on powers implicit from those set forth in 24 V.S.A. § 872 (enumerating the general powers of the Selectboard).

The same applies in a Town Manager system. Bennington’s Town Manager, has “general supervision of the affairs of the town, [is] the administrative head of all departments of the town governments, and [is] responsible for the efficient administration thereof.” 24 V.S.A. § 1235. The Manager has the authority to perform all of the duties of the Selectboard with certain exceptions not relevant here. 24 V.S.A. § 1236(2). Under Vermont Law a Town Manager, directly or by delegation, has the authority to direct municipal counsel to enter an appearance in a matter in which the Town has an interest without selectboard authorization at a public meeting. The Town Manager has due authority to exercise his or her authority for the day to day management of the Town independently of the selectboard and may follow his or her own judgment, subject to the provisions of 24 V.S.A. § 1233 which permit the Selectboard to remove the Town Manager for cause.

⁵ Even assuming Petitioner was correct that action at an open meeting was required to direct municipal counsel to enter an appearance on behalf of the Town, the Town could easily cure such an infirmity through ratification. *In re Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 107, 214 Vt. 73.

Contrary to Petitioner’s assertions the Town has yet to take a position on the project or make a recommendation pursuant to § 248. Like the Department of Public Service, the Town has thus far merely raised threshold evidentiary deficiencies and inconsistencies for further examination. Indeed, in its initial comments the Town expressly indicated that it had yet to make a recommendation pursuant to § 248, and that it may do so “following further consideration by [the Selectboard and Planning Commission] at future meetings.” Town’s Initial Comments, at 2.

B. Town Counsel’s Appearance Does Not Violate the Vermont Rules of Professional Conduct⁶

Petitioner asserts that the Town’s counsel cannot appear in this proceeding without violating the Rules of Professional Conduct. Given that Petitioner’s opposition is not a motion to disqualify the Town’s counsel, the PUC need not address these arguments to decide the pending motion to strike. The Town nonetheless offers relevant authority in order to assist the Commission and in the absence of any supplied by Petitioner.

1. Rule 3.7 does not prohibit Town Counsel’s representation.

Petitioner argues that “unless the Town stipulates that the Town Plan expired on October 6, 2023, [its counsel] is a key witness and as such is disqualified from

⁶ Petitioner presents arguments under both Vermont and New York Rules of Professional Conduct. The Town addresses only the Vermont rules as the choice of law provision in both states’ Rules of Professional Conduct provides that “[f]or conduct in connection with a proceeding in a [tribunal/court] before which a lawyer has been admitted to practice . . . the rules to be applied shall be the rules of the jurisdiction in which the [tribunal/court] sits . . .” Vermont Rules of Professional Conduct 8.5; New York Rules of Professional Conduct 8.5.

representing the Town under Vermont Rules of Professional Conduct 3.7.” Opposition, at 2. Petitioner’s sole basis for this assertion is a reference to a legal opinion relating to the Town Plan in an email between Bennington Town Manager Stuart Hurt and a third party. Petitioner speculates that this must mean that the undersigned counsel has provided a legal opinion to the Town relating to the validity of the Town Plan. Town Counsel’s communications with its client are protected by attorney-client privilege, and therefore will not be the subject of witness testimony in this proceeding. *See* Vermont Rule of Evidence 502 (“A client has the privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or the client’s representative and the client’s lawyer or the lawyer’s representative . . .”). Testimony from the Town’s counsel is also unnecessary to determine the legal issue Petitioner’s seek to raise concerning the renewal of the Town Plan. As such, counsel is not a necessary witness.

That conclusion does not change if Petitioner announces an intention to call the Town’s lawyer as a witness. “Disqualification of counsel is a ‘drastic measure’ and the moving party bears the burden of supporting a motion to disqualify.” *In re Watts*, 2024 VT 48, ¶ 26, 325 A.2d 108 (quoting *Cody v. Cody*, 2005 VT 116, ¶¶ 16, 23, 179 Vt. 90). “The party seeking disqualification must carry a heavy burden, and must meet a high standard of proof.” *Cody*, 2005 VT 16, ¶ 16. “Motions to disqualify counsel ‘should be resolved with extreme caution because they may be used abusively as a litigation tactic.’” *Id.* (quoting *Nelson v. Green Builders, Inc.*, 823 F.Supp 1439, 1444 (E.D. Wis. 1993)).

Courts in other jurisdictions have explained that:

Disqualification motions premised upon the advocate-witness rule are subjected to strict scrutiny because of the ‘strong potential for abuse’ when a lawyer invokes the need to call opposing counsel as a witness and then acts to disqualify him as counsel.

Paramount Comms., Inc. v. Donaghy, 858 F.Supp. 391, 394 (S.D.N.Y. 1994); *see also Forrest v. Par Pharmaceutical, Inc.*, 46 F. Supp. 2d 244, 248 (S.D.N.Y. 1999). Courts assessing such motions must determine whether the testimony to be given by the lawyer is necessary. *Weaver v. Weaver*, 2018 VT 56, ¶ 5, 207 Vt. 564; *see also Forrest*, 46 F.Supp 2d at 248 (“[t]estimony may be relevant and even highly useful but not strictly necessary.”). Petitioner’s desire to remove the undersigned counsel does not and cannot satisfy the heavy burden to disqualify counsel on the basis of Rule 3.7.

2. Rule 1.7 does not prohibit Town Counsel’s representation.

Petitioner also argues, without authority, that Town counsel’s representation in this matter violates Rule 1.7 of the Rules of Professional Conduct based on its speculation about the substance of a privileged discussion alleged to have occurred in an executive session. Opposition, at 4. This, too, is incorrect, and misapprehends the relationship between municipal counsel and individual members of a municipal legislative body.

First, the Town has not waived privilege, and will not respond to speculation about alleged attorney-client communications. Regardless, Petitioner’s legal contention is incorrect. Municipal counsel’s client is the Town, not its individual officers. Rule 1.13(a) of the Vermont Rules of Professional Conduct provides that a “lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.” The Vermont Supreme Court has explained that “[a]n

organization’s lawyer, such as a city attorney or corporate counsel, works only for its constituents, including its employees and officials, in order to serve the organization, *not to serve those individuals personally.*” *Handverger v. City of Winooski*, 2011 VT 123, ¶¶ 8–9, 191 Vt. 84, 88 (citing *Bovee v. Gravel*, 174 Vt. 486, 487, 811 A.2d 137, 140 (2002) (mem.) (affirming “the general rule that an attorney representing a corporation owes a duty of care solely to the corporation, not to its separate shareholders, officers or directors”)). “[A] municipal attorney is not in a personal attorney-client relationship with municipal staff.” *Id.* (citation omitted).

III. The balance of petitioner’s arguments are personal attacks that warrant no response.

Petitioner’s remaining contentions constitute personal attacks that are premised on rank speculation, unsupported by its own exhibits, and are also inflammatory. The Town declines to step into an endless loop of responding to improper filings by the Petitioner, other than to suggest that the Commission has the responsibility to insist on professionalism and decorum just as any court, and that a failure by the Commission to adequately address unprofessional behavior diminishes the integrity of proceedings before it. “An advocate’s function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate’s right to speak on behalf of litigants An advocate can present [its] cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.” Rule of Professional Conduct, Comment 4 to Rule 3.5. If this Commission’s Rule 2.203 is to be heeded, either in this matter or others, Petitioner’s most recent of its many breaches

thereof demand to be addressed and striking the offending filings is the least of the responses that the Commission should consider.

Dated at Manchester Center, Vermont on February 11, 2025.

/s/ Merrill E. Bent
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EXHIBIT 4



—BENNINGTON—

TOWN CHARTER

T.24 VSA Chapter 103

REVISED TO INCORPORATE AMENDMENTS

June 10, 2019

Preamble

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

Subchapter 1: Powers Of The Town

§ 103-101. General law applies

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

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

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

§ 103-102. Additional Town powers

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

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

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

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

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

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

§ 103-103. Initiative: advisory votes

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

§ 103-104. Recall

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

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

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

Subchapter 2: Officers

§ 103-201. Elective officers

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

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

§ 103-202. Appointive officers

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

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

§ 103-203. Compensation

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

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

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

Subchapter 3: Select Board

§ 103-301. Select Board; the legislative body

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

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

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

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

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

(3) relating to registration and regulation of bicycles;

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

§ 103-303. Further powers of Select Board members

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

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

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

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

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

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

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

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

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

§ 103-304. Organization of Select Board

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

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

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

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

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

Subchapter 4: Town Manager

§ 103-401. Appointed by Select Board

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

§ 103-402. Town Manager nonpartisan

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

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

§ 103-403. Oath and bond

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

§ 103-404. Duties for Manager

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

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

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

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

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

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

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

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

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

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

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

(11) Be responsible for the system of accounts.

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

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

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

§ 103-405. Compensation

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

§ 103-406. Removal

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

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

Subchapter 5: Taxation

§ 103-501. Taxes

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

§ 103-502. Discounts elimination

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

§ 103-503. Fair market value of real estate

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

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

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

§ 103-504. Special assessments

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

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

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

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

§ 103-506. Creation of Bennington Downtown District

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

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

§ 103-508. Purposes and powers

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

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

- (1) To advertise and promote the Improvement District.
- (2) To represent the interests of the District.
- (3) To receive and expend contributions, grants, and income.
- (4) To expend funds as provided for in the budget or as otherwise approved.

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

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

(7) To install and make public improvements.

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

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

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

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

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

§ 103-509. Annual budget

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

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

§ 103-510. District taxes

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

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

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

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

§ 103-511. Local option tax

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

- (1) a one percent meals tax;
- (2) a one percent rooms tax;
- (3) a one percent alcoholic beverages tax; or

(4) a one percent sales tax.

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

Subchapter 6: Zoning

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

§ 103-602. Ordinances of villages not merging

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

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

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

§ 103-604. Comprehensive Town ordinance

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

Subchapter 7: Water System

§ 103-701. Town powers

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

Subchapter 8: Miscellaneous

§ 103-801. Severability

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

§ 103-802. Merger of municipalities within Town

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

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

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

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

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

"To determine by ballot whether the Village of Old Bennington will surrender its existing charter and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled an Act to Provide a Charter for the Town of Bennington."

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

"To determine by ballot whether the Village of North Bennington will surrender its existing charter and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled An Act to

Provide a Charter for the Town of Bennington."

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

"To determine by ballot whether the Bennington Fire District No. 1 will dissolve and merge with the Town of Bennington under the provisions of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for the Town of Bennington."

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

"To determine by ballot whether the (insert municipality) will confirm its vote of (insert date) in favor of No. 83 of the Acts of 1966 entitled An Act to Provide a Charter for the Town of Bennington."

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

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

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

§ 103-804. Notice to Secretary of State

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

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

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

§ 103-806. Charter Review Committee

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

EXHIBIT 5



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

February 24, 2025

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

Re: Notice of Open Meeting Violation

Dear Mr. Hurd:

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

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

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

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

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

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

Thank you.

Sincerely,



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