STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE, (Thomas Melone, Respondent)	PRB File No. 120-2025 **March 16, 2026**

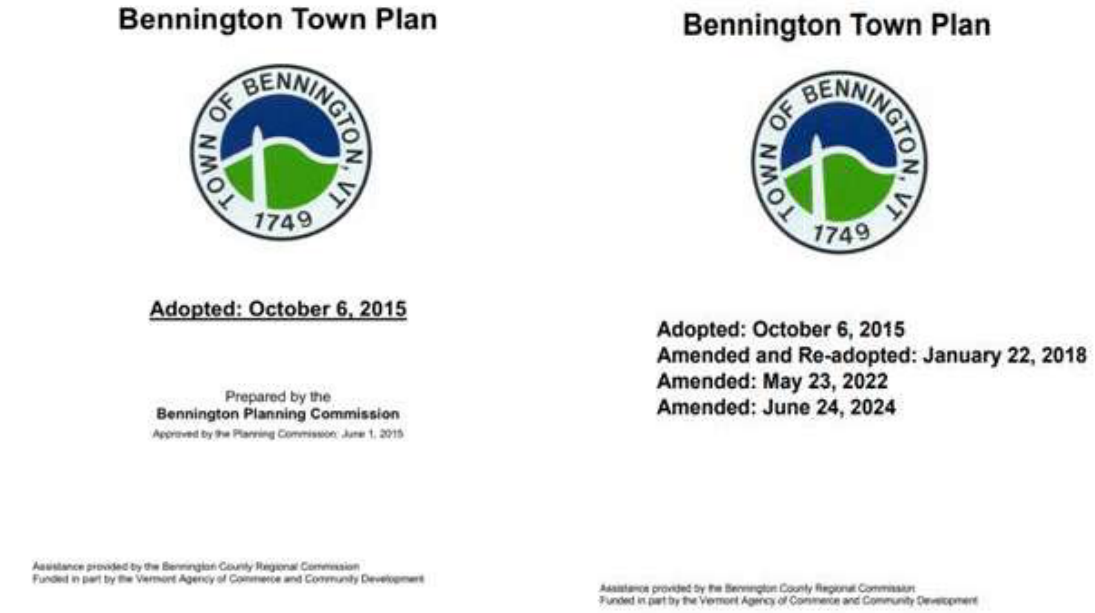
RESPONDENT'S OPPOSITION TO THE TOWN OF BENNINGTON'S MOTION TO QUASH THE SUBPOENAS TO DANIEL MONKS, SHANNON BARSOTTI AND JEANETTE JENKINS

In the event the Town's motion is not stricken as a result of Respondent's motion to strike filed today, Respondent THOMAS MELONE ("Respondent") hereby submits this opposition to the Town of Bennington's (the "Town") Motion to quash the deposition subpoenas issued on February 9, 2026 (the "Subpoenas") to Jeanette Jenkins, Shannon Barsotti and Dan Monks (collectively, the "Bennington Recipients"). Pursuant to VRCP 7(b)(6)[1], Respondent requests an evidentiary hearing at which Respondent will call Jeanette Jenkins, Shannon Barsotti and Dan Monks to testify as to their collective allegations that the subpoena imposes an undue burden, that claims of privilege are "implicated", and what the Motion describes "a bizarre theory that Bennington Town officials and employees have engaged in a criminal conspiracy to 'cover up' an alleged procedural flaw in the re-adoption of its Town Plan in 2018." Either Stasny is willfully ignorant of the facts or he is intentionally being deceptive because the Town Plan was clearly not re-adopted in 2018, and the evidence filed with Respondent's Answer and other filings shows that.

To illustrate just one example (as noted in the Reply), 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

[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."

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. What is bizarre is Stasny claiming that the purported re-adoption of the Town Plan occurred in 2018 (which it did not), and that the Town waited for six long years before they woke up to the fact.



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.[2] 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

[2] https://outside.vermont.gov/agency/ACCD/bylaws/Bylaws%20and%20Plans%20Approved/Forms/Group%20by%20Municipality.aspx?_gl=1*1g1c6qy*_ga*MTQzMTIxMTk2MC4xNzMzMjQzNzI5*_ga_V9WQH77KLW*czE3NjAwNDgwNTQkbzExNyRnMCR0MTc2MDA0ODA1OSRqNTUkbDAkaDA.

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. Either way, Stasny's motion to quash is frivolous and should be denied.

INTRODUCTION

Purportedly on behalf of the Town , on March 2, 2026, John Stasny of the Bent Firm filed a motion to quash the deposition subpoenas issued by Respondent on February 9, 2026 to the Bennington Recipients. The filing was signed by John Stasny of the Bent Firm as well as the Bennington Recipients.

Jeanette Jenkins, Shannon Barsotti and Dan Monks are all witnesses that have evidence related to the charges in the Petition for Misconduct (the "Petition") and it is necessary that Respondent obtain that information for his defense. Claims of privileged information are properly made during a deposition. Such claims cannot prevent a deposition. Nor can a frivolous claim of undue burden prevent a deposition. While the burden of proof by clear and convincing evidence rests with Mr. Hanley, Respondent is entitled gather evidence that establishes that none of Respondent's claims were false, and none were frivolous or otherwise violated the Rules of Professional Conduct.

Take Count I for example. The Petition alleges that the January 10 Comments contained "false statements of law and fact" and that such statements allegedly resulted in multiple VRPC violations as set forth in Count I, although Mr. Hanley has refused to comply with VRCP 9 and specifically state what statements are allegedly false. To prove the alleged rule violations, Mr. Hanley must demonstrate (1) that the statements made were *actually* false and (2) that the Respondent knew they were false. But no valid Bennington Town Plan means alleged forgery and counterfeiting when official documents are altered to cover-up that there is no valid Town Plan (as shown in the Reply and *infra*), and obtaining or receiving grants or other benefits (which Barsotti orchestrated along with Jenkins and Monks) without a valid Town Plan involves alleged false

certifications (also as shown in the Reply *infra*).

A. Existing Evidence

The statements and disclosure made in the January 10 Comments were based soundly on existing documentary and video evidence. The following is a non-exhaustive list of such evidence divided up by the different statements in the January 10 Comments.

(i) The Town's Alleged Cover-Up of the Town Plan Expiration

As it relates to the Town's alleged cover-up of the expiration of the Town Plan, the following is a non-exhaustive list of examples of video evidence of various members of the Select Board attempting to cover-up the fact that the Town Plan had expired:

Date	Link	Time
9/9/24	https://www.youtube.com/watch?v=Ocnv_ROqfvE	2:49:00 through 2:52:00
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-ZVOtI&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

The following is a non-exhaustive list of examples of documentary evidence of Town Officials attempting to cover up the fact that the Town Plan had allegedly expired. *See also*, *PLH Vineyard Sky LLC v. Town of Bennington*, 2:25-cv-469 (D. Vt. filed May 2, 2025):

- The Manager's Report dated September 23, 2024 (*see* ***REPLY*** **Exhibit A**) contains

false statement concerning the status of the Town Plan.

- The Manager's Report dated November 11, 2024 (*see* ***REPLY* Exhibit B**) contains false statements concerning the status of the Town Plan.

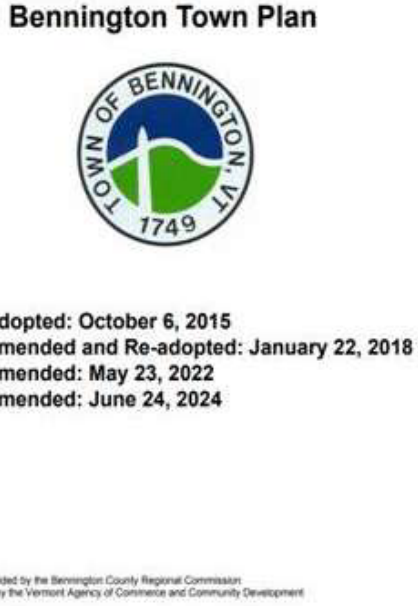
- The Email exchange (*see* ***REPLY* Exhibit C**) pursuant to which a citizen of Bennington challenged then Town manager Stu Hurd's claim that the Town Plan didn't expire in 2023, Mr. Hurd falsely maintains that the Town Plan has not expired and said: "*It's not a lie if one believes what one's saying*."

- See Section (ii) below regarding alleged violations of 13 V.S.A. § 1801.

- See Section (iii) below regarding alleged false certifications and representations made in connection with state incentive programs.

(ii) **Alleged Violations of 13 V.S.A. § 1801**

With respect to the statement regarding alleged violations of 13 V.S.A. § 1801, 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.



The altered document in addition to being published on the Town's official website, was also uploaded to the 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.[3]

In addition to uploading an allegedly false and altered document to the State, 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 (*see* ***REPLY* Exhibit D**). 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 (*see* ***REPLY* Exhibit E**). 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. In any case, if the Town Plan had expired or had not been re-adopted on either January 22, 2018 or June 24, 2024, then all of those statements were false.

(iii) **Alleged False Certifications With Respect to Incentive Programs**

With respect to the state and federal incentive programs, when municipalities in Vermont allow their Town Plan to expire, it causes that municipality to become ineligible for critical state and federal grant money[4]. Notwithstanding the expiration of the Bennington Town Plan in October of 2023, the Town continued to apply for and receive 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 be in place (collectively, the "Incentive Programs"). These Incentive Programs can be further classified by (A) State

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[3] https://outside.vermont.gov/agency/ACCD/bylaws/Bylaws%20and%20Plans%20Approved/Forms/Group%20by%20Municipality.aspx?_gl=1*1g1c6qy*_ga*MTQzMTIxMTk2MC4xNzMzMjQzNzI5*_ga_V9WQH77KLW*czE3NjAwNDgwNTQkbzExNyRnMCR0MTc2MDA0ODA1OSRqNTUkbDAkaDA.

[4] https://www.timesargus.com/news/local/expired-plan-nullifies-zoning-changes/article_c018dbf2-ac24-11ef-a5b9-af741d61a594.html

Designation Programs, (B) Municipal and Regional Resilience Fund and (C) grants.

A. State Designation Programs.

One of the Incentive Programs that the Town has actively participated in both before and after the alleged expiration of the Town Plan are known as the State Designation Programs. The ACCD describes the State Designation Programs on its website as follows:

> The Department of Housing and Community Development manages the state designation programs – Downtowns, Village Centers, New Town Centers, Growth Centers and Neighborhood Development Areas. These programs work together to provide incentives, align policies and give communities the technical assistance needed to encourage new development and redevelopment in our compact, designated areas. The program's incentives are for both the public and private sector within the designated area, including tax credits for historic building rehabilitations and code improvements, permitting benefits for new housing, funding for transportation-related public improvements and priority consideration for other state grant programs.[5]

Each of the five (5) designation programs (Downtowns, Village Centers, New Town Centers, Growth Centers and Neighborhood Development Areas) requires a confirmed Planning Process under 24 V.S.A. §4350.[6] 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).

As described in the State Designation Programs Planning Manual[7], there are a number of municipal benefits that come from a municipality obtaining the designations:

> Most state grants to municipalities are issued through a competitive application process that ranks applications on a set of selection criteria. By obtaining designation, municipalities improve the competitiveness of their applications and their ability to access the following funds:

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[5] https://accd.vermont.gov/community-development/designation-programs

[6] *See* 24 V.S.A. § 2793(b)(3) (downtown development districts); 24 V.S.A. § 2793a (a) (village centers); 24 V.S.A. § 2793b(b)(1) (new town center development districts); 24 V.S.A. § 2793c (c)(3) (growth center); 24 V.S.A. § 2793e (c)(1) (neighborhood development areas). Three of the five designation districts (Village Centers, Growth Center and Neighborhood Development area) also specifically require a duly adopted plan in addition to the planning process confirmation.

[7] https://outside.vermont.gov/agency/ACCD/ACCD_Web_Docs/CD/CPR/Planning-Your-Towns-Future/DHCD-Planning-Manual-Module2.pdf?_gl=1*1tzsxmt*_ga*MTQzMTIxMTk2MC4xNzMzMjQzNzI5*_ga_V9WQH77KLW*czE3NjAxMTMzNDgkbzExOSRnMCR0MTc2MDExMzM1NCRqNTQkbDAkaDA.

• Downtown Transportation Fund – loans, loan guarantees, or grants up to $100,000 for capital transportation and related capital improvement projects in designated downtowns. Grants may not exceed 50% of a project's cost.

• Priority consideration for specific state agency funding programs – the type of priority given to designated areas and the weight given for designation may vary by designation and funding program and may change from year to year:

- Municipal Planning Grants (ACCD)
- Better Connections grant program (ACCD and VTrans)
- Vermont Community Development Program (ACCD)
- Transportation Alternatives Program (VTrans)
- Bicycle and Pedestrian Program (VTrans)
- Historic Preservation Grants (ACCD)
- Property Assessment Fund - Contaminated Sites / Brownfields (ANR)
- Clean Water State Revolving Loan Fund for Water/Wastewater infrastructure (ANR)
- State funds for affordable housing (VHCB)
- Locating state buildings or offices – priority site consideration by the State Department of Buildings and General Services when leasing or constructing buildings. While not specifically funding for a municipality, the additional "feet on the street" from a state office building adds to the business vitality of the designated area, increasing the value of nearby property and thus of property tax assessments.
- Technical Assistance – dedicated state employees provide assistance to designated communities, offering advice on community planning, revitalization and economic development, one-on-one consultation, board development and assistance with funding to help revitalize and strengthen your community.

In addition, when one-time opportunities for funding or technical assistance arise, such as special funding after disasters, municipalities with designated centers are likely to be selected for technical assistance and funding.

Another benefit of the State Designation Programs is the access to state tax credits to incentivize private investment in certain qualified projects. *See generally* 24 V.S.A. §2794 & §2793a and 32 V.S.A. §5930cc.

B. <u>Municipal and Regional Planning and Resilience Fund.</u>

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 (the "**<u>Planning Fund</u>**"), among other benefits. *See* 24 V.S.A. §4350(d)(4) and 24 V.S.A. § 4306. Upon information and belief, Bennington has received $27,900 out of the Planning Fund since the expiration of the Town Plan.

C. <u>Grants</u>

Another form of Incentive Program that the Town has actively participated in both before

and after the expiration of the Town Plan is the application for and receipt of certain grants. The requirement of a duly adopted and current Town Plan to apply for and receive grant money comes in one of two ways. *First*, the State Designation Programs allow municipalities to improve the competitiveness of their applications and their ability to access the state and federal funds through grants. For example, if a municipality is applying for a grant and using a State Designation Program to improve the competitiveness of its application, it would need a duly adopted Town Plan in place to support such designation. *Second*, the terms of the grant itself may require that a municipality have a duly adopted town plan in place. For example, all grants through the VCDP[8] require that the municipality certify that it has a duly adopted and current municipal plan. *See*, *e.g., see* ***REPLY*** **Exhibit F**, the "Resolution for VCDP Grant Application Authority", dated August 26, 2024, that the Town submitted to the VCDP in connection with their planning grant for the Shires Housing Merger (the "**Shires Grant**") which includes a (false) certification that the Town has a duly adopted and current Municipal Plan. Shires was integrally involved with the Benn High project, Count V.

Upon information and belief, the following is a non-exhaustive list of examples of the Town of Bennington applying for and/or receiving funding through the Incentive Programs when it would not be entitled to such funds because with an expired Town Plan:

(i) Bennington has received $27,900 out of the Planning Fund since the expiration of the Town Plan. 24 V.S.A. § 4306(b)(2)(A) requires that a municipality be confirmed under Section 4350 prior to receiving such funds.

8 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 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. In addition to the certifications to be made by the municipalities in their applications for grants to the VCDP, there are numerous other controlling documents that require a duly adopted and current municipal plan be in place. For example, the State of Vermont HUD Consolidated Plan (July 1, 2020) (*see* ***REPLY*** **Exhibit J**), the VCDP Program Guide (July 2023)(*see* ***REPLY*** **Exhibit K)** and Planning Grant Instructions (July 2023)(*see* ***REPLY*** **Exhibit L**) each require that the municipal applicant have a duly and adopted and current municipal plan in place as a condition precedent to applying for and/or receiving grant money.

(ii) On October 23, 2023, the Town Select Board adopted a resolution (*see* ***REPLY*** **Exhibit G**) 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. The Municipal Planning Grant is also funded pursuant to 24 V.S.A. § 4306, which requires that a municipality be confirmed under Section 4350 prior to receiving such funds.

(iii) In December of 2023, the Town applied for $304,000 of federal funds for the Ninja Path: Phase II, Stage 1 through the VTrans Fall 2023 Transportation Alternatives (TAP) and Municipal Highway and Stormwater Mitigation Program Grant (MHSMP). On August 29, 2024, the Town was awarded $1,958,400 in federal funds through the VTrans Bicycle and Pedestrian Program. Priority was given to this project because of the State Designation Programs (*see* ***REPLY*** **Exhibit H**, page 5).

(iv) On February 12, 2024, the Town Select Board executed a Grant Agreement Resolution approving a VCDP grant (the "Squire Grant") in the amount of $700,000 for the Squire Recovery Housing project (*see* ***REPLY*** **Exhibit I** hereto). These funds are CDBG funds under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq*.). Pursuant to the State of Vermont's HUD Consolidated Plan, each applicant must have a municipal plan adopted in accordance with 24 V.S.A. Ch. 117. The Resolution for the Squire Grant was signed by Tom Haley, Jim Carroll, Gary Corey, Jeanne Conner and Ed Woods. The Grant Agreement itself (which is a VCDP form agreement) contains certifications from the Town that the Town has the legal authority to apply for an accept the grant (*see* ***REPLY*** **Exhibit M**). The Town certified that it had the legal authority to receive funds under a VCDP grant which specifically requires a duly adopted and current Town Plan. Without a Town Plan, that certification would be false.

(v) On March 25, 2024, the Town Select Board adopted a resolution approving a $40,000 grant (the "Skatepark Grant") from the DHCD in the amount of $40,000 for the Bennington Skatepark project (*see* ***REPLY*** **Exhibit N**). This grant is part of the DHCD's "Better Places" Program which requires participation in the State Designation Program to participate. The State Designation Program, in turn, requires a duly adopted Town Plan to receive funds.

(vi) On April 22, 2024, the Town Select Board executed a Grant Agreement Resolution approving a VCDP grant in the amount of $1,000,000 (the "Gage Grant") for the Gage Street Recovery Housing project (*see* ***REPLY*** **Exhibit O**). These funds are CDBG funds under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.). Pursuant to the State of Vermont's HUD Consolidated Plan, each applicant must have a municipal plan adopted in accordance with 24 V.S.A. Ch. 117. Upon information and belief, the Resolution for the Gage Grant was signed by Jeannie Jenkins, Jeanne Conner, Tom Haley, Sarah Perrin and Ed Woods (*see* ***REPLY*** **Exhibit O**). The Grant Agreement itself (which is a VCDP form agreement) contains certifications from the Town that the Town has the legal

authority to apply for an accept the grant (*see* ***REPLY*** **Exhibit P**). The Town falsely certified that it had the legal authority to receive funds under a VCDP grant that specifically requires a duly adopted and current Town Plan.

(iv) **Alleged False Statements to the Vermont Public Utility Commission.**

As to the alleged false statements made by Merrill Bent on behalf of the Town to the PUC, in Case No. 24-3517-PET, she stated that the expiration date of the Town Plan is January 22, 2026 (*see* page 2 of ***REPLY*** **Exhibit Q**). If the Town Plan expired on October 6, 2023, then that statement would be false. In addition, in Case No. 23-0249-PET, Merrill Bent on behalf of the Town stated that its Town Plan and the policies contained therein are entitled to substantial deference under 24 V.S.A. § 4352 (*see* ***REPLY*** **Exhibit R**). However, an affirmative determination of energy compliance expires with the expiration of the Town Plan under 24 V.S.A. § 4352(h). If the Town Plan expired on October 6, 2023, then that statement would be false.

(v) **RICO.**

The alleged predicate acts by various persons were the alleged forging, altering and counterfeiting of official Town documents, the false certifications and representations made on grant applications and grant agreements and mail fraud and/or wire fraud in order to perpetuate the scheme. The alleged pattern of racketeering activity consisted of alleged forging, altering and counterfeiting official Town documents, making false certifications to the State and mail fraud and/or wire fraud. The various persons involved allegedly engaged in an intentional scheme or artifice to continue to receive benefits (including payments) under the Incentive Programs, allegedly defrauding various governmental entities.

The persons involved allegedly committed mail fraud and/or wire fraud by virtue of the alleged false and misleading representations concerning the status of the Town Plan, including, without limitation, (i) uploading on the Town website and the ACCD website alleged altered and fraudulent versions of the Town Plan, (ii) allegedly issuing official Town documents misrepresenting the status of the Town Plan, (iii) allegedly conveying false information concerning the status of the Town Plan through written materials provided at Planning Commission and Select Board meetings, (iv) allegedly conveying written and oral false information concerning the status

of the Town Plan at Planning Commission and Select Board meetings, several of which are on video and (iv) allegedly enabling the Town to make false certifications regarding the status of the Town Plan on applications for Incentive Programs.

It was reasonably foreseeable to the persons involved that the mails and/or wires would be used in furtherance of the scheme, and the mails and/or wires were in fact used to further and execute the scheme. The precise dates of such transmissions cannot be alleged without access to the books and records of the persons involved, however, Respondent generally alleges that such transmissions were repeated and regular, occurring since at least October 6, 2023. For the purpose of furthering and executing their scheme, the persons allegedly involved regularly allegedly caused matters and things to be placed in post offices or authorized depositories, or deposited or caused to be deposited matters or things to be sent or delivered by a private commercial interstate carrier.

For the purpose of furthering and executing the alleged scheme, the alleged persons involved also regularly transmitted and caused to be transmitted writings and electronic data in interstate commerce by means of wire communication.

The uploading on the Town website and the ACCD website of the alleged altered and fraudulent version of the Town Plan, the broadcasting of the Select Board meetings on television where alleged false information was conveyed concerning the status of the Town Plan and the alleged false representation and certifications made in connection with applications for and receipt of the benefits under the Incentive Programs are only a few instances of the pattern of racketeering activity, consisting of alleged mail fraud and/or wire fraud violations, engaged in by certain Town officials.

Each alleged postal and electronic transmission was incident to an essential part of the scheme, namely to mask the true status of the Town Plan and to continue to apply for and receive benefits under the Incentive Programs. Additionally, each alleged postal and/or electronic transmission constituted a predicate act of mail fraud and/or wire fraud in that each transmission furthered and executed the scheme to defraud the public.

The foregoing accumulation of evidence was more than sufficient for Respondent to

believe that truth of the matters asserted in the January 10 Comments and more than sufficient to commence an action against the various persons allegedly involved. The burden on plaintiffs under Vermont law at that stage is "exceedingly low." *See Prive v. Vermont Asbestos Group*, 2010 VT 2, ¶ 14, 187 Vt. 280, 992 A.2d 1035. In any case, the evidence that Respondent had on January 10, 2025, clearly indicated that certain officials of Bennington were allegedly involved. For example, with respect to the claim of allegedly filing false certifications to the State, *see* ***REPLY*** **Exhibit F** clearly shows which Bennington officials were involved because they are the ones with their signature on the Resolution. With respect to the claims of violations of 13 V.S.A. § 1801, however, the altered Town Plan is unsigned, and although it was Dan Monks who allegedly uploaded the altered document to the VCDP website, it is not possible to tell solely from the cover page of the Town Plan, which person or persons were responsible for the actual alleged alteration or which persons knew about it. On that issue discovery via subpoenas and depositions will further illuminate the baselessness of Mr. Hanley's charges. This is one of the reasons why Respondent can deny the allegations of paragraph 61 of the Petition. Paragraph 61 of the Complaint reads as follows:

> 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."

As discussed above, Respondent never stated that all but two members of the Town of Bennington Select Board were engaged in acts of "forgery" and "counterfeiting," Respondent stated that only the cover up included such acts. Respondent did not "names names" at such point in time because Respondent did not (and still does not) know exactly which persons actually executed the alleged altering of official documents or which officials knew about it. So, while Respondent had sufficient evidence of wrongdoing to support the veracity of his statements as well as to support the impending litigation, there was still additional work to be done through discovery

to pinpoint exactly which officials were involved, and what each person actually did.

ARGUMENT

V.R.C.P. 45(c)(3)(A)(iii) and (iv) require that a court quash or modify a subpoena if it "(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) subjects a person to undue burden." V.R.C.P. 45(c)(3)(B) provides that "[i]f a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information… the court may order appearance or production only upon specified conditions." The language in the Vermont rule follows the language of Federal Rule of Civil Procedure 45 and therefore case law interpreting the federal rule is instructive. *See, Watson v. Vill. at Northshore I Ass'n*, 2018 VT 8 at P80.

A motion seeking to prevent the taking of a deposition "is very unusual" and "absent extraordinary circumstances, such an order would likely be in error." *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5 Cir. 1979) (citing 4 J. Moore & J. Lucas, Moore's Federal Practice ¶ 26.69 (3d ed. 1976); 8 C. Wright & A. Miller § 2037 (1970)). The moving party bears a heavy burden of showing "extraordinary circumstances" that would justify such a protective order, and the showing must be sufficient to overcome plaintiff's "legitimate and important interests in trial preparation." *Alexander v. FBI*, 186 F.R.D. 71, 75 (D.D.C. 1998); *see also Prozina Shipping Co., Ltd. v. Thirty-Four Automobiles*, 179 F.R.D. 41, 48 (D. Mass. 1998); *Cipollone v. Liggett Group, Inc*., 785 F.2d 1108, 1121 (3d Cir. 1986) (burden of persuasion is on the party seeking protective order; the harm alleged "must be significant, not a mere trifle"); *see also, Static Control Components, Inc. v. Darkprint Imaging*, 201 F.R.D. 431, 434 (M.D.N.C. 2001) (party "assumes a heavy burden because protective orders which totally prohibit a deposition should be rarely granted absent extraordinary circumstances."); *Office of the DA of Phila. v. Bagwell*, 155 A.3d 1119, 1136 (Pa. Cmwlth. 2017) ("In both Pennsylvania and in the federal courts, protective orders are rare, disfavored, and require the party seeking a protective order to shoulder a heavy burden."); *Elliott v. AMS, Inc*., 2016 U.S. Dist. LEXIS 109970, (S.D. W.Va. 2016) *10-11 (same) (collecting cases); *Frideres v. Schiltz*, 150 F.R.D. 153, 156 (S. D. Iowa 1993) ("Protective orders prohibiting

depositions are rarely granted.") Examples of "extraordinary circumstances" are rare, such as if there is "compelling evidence that a deposition will constitute a substantial threat to a witness' life." *United States v. Mariani*, 178 F.R.D. 447, 448 (M.D. Pa. 1998) (protective order preventing the deposition of 83-year-old terminally ill witness warranted); *see also, Frideres v. Schlitz*, 150 F.R.D. 153, 156 (S.D. Iowa 1993) (protective order issued where witness' physician opined that the stress from deposition could be "life threatening" to the witness). Extraordinary circumstances do not exist here.

I. THE TOWN HAS NO STANDING TO CHALLENGE THE SUBPOENAS.

The Town claims that it has the right to move to quash the subpoenas but it does not. The subpoenas have been issued to individuals, who are non-parties. The Town is a nonparty. In such a case, only the subpoena recipient may seek to quash a subpoena. *Rhodes v. Litig. Trust of the Rhodes Cos., LLC (In re Rhodes Cos., LLC)*, 475 B.R. 733, 82 Fed. R. Serv. 3d (Callaghan) 468, 2012 U.S. Dist. LEXIS 59918 (D. Nev. 2012) ("all subsections are consistent with section (c)'s title "Protecting a Person Subject to a Subpoena," except subsection (c)(3)(B), which explicitly extends protection to persons 'affected by' a subpoena. Thus, Rule 45(c)'s title is evidence that the primary purpose of Rule 45(c) is to protect the person subject to the subpoena, and unless explicitly stated, as in subsection (c)(3)(B), the Rule should be interpreted as applying to the person subject to the subpoena only.")[9]

II. NEITHER THE TOWN NOR ANY OF THE BENNINGTON RECIPIENTS HAVE STANDING TO CHALLENGE THE SUBPOENAS BASED UPON RULE 19(B)(1) OF A.O. 9.

Neither the Town nor any of the Bennington Recipients (all of whom are nonparties) have standing to challenge the subpoenas based upon Rule 19(b)(1) of A.O. 9. Only a party "has standing to move to enforce the Court's orders and rules." *Mortg. Payment Prot., Inc. v. Cynosure Fin., Inc.*, No. 6:08-cv-1212-Orl-22GJK, 2010 U.S. Dist. LEXIS 149606, at *10 (M.D. Fla. Nov. 5, 2010) (concluding that the plaintiff had standing to seek to enforce the court's discovery

[9] As a result of the 2013 Amendment to Rule 45, subdivision (d) now contains the provisions formerly in subdivision (c).

deadline). Regardless, Rule 19(b)(1) of A.O. 9 addresses "discovery" and not subpoenas, which have no such time limitation. And of course, the time limitations in Rule 19(b)(1) of A.O. 9 can be changed. *See* V.R.C.P. 6(b).

III. THERE IS NO UNDUE BURDEN.

The motion asserts that "[t]he 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 is a former member of the Town Selectboard, who spent several years in volunteer service to the Town." Mot. at 5-6.

Right off the bat, Ms. Jenkins has made no argument, much less demonstrate, any undue burden. As to Monks and Barsotti, the only claim is that they "have plenty to do." Again, no argument regarding an undue burden was made. The motion is all smoke and mirrors. Regardless, under Stasny's argument, all depositions would create an "undue burden."

"[T]he purpose of discovery is to provide a mechanism for making relevant information available to the litigants." *Lozano v. Maryland Cas. Co*., 850 F.2d 1470, 1473 (11th Cir. 1988). "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession." *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S. Ct. 385 (1947). Broad discovery helps "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *United States v. Procter & Gamble Co*., 356 U.S. 677, 682, 78 S. Ct. 983 (1958).

"The scope of discovery through a Rule 45 subpoena is the same as the scope of discovery permitted under Rule 26(b)." *Sullivan v. Personalized Media Communs., LLC*, No. 16-mc-80183-MEJ, 2016 U.S. Dist. LEXIS 129090, 2016 WL 5109994, at *2 (N.D. Cal. Sept. 21, 2016). V.R.C. P. 26(b)(1) provides that, for discovery in civil actions, "[p]arties may obtain discovery regarding 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. Information within this scope of discovery need not be admissible in evidence to be discoverable." Information is regarded as relevant to the subject matter if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. *Ceramic Corp. of America v. Inka Maritime Corp. Inc*., 163 F.R.D. 584, 589 (C.D. Cal. 1995). "[T]the concept of relevance is 'liberally construed.'" *Burlington Sch. Dist. v. Monsanto Co*., No. 2:22-cv-215, 2024 U.S. Dist. LEXIS 103650 *3 (D. Vt. June 11, 2024) quoting *Daval Steel Prods. v. M/V Fakredine*, 951 F.2d 1357, 1367 (2d Cir. 1991) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978)).

A person asserting "undue burden" must demonstrate specific facts "'as distinguished from stereotyped and conclusory statements." 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure*, § 2035 (2d. 2009). The moving party must establish "particular and specific facts" rather than "conclusory assertions," that justify the imposition of a protective order. *Rofail v. United States*, 227 F.R.D. 53, 54-55 (E.D.N.Y. 2005) (internal citation omitted).

Neither the Town nor any of the Bennington Recipients have specified any facts showing an undue burden. Ms. Jenkins has made no argument, much less demonstrate, any undue burden. As to Monks and Barsotti, the only claim is that they "have plenty to do." Again, no argument regarding an undue burden was made. Those allegations do not constitute an undue burden. If they did, then no deposition would ever be allowed because every deponent would then claim the same thing—that time spent in preparing and attending a deposition was an undue burden. Mr. Stasny cites no case law supporting his frivolous argument.

IV. THE TOWN'S CLAIMS OF PRIVILEGE FAIL.

A claim of attorney-client privilege may be the basis for refusing to answer a question during a deposition, but it is baseless to claim, as Stasny does, that it can prevent a deposition.

In any case, privilege is construed narrowly because it blocks the discovery of relevant

information. *United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011). *Id.* The party asserting the privilege bears the burden of establishing privilege. *Mejia*, 655 F.3d at 132. "[P]rivilege 'stands in derogation of the public's "right to every man's evidence."'" *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co., Ltd*., 232 F.R.D. 103, 114 (S.D.N.Y. 2005) (quoting *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973) (quoting 8 Wigmore, Evidence § 2192 (McNaughton rev. 1961), at 70)).[10]

V. JEANETTE JENKINS, SHANNON BARSOTTI AND DAN MONKS ARE ALL WITNESSES THAT HAVE EVIDENCE RELATED TO THE CHARGES IN THE PETITION.

As explained in the Reply, in Respondent's opposition to the Hanley Motion to Quash, and Respondent's Answer (all of which are incorporated herein by reference pursuant to VRCP 10(c)), Jenkins, Barsotti and Monks were participants in the cover-up of the Town Plan, the malfeasance disclosed by Respondent, and Respondent's communications with government officials. Jenkins, Barsotti and Monks involvement and actions relate to Counts I, V, VI, VII and VIII.

CONCLUSION

The Respondent made certain statements related to the Town and its attorney that he believed and continues to believe were truthful. The Town, for obvious reasons, does not want the truth to be revealed in any forum and, therefore, seeks to quash the Subpoenas. However, by filing the ethics complaint against Respondent, the Town's attorney placed these issues front and

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

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

center. There is no getting around the issues of the Bennington Town Plan, the Benn High development project, or whether Merrill Bent was validly hired as legal counsel on various specific matters. The specific charges brought in the Petition, put all of those issues, as well as others, squarely at issue. As explained in the Reply, no valid Town Plan means forgery and counterfeiting when official documents are altered to cover-up that there is no valid Town Plan (as shown in the Reply), and obtaining or receiving grants or other benefits that require a valid Town Plan involves false certifications (also as shown in the Reply).

The Motion to quash must be denied.

Respectfully submitted,

Dated: March 16, 2026

/s/Thomas Melone

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