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2026 VT 40

No. 25-AP-427

In re Petition of Industrial Tower and Wireless LLC
(Donna Dzugas-Smith et al., Appellants)

Supreme Court

On Appeal from
Public Utility Commission

June Term, 2026

Edward McNamara, Chair

Cindy E. Hill of Hill Attorney PLLC, Middlebury, for Appellants.

Michael Swain, Special Counsel, Montpelier, for Appellee Vermont Department of Public Service.

Daniel A. Seff of MSK Attorneys, Burlington, for Petitioner-Appellee Industrial Tower and Wireless, LLC.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **EATON, J.** Neighbors, residents of the Town of Westmore, appeal from a Public Utility Commission (PUC) decision awarding a Certificate of Public Good (CPG) to developer, Industrial Tower and Wireless LLC, for a planned telecommunications tower near Lake Willoughby in the Town. Neighbors make three arguments on appeal. First, neighbors argue that the PUC erred when it did not give substantial deference to comments submitted by divisions of the Town recommending denial of the CPG. Second, they contend that the PUC erroneously concluded that the proposed tower conformed with the Town Plan. Finally, they argue that the

PUC erred in not considering the nearby neighbors' views of the tower in its aesthetic analysis. We affirm.

¶ 2. Unless otherwise noted, the following facts are drawn from the PUC's decision, which adopted the hearing officer's proposed decision. On June 6, 2023, developer filed a petition requesting that the PUC issue a CPG for a wireless telecommunications facility, including a tower, in the Town. On June 11, 2024, the PUC hearing officer determined the petition was administratively complete and established the deadline for public comment, motions to intervene, and requests for hearing as July 9, 2024. On that day, neighbors moved to intervene and for an evidentiary hearing. The hearing officer granted neighbors' permissive intervention but limited the scope of their intervention to the tower's aesthetic impact under 30 V.S.A. § 248a(c)(1) and the tower's compliance with the municipal plan under § 248a(c)(2).¹

¶ 3. That same day—the July 9, 2024, deadline—the Town of Westmore Planning Commission filed a public comment on the petition. This comment raised concerns about the aesthetics of the tower, stating that “[s]ome of our citizens will be adversely affected by the tower from annoying to devastating” because the tower “will destroy their views and destroy the rural and natural setting of their property which is often why they choose to live where they live.” According to the comment, the adverse effect would “negatively affect[]” these individuals’ “spiritual, physical, financial and mental health” and that this “may be reason enough not to construct the tower.” Nevertheless, the comment acknowledged that “this same problem [exists] everywhere,” stated that the site chosen was “as acceptable as any site we could readily match

¹ As explained in more detail below, 30 V.S.A. § 248a(c) requires that the PUC make certain findings prior to issuing CPG. Namely, § 248a(c)(1) requires a finding that “[t]he proposed facility will not have an undue adverse effect on aesthetics.” Section 248a(c)(2) states that absent “good cause to find otherwise, substantial deference has been given to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan.”

because it cannot be easily viewed from the important locations we have chosen as critical views of our lake,” and acknowledged that “[i]t seems like [the tower] will have minimal impact on our visitors’ enjoyment of our beautiful lake.” The comment included the conclusion that the Planning Commission “[found] the siting of the tower within the confines of the Town Plan because of its overall impact.”

¶ 4. Almost seven months after the July 9, 2024, deadline, on February 2, 2025, the Planning Commission filed a motion for “intervener/party status” in the proceeding. The hearing officer rejected the Planning Commission’s motion as untimely because it was filed after the July 9 deadline. The hearing officer acknowledged that the applicable statute, 30 V.S.A. § 248a(m), “confer[ed] a statutory right to participate for a planning commission” but reasoned that “the right to intervene, even if conferred by statute, is not absolute and must still follow relevant procedural requirements, such as timeliness.” Supporting this reasoning, the hearing officer cited the PUC’s Standards and Procedures Implementing 30 V.S.A. § 248a, which stated that motions to intervene “filed outside the 30-day comment period will be considered untimely and will not be considered by the [PUC].” Standards and Procedures Implementing 30 V.S.A. § 248a, VII, <https://perma.cc/L9AP-8G4F>.

¶ 5. The Planning Commission filed a motion for reconsideration on March 6, 2025, in addition to a letter highlighting certain portions of the Westmore Town Plan for the PUC. In this letter, the Planning Commission stated that the letter could “be filed as [an] additional public comment[.]” in the case. In a subsequent March 25, 2025, letter, the Westmore Selectboard articulated that the “[f]indings determined by the Westmore Planning Commission and detailed in the Planning Commission letter, March 6, 2025, to the PUC, document that the [tower] does not comply with the Town Plan, the Westmore Telecommunications Ordinance, nor with the significant aesthetic characteristics attributed to the Town.” The hearing officer denied the Planning Commission’s motion for reconsideration. Once again, the hearing officer recognized

that municipal planning commissions have a statutory right to intervene but reasoned that the Planning Commission's motion to intervene in this case was untimely because it was filed seven months after the deadline and because "[b]oth Commission Rule 2.209(A) and the Commission's Standards and Procedures Implementing 30 V.S.A. § 248a ('Standards and Procedures') require timely intervention in a [§] 248a proceeding." See Rules of Practice § 2.209(A), (D), Code of Vt. Rules 30 000 2000, <http://www.lexisnexis.com/hottopics/codeofvtrules> (explaining "[u]pon timely application, anyone shall be permitted to intervene in any proceeding . . . when a statute or Commission rule confers an unconditional right to intervene" and requiring that "application to intervene must be made by notice" and "motion must be made as early as possible or by the date allowed under a scheduling order"). The hearing officer also stated that "the [PUC] will consider comments filed by the municipal planning commission, pursuant to [§] 248a(n)."

¶ 6. On April 7, 2025, developer filed a motion in limine to preclude consideration of public comments filed after the July 9, 2024, deadline. The PUC granted developer's motion, reasoning that "the thirty-day comment period is a statutory requirement and none of the comments filed after July 9, 2024, provide a basis to ignore that requirement." The public comments excluded by this order included the Planning Commission and Westmore Selectboard's March letters summarized above, which stated that the proposed tower violated the Westmore Town Plan and recommended that the PUC deny the CPG for the tower.

¶ 7. The hearing officer held an evidentiary hearing on the merits of the CPG petition on May 14, 2025. Neighbors, developer, and the Vermont Department of Public Service filed legal briefs, and the hearing officer issued a proposed decision on June 25, 2025. The hearing officer recommended that the PUC grant the CPG and authorize the installation of the tower. The PUC held oral argument on August 7, 2025, and issued a final order on September 17, 2025, adopting the hearing officer's proposal and granting developer a CPG. Neighbors moved for

reconsideration and the PUC denied that motion. Neighbors then appealed to this Court. Neither the Planning Commission nor the Selectboard appealed the PUC decision.

¶ 8. Neighbors make three arguments on appeal. First, they argue that the PUC erred when it did not provide statutorily required substantial deference pursuant to 30 V.S.A. § 248a(c)(2) and § 248a(n) to the letters the Planning Commission and Selectboard submitted after the July 9, 2024, deadline. Second, neighbors argue that, contrary to the hearing officer's determination, the tower contravenes the Town Plan. Third, they contend that the PUC should have considered nearby neighbors' views of the proposed tower in its aesthetics analysis.

I. PUC's Decision to Exclude the Post-July 9 Comments and Recommendation

¶ 9. As explained above, neighbors argue that the PUC violated a statutory mandate when it excluded the Planning Commission's and Selectboard's post-July 9 letters. Specifically, neighbors point to 30 V.S.A. § 248a(c)(2) which requires that before the PUC issues a CPG, the PUC must find that "[u]nless there is good cause to find otherwise, substantial deference has been given to . . . the municipal planning commissions regarding the municipal plans" and that "[a] rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from . . . [a] municipal planning commission concerning compliance with the municipal plan." Neighbors also point to 30 V.S.A. § 248a(n) which both requires the PUC to "consider the comments and recommendations submitted by the municipal legislative body and planning commission" and states that the PUC's "decision to issue or deny a certificate of public good shall include a detailed written response to each recommendation of the municipal legislative body and planning commission."

¶ 10. We decline to consider neighbors' argument because neighbors lack standing to appeal this issue. See Ladd v. Valerio, 2005 VT 81, ¶ 3, 178 Vt. 614, 883 A.2d 764 (mem.) (explaining "courts have no jurisdiction to grant the relief sought" when there is lack of standing).

¶ 11. “[I]n any case before this Court . . . the [appellant] bears the burden to establish standing.” In re Lake Bomoseen Ass’n, 2025 VT 59, ¶ 27, ___ Vt. ___, 356 A.3d 1030 (quotation omitted). Accordingly, the appealing party must demonstrate that it has been “adversely affected by the judgment” to “establish standing to raise a claim on appeal.” Id. (quotation omitted). For this reason, “[l]ike the federal courts, we generally do not allow third-party standing.” Baird v. City of Burlington, 2016 VT 6, ¶ 15, 201 Vt. 112, 136 A.3d 223. Indeed, we have explained that an appellant “cannot rest his claim to relief on the legal rights or interests of third parties” because “the interest of an injured party typically inures solely to that injured party.” Lake Bomoseen, 2025 VT 59, ¶ 28 (citation and quotations omitted). Where we do allow third-party standing, however, we require that the third party show that it has “authorization or standing to represent the interests of the injured party, or that the injured party would likely be unable to assert their own rights.” Id. ¶ 29 (citation, quotations, and alteration omitted).

¶ 12. At its core, neighbors’ argument concerns a procedural decision by the PUC to exclude filings made by the Planning Commission and Selectboard but does not concern any action by neighbors. Neighbors cannot assert injury on the Town’s behalf regarding this procedural decision. See In re John L. Norris Tr., 143 Vt. 325, 328, 465 A.2d 1385, 1387 (1983) (explaining party “cannot rest his claim to relief on the legal rights or interests of third parties” (quotation omitted)). Neighbors have also not established that they are authorized to represent the Town on these issues or that the Town was unable to assert its own legal rights. See Lake Bomoseen, 2025 VT 59, ¶ 28.

¶ 13. Neighbors argue that they have standing to appeal because they were “parties to the action at the PUC” and because “they were explicitly granted intervention status by the PUC in regard to the [tower’s] compliance with the municipal plan under 30 V.S.A. § 248a(c)(2).” They contend that because they were given intervenor status under these statutes, they have an interest in the “evidentiary standard” accorded to municipal legislative bodies and municipal planning

commissions outlined in the statutes. See 30 V.S.A. § 248a(c)(2) (explaining substantial deference standard for municipal bodies' recommendations).

¶ 14. Neighbors' status as a party in itself does not provide them with a basis to assert claims to which they lack an injury. The scope of neighbors' permissive intervention does not extend to procedural decisions regarding comments made by a separate party or the appropriate scope of deference afforded to one—of multiple—comments filed by that separate party. See Hinesburg Sand & Gravel Co. v. State, 166 Vt. 337, 341, 693 A.2d 1045, 1048 (1997) (differentiating between standing to appeal merits and standing to appeal procedural decision and explaining that “ ‘[s]tanding does not refer simply to a party's capacity to appear in court’ ” but instead “ ‘is gauged by the specific common-law, statutory or constitutional claims that a party presents’ ” (quoting Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund, 500 U.S. 72, 77 (1991))). Neighbors' permissive intervention pursuant to § 248a(c)(2), even if articulated broadly, does not allow neighbors to conflate an alleged procedural injury committed against the Town with an injury to neighbors.

¶ 15. Neighbors also argue that they have standing to appeal the PUC's decision regarding the Town because “[a]s residents and landowners of the Town of Westmore, they are of course affected by a [tower's] compliance or non-compliance with their Town Plan, which is why they, like many other intervenors at the PUC, were granted intervention status on this criteria.” They assert that they have a legal interest in the case and the judgment and that the “evidentiary standard affects the entirety of the litigation and the interests of all involved.”

¶ 16. Certainly, neighbors have an interest in the case broadly. However, an interest in the overall outcome of a case or even a specific issue within that case does not confer standing to a party to appeal a procedural decision affecting another party's participation in the proceeding. Indeed, the U.S. Supreme Court has explained that to establish standing on a procedural issue, a plaintiff must “show[] that the procedural violation endangers a concrete interest of the plaintiff

(apart from his interest in having the procedure observed).” Lujan v. Defs. of Wildlife, 504 U.S. 555, 573 n.8 (1992). The Supreme Court clarified that an individual can “enforce procedural rights . . . so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing.” Id.

¶ 17. In this case, neighbors’ argument does not allege an invasion of neighbors’ legally protected interests—that is, the PUC’s decisions are not rulings related to neighbors’ participation in the case or their ability to make arguments concerning the issues pursuant to which they were granted permissive intervention—and therefore there is no alleged injury-in-fact to neighbors. See Parker v. Town of Milton, 169 Vt. 74, 77-78, 726 A.2d 477, 480 (1998) (explaining “Vermont has adopted a three-part test to determine whether a plaintiff has standing. A plaintiff must, at a minimum, show (1) injury in fact, (2) causation, and (3) redressability” and clarifying that “[t]he injury must be an invasion of a legally protected interest” (quotation omitted)). Moreover, the substantial deference “evidentiary standard” neighbors seek to apply is statutorily required for Town comments, but not for neighbors’ comments. See 30 V.S.A. § 248a(c)(2).² Accordingly, whether that standard was appropriately applied to comments that neighbors did not submit is not an issue neighbors have standing to appeal.³

² The PUC acknowledged that its decision was based on procedure not substance. It explained that it was “not presented with a situation where [it] must determine whether the hearing officer’s [proposal for decision] applie[d] the substantial deference standard” and that, instead, it was “confronted with conflicting municipal recommendations” and was required to “decide which, if any, of those recommendations [was] entitled to substantial deference” under § 248a(c)(2). According to the PUC, “the timing by which the [Planning Commission’s] and Selectboard’s comments were submitted to the [PUC]” were “[c]entral to this issue” because “giving substantial deference to both comments is impossible” where one comment stated that the tower was within the confines of the Town Plan and the other asserted that the tower did not comply with the Town Plan.

³ Generally, intervenors have a right to appeal a PUC decision. See, e.g., In re Apple Hill Solar LLC, 2019 VT 64, ¶ 18, 211 Vt. 54, 219 A.3d 1295 (holding that intervenor had standing to appeal). However, the scope of an intervenor’s right is not unlimited, and should not exceed the issues for which intervenor status was granted. For this reason, we also do not consider neighbors’ arguments concerning the Town’s telecommunications ordinance.

II. The Tower's Compliance with Town Plan

¶ 18. Next, neighbors argue that, irrespective of the PUC's decision concerning the Town's late filings, the PUC erred when it determined that the tower did not violate the Westmore Town Plan. See 30 V.S.A. § 248a(c)(2) (stating "substantial deference has been given to the plans of the affected municipalities" before PUC issues CPG).

¶ 19. As we have frequently done, "we emphasize the limited nature of our review" in these situations. In re UPC Vt. Wind, LLC, 2009 VT 19, ¶ 2, 185 Vt. 296, 969 A.2d 144. When the PUC "evaluates a petition for a CPG . . . it is engaging in a legislative, policy-making process" and in so doing, it must exercise its discretion "to weigh alternatives presented to it, utilizing its particular expertise and informed judgment." Id. (quotations and citation omitted) (applying standard to 30 V.S.A. § 248 analysis); see also In re VTel Wireless Inc., 2015 VT 135, ¶ 10 n.4, 201 Vt. 1, 134 A.3d 1227 (explaining "[w]e discern no basis for according any less deference to . . . decisions relating to the issuance of a CPG for telecommunication facilities under 30 V.S.A. § 248a than we have traditionally afforded . . . decisions relating to the issuance of a CPG for power-generating facilities under 30 V.S.A. § 248"). "We give great deference to the [PUC's] expertise and judgment and accord a strong presumption of validity to the [PUC's] orders." UPC Vt. Wind, 2009 VT 19, ¶ 2 (quotations omitted). Further, we "will affirm the PUC's findings unless they are clearly erroneous and its legal conclusions if they are rationally derived from a correct interpretation of the law and supported by findings." Apple Hill Solar, 2019 VT 64, ¶ 27 (quotations omitted). Ultimately, the burden is on neighbors to demonstrate clear error, "and that burden is not a light one." In re Vt. Elec. Power Co., 2006 VT 69, ¶ 6, 179 Vt. 370, 895 A.2d 226 (quotation omitted).

¶ 20. Some background on the applicable statutes is helpful to understanding neighbors' argument. Section 248a of Title 30 outlines the requirements for an applicant seeking approval for the construction or installation of a telecommunications facility. The statute explains that to

construct that facility, “the applicant may obtain a certificate of public good issued by the Public Utility Commission under this section, which the Commission may grant if it finds that the facilities will promote the general good of the State.” 30 V.S.A. § 248a(a). In determining whether to grant a CPG, the PUC is required to make certain findings and give deference to certain entities involved in the process. This includes, “[u]nless there is good cause to find otherwise, [that] substantial deference has been given to the plans of the affected municipalities.” *Id.* § 248a(c)(2). The statute defines “[s]ubstantial deference” to mean “that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.” *Id.* § 248a(b)(5).

¶ 21. In this case, neighbors argue that the proposed tower violates the Westmore Town Plan because the plan “emphasizes the ‘infinite magnificence’ of Lake Willoughby and its visual setting” and that it “places high value on ensuring that ‘natural integrity’ of the [landmark] is not diminished.” Neighbors highlight that “[t]he Town Plan deems any development over 100' high that can be seen from [Lake Willoughby, a National Natural Landmark,] a development with substantial regional impact” and they point out that the proposed tower would be “140' high, with antennae reaching 153' high, at a base elevation of 1361', rising more than 70' above surrounding treetops” and would therefore be considered a substantial regional impact under the Town Plan. Finally, they assert that the “the Town Plan directs that development not create a visual intrusion into the viewshed from any vantage point on public roadways, any body of water, or the [National Natural Landmark designation area]” and that the testimony presented by neighbors to the PUC and the visibility analysis submitted by developer “indicates that the tower will be visible—visually intrude—from numerous places in the [National Natural Landmark designation area] including the lake itself and the eastern shore.”

¶ 22. Under the deferential standard of review outlined above, we conclude that the PUC gave the statutorily required substantial deference to the Town Plan. See *id.* § 248a(c)(2) (“Before

the [PUC] issues a [CPG] under this section, it shall find that . . . [u]nless there is good cause to find otherwise, substantial deference has been given to the plans of the affected municipalities.”). Indeed, the PUC adopted the hearing officer’s proposed decision, which discussed the Town Plan in depth, considered the specific aspects of the Town Plan that neighbors highlighted, and concluded that the tower “does not violate a clear, written community standard.”

¶ 23. In considering the Town Plan’s prioritization of scenic resources in the area and whether the tower should be considered a “substantial regional impact,” the hearing officer agreed with neighbors that the tower “would be considered a development of substantial regional impact under [the relevant Town Plan] provision.” However, the hearing officer disagreed with neighbors that the tower violated the Town Plan as a result. According to the hearing officer, the Town Plan did not “state that development that may cause these impacts are prohibited . . . [and did] not even state that these impacts are necessarily adverse.” Instead, the hearing officer interpreted the provision to require “careful consideration of any development that would cause these impacts.” He concluded that the tower did not violate this provision of the plan because “while visible from certain viewpoints from Lake Willoughby, [the tower] will have very limited visibility from those identified scenic areas.”

¶ 24. The hearing officer also disagreed with neighbors that the tower violated the Town Plan because it would be a “visual intrusion” on the natural landscape. The hearing officer pointed out that this quoted provision of the Town Plan concerned development on ridgelines and was therefore inapplicable to the tower, which would not be located on a ridgeline. See Westmore Town Plan, § 9 Forests, Mountaintops/Ridgelines, Issues/Concerns (5)(a), at 24, <https://www.nvda.net/files/Westmore.Adopted.7.9.18.pdf> [<https://perma.cc/S8W9-34LF>] (articulating that “ridgelines in [T]own must be preserved and protected when planning any new development” and requiring that “any new development on the ridgelines should not . . . create a visual intrusion into the viewshed as viewed from any public right of way, body of water, or from any vantage

point in the National Natural Landmark designation area”). The hearing officer further reasoned that this provision was inapplicable because the tower would be sited in “a forested area that will result in screening of much of the [tower] and reduce [tower] visibility” and that “[t]o the extent that the Facility is visible from Lake Willoughby and adjacent public highways, that visibility will be relatively distant and in many locations backgrounded by natural topography and vegetation.”

¶ 25. The hearing officer ultimately concluded that while the Town Plan “certainly encourages careful consideration of development that has the potential to impact these areas, it does not prohibit development in these areas” and that “[g]iven its limited visibility, the [tower] will not change the overall rural character of the area” and would not “run afoul of the [T]own plan.”

¶ 26. There is nothing in this analysis that indicates that the Town Plan was overlooked or in any other way, not presumed correct, valid, and reasonable by the hearing officer or PUC. See 30 V.S.A. § 248a(b)(5) (defining “substantial deference” requirement outlined in § 248a(c)(2)). Neighbors have not demonstrated that the hearing officer’s findings on these issues are “clearly erroneous” and the hearing officer’s conclusion that the tower would not violate the Town Plan is rational and “supported by [those] findings.” Apple Hill Solar, 2019 VT 64, ¶ 27 (quotations omitted).

¶ 27. Neighbors support their argument by opining that the hearing officer applied the incorrect analysis to the Town Plan. Namely, they assert that the hearing officer used the Quechee test rather than applying the “substantial deference” required by § 248a(c)(2). Compare 30 V.S.A. § 248a(c)(2) (recognizing that PUC must find, “[u]nless there is good cause to find otherwise, [that] substantial deference has been given to the plans of the affected municipalities.”), with VTel Wireless, 2015 VT 135, ¶ 13 (explaining under Quechee standard, if project “will have an adverse impact on scenic and natural beauty,” PUC will determine if that impact is “undue” by considering three criteria, including that project “must not violate clear, written community standards designed

to preserve the aesthetics of the area” (quotations omitted)). According to neighbors, this use of the Quechee test resulted in “[t]he hearing officer fail[ing] to apply the statutory substantial deference to the entirety of the Town Plan” because he limited his “review to the ‘community standards’ contained in the wrong version of Quechee aesthetics review.”

¶ 28. Neighbors are correct that the hearing officer applied the Quechee test and that his discussion of the Town Plan—and conclusion that the tower did not violate the Town Plan—existed within the Quechee analytical framework. Indeed, the hearing officer explained that “[i]n determining whether a proposed project satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the [PUC] applies the so-called ‘Quechee test’ ” and used the “community standards” language from that test to discuss the Town Plan.⁴ It does not necessarily follow, however, that the hearing officer did not afford the Town Plan the deference required under § 248a. Indeed, setting aside the overall analytical structure, as described in detail above, the hearing officer’s proposal for decision demonstrates that the hearing officer considered each aspect of the Town Plan that neighbors highlighted as prohibiting the tower and concluded that the tower “will not . . . run afoul of the” Town Plan.

¶ 29. Furthermore, beyond conclusive statements that the hearing officer did not use the correct standard, neighbors have not explained how the substance of the hearing officer’s analysis did not meet the requirement in 30 V.S.A. § 248a(c)(2). Cf. State v. Bristol, 143 Vt. 245, 250, 465 A.2d 278, 280 (1983) (declining to reverse where “the most that can be said [was] that the trial court reached the right result for the right reason, but cited the wrong rule”). Neighbors also do not argue how or why the substance of the hearing officer’s analysis would differ from the analysis he conducted under the Quechee framework. Specifically, while neighbors opine that the hearing officer “limited [his] review to the ‘community standards’ contained in the wrong version of

⁴ Neighbors point out that the hearing officer incorrectly cited 30 V.S.A. § 248 rather than 30 V.S.A. § 248a in this part of the decision.

Quechee aesthetics review,” they do not explain how an analysis of those “community standards” would or should differ from the required analysis of the Town Plan pursuant to § 248a(c)(2) when this Court has explained that “[t]own plans may be sources of clear, written community standards” under Quechee analysis. Apple Hill Solar, 2019 VT 64, ¶ 33. In fact, contrary to their implicit suggestions, a review of the hearing officer’s reasoning demonstrates that he used “community standards” and “Town Plan” interchangeably in his proposal for decision, which indicates that his review of “community standards” involved a review of the Town Plan.⁵

¶ 30. Finally, neighbors opine that the hearing officer did not give substantial deference to the “entirety” of the Town Plan, but they do not point to any provision of the Plan that the hearing officer omitted from his analysis or how the hearing officer’s analysis should otherwise have differed to address the “entirety” of the Plan. See V.R.A.P. 28(a)(4)(A) (requiring argument to contain “appellant’s contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies”). Therefore, we decline to address this argument.

III. Nearby Neighbors’ Views

¶ 31. Neighbors argue that testimony and photographs they submitted should have received consideration in the PUC’s aesthetic analysis. As described above, in reviewing the PUC’s decision to grant a CPG, “[w]e give great deference to the [PUC’s] expertise and judgment and accord a strong presumption of validity to the [PUC’s] orders.” UPC Vt. Wind, 2009 VT 19, ¶ 2 (quotations omitted). Further, we “will affirm the PUC’s findings unless they are clearly erroneous and its legal conclusions if they are rationally derived from a correct interpretation of the law and supported by the findings.” Apple Hill Solar, 2019 VT 64, ¶ 27 (quotations omitted).

⁵ There is no merit to neighbors’ assertion that the PUC “does not address” the Town Plan in its final order because the PUC adopted the hearing officer’s proposal for decision, which, as described above, discussed the Town Plan in depth.

¶ 32. Once again, some information on the relevant statutes and appropriate analysis is helpful to understanding this issue. Section 248a(c)(1) requires that before the PUC issues a CPG, the PUC must find that “[t]he proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public’s use and enjoyment of . . . any highway that has been designated as a scenic road . . . or a scenic byway.” In determining whether a facility will have an “undue adverse effect on aesthetics,” the PUC applies the Quechee test.⁶ Under this test, the PUC first inquires whether the project “will have an adverse impact on scenic and natural beauty.” VTel Wireless, 2015 VT 135, ¶ 13 (quotation omitted). If the project will have an adverse effect, the PUC then considers whether the impact would be “undue” considering three criteria: “first, [the project] must not violate clear, written community standards designed to preserve the aesthetics of the area; second, it must not offend the sensibilities of the average person; and finally, the applicant must take generally available mitigating steps to harmonize the project with its surroundings.” Id. Importantly, in In re Rutland Renewable Energy, LLC, we indicated that, under the second criterion, the “definition of an average person meant the average member of the viewing public who would see a particular project from the vantage point of the public” and that while the PUC “must consider all vantage points, it [should do] so from an objective, as opposed to subjective and neighborly, perspective.” 2016 VT 50, ¶ 22, 202 Vt. 59, 147 A.3d 621 (quotation omitted).

¶ 33. In this case, in applying the first inquiry of the Quechee test, the hearing officer determined that the proposed tower would have an adverse impact on aesthetics because of the tower’s industrial appearance, lack of other similar facilities in the immediate area, and

⁶ Neighbors state that the PUC has not adopted a specific policy regarding application of the Quechee test in telecommunications cases but does not argue that a separate analysis is required. We note that we have favorably described the PUC’s use of the Quechee test for CPG applications pursuant to 30 V.S.A. § 248a in VTel Wireless. 2015 VT 135, ¶¶ 5, 13. Accordingly, we do not differentiate between cases applying the Quechee test to cases pursuant to § 248a and other statutes.

nonconformance within the context of the adjacent wooded area. Neither party contests this conclusion. Consequently, the hearing officer appropriately turned to the second part of the Quechee analysis and considered whether the project’s adverse impact on aesthetics would be “undue.”⁷ In so doing, and as discussed in more detail below, we conclude that the PUC, through its adoption of the hearing officer’s proposed decision, engaged in the appropriate analysis, made sufficient findings to support the decision, and the findings are supported by the record. We therefore uphold the determination.

¶ 34. In his analysis, the hearing officer considered “the perspective of the average person viewing the [tower] from public and private property in making this determination.” The hearing officer recognized the particularly scenic qualities of the region and noted that the tower “may appear out of context with its forested setting.” However, he also described that “[v]iews of the [tower] from the surrounding area, including Lake Willoughby, will be very limited due to terrain and forest cover,” and, regarding views from private property, he stated that the tower “will not be visible from adjacent residences but may be visible from within property boundaries.” The hearing officer also considered the tower’s background when visible and explained that “[i]n areas where portions of the [tower] may be visible along the east side of Lake Willoughby, the [tower] will not

⁷ In this section of their brief, neighbors only argue that the proposed tower offends the sensibilities of the average viewer and do not contest the hearing officer’s findings on the other two Quechee criteria. See VTel Wireless, 2015 VT 135, ¶ 13 (outlining Quechee test criteria). Nevertheless, we note that the hearing officer appropriately considered both uncontested Quechee criteria. Regarding the first Quechee criterion, as described above, the hearing officer considered the Town and regional plans and concluded that the tower was “consistent with the goals of the Westmore Town Plan and the Northeast Kingdom Regional Plan and does not violate any clearly identified community standards contained in” either plan. See id. (explaining under Quechee test, first criterion requires consideration that project “must not violate clear, written community standards designed to preserve the aesthetics of the area”). Regarding the second criterion, the hearing officer concluded that developer would take appropriate mitigating steps because the tower was planned for “an area of limited visibility,” because “[m]ost public visibility of the [tower] is limited to locations over a mile away” and because it would “not be sited on a ridgeline and” instead would “be located in a forested area.” See id. (requiring applicant to take “generally available mitigating steps to harmonize the project with its surroundings” under third criterion of Quechee test).

be detectable based on typical visual acuity” and that “[i]n most other areas of visibility, the [tower] will be backgrounded by forested terrain.” Accordingly, the hearing officer concluded that, because of this limited visibility, the tower “will not reach a level of visual impact such that it could be considered offensive or shocking to the average viewer.” In reaching these factual findings and conclusions, the hearing officer relied on a report compiled by an independent aesthetics expert hired by the Department of Public Service which similarly concluded that the tower “would not be visible from adjacent residences, but may have visibility from within the property boundaries,” but also qualified that the expert “was not able to access individual private properties to verify potential visibility during field investigation.”

¶ 35. The hearing officer’s analysis and conclusion sufficiently demonstrate that he considered the tower from “all vantage points” including private residences.⁸ Rutland Renewable Energy, 2016 VT 50, ¶ 22 (concluding project did not offend sensibilities of average viewer rather than considering subjective testimony of specific neighbors.)

¶ 36. Neighbors argue that the PUC erred by failing to consider specific testimony and photographs they submitted. They assert that their evidence demonstrates that the tower would be

⁸ In their primary brief, neighbors cite to PUC Rule 5.112(D), which requires the PUC to “consider the perspective of an average person viewing the project from both adjoining residences and from public vantage points,” Construction and Operation of Net Metering Systems § 5.112(D), Code of Vt. Rules 30 000 5100 [hereinafter Rule 5.112(D)], <http://www.lexisnexis.com/hottopics/codeofvtrules>, and argue that the PUC violated this rule by “utterly ignor[ing] clear evidence from adjacent and nearby residents.” Developer argues that this rule is inapplicable because it only applies to net-metering systems. See *id.* § 5.112(A), (D) (explaining “[i]n determining whether a net-metering system satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the [PUC] applies the so-called ‘Quechee test’ ” and elaborating that “[i]n determining whether a project would offend the sensibilities of an average person” under this test “the [PUC] will consider the perspective of an average person viewing the project from both adjoining residences and from public vantage points”). We need not address the applicability of Rule 5.112(D) to this case because, as explained, even when considering the view from neighboring properties, there was no error in the hearing officer’s analysis.

visible from their nearby residences, and they argue that, as a result, the finding that the tower “will not be visible from adjacent residences” was error.

¶ 37. In “considering the sensibilities of the average person, the [PUC] can and should consider all vantage points, including from private property.” *Id.* ¶ 21. It does not necessarily follow, however, that a hearing officer must credit all testimony and evidence presented considering views from private property, or that the existence of such views precludes granting a CPG. Indeed, the PUC was within its discretion to credit the Department’s expert report over the testimony and photos submitted by neighbors and to conclude that the limited visibility would not offend the sensibilities of an average viewer.⁹ See *UPC Vt. Wind*, 2009 VT 19, ¶ 21 (declining to “reconsider the evidence and reach a conclusion opposite to that reached by the [PUC]” and explaining “[i]t is for the [PUC], not this Court, to weigh the evidence and assess the credibility of witnesses”).

¶ 38. Furthermore, even if the hearing officer erred by stating that the tower “[would] not be visible from adjacent residences,” his conclusion regarding whether the tower would be offensive or shocking to the average viewer also rested on the determination that the tower would be “backgrounded by forested terrain” in areas of visibility. The images submitted by neighbors from inside their residences do not contradict this determination and related conclusion. See *id.*

⁹ Neighbors draw the Court’s attention to photographs from two separate balloon floats. One set of images was taken by a neighbor during the balloon float conducted by developer and another set from a balloon float conducted by a private individual on a parcel of land adjacent to where the tower would be built. Neither set of images from inside a residence shows the balloon above the tree line. Accordingly, neither conflict with the expert’s conclusion that the tower would not be visible from inside residences according to a “Vegetated Viewshed” analysis. Indeed, as the expert report explains, this type of analysis “shows how vegetation, buildings and other obstructions in the landscape may act in addition to landform, to block views of the [tower]” and is considered “a more realistic representation of the area from which the [tower] is potentially visible.” The PUC was within its discretion to make a factual finding relying on the expert’s interpretation and analysis of the tower’s visibility as related to the surrounding vegetation. See *UPC Vt. Wind*, 2009 VT 19, ¶ 2 (“We give great deference to the [PUC’s] expertise and judgment.” (quotation omitted)).

¶ 2 (“We give great deference to the [PUC’s] expertise and judgment and accord a strong presumption of validity to the [PUC’s] orders.” (quotations omitted)). Neighbors have not met their burden to demonstrate otherwise.¹⁰ See Vt. Elec. Power, 2006 VT 69, ¶ 6 (“The burden of demonstrating clear error is the appellant’s, and that burden is not a light one.” (quotation omitted))

Affirmed.

FOR THE COURT:

Associate Justice

¹⁰ Neighbors also argue that the PUC should have considered the area’s National Natural Landmark determination in its aesthetic analysis, stating that Lake Willoughby is “the crown jewel of Vermont’s scenic beauty” and asserting that, as a result, “[t]he PUC failed to consider that the expectations of, and what is shocking and offensive to, the ‘average viewer’ in this extraordinary context” as compared to “the average viewer at other, more averagely-scenic, locations in our State.” Neighbors point to no authority supporting this suggested analysis and we decline to adopt such a subjective analysis here. Cf. Rutland Renewable Energy, 2016 VT 50, ¶ 22 (explaining PUC considers all vantage points “from an objective, as opposed to subjective and neighborly, perspective”).