

STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE

IN RE: NEW HAVEN'S REQUEST FOR A
DETERMINATION OF ENERGY COMPLIANCE PURSUANT
TO 24 V.S.A. SECTION 4352

July 6, 2017
7 p.m.

50 North Street
New Haven, Vermont

Public Hearing held before the
Vermont Department of Public Service, at the Gymnasium at
the New Haven Town Hall, 50 North Street, New Haven,
Vermont, on July 6, 2017, beginning at 7 p.m.

P R E S E N T

DEPARTMENT OF PUBLIC SERVICE:

June Tierney, Commissioner
Geoffrey A. Commons, Esquire
Ed McNamara

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1 COMMISSIONER TIERNEY: Good evening.

2 My name's June Tierney. I'm the Commissioner for the
3 Vermont Department of Public Service and here tonight
4 to convene a public hearing about your Town Plan and
5 your town's request to have that plan certified under
6 recent legislation that allows towns to receive a
7 certification of compliance with the state's
8 Comprehensive Energy Plan.

9 I see you cupping your ear in the back.
10 So my challenge to you is if you can't hear me, will
11 you please put your hand up, and I'll try to project
12 my voice. And if we find that we are stopping too
13 many times, I would then ask you to move a little
14 closer so that I don't have to project quite as far.
15 And I apologize in advance. I have been a soft-
16 spoken person all my life. And it can be a real
17 challenge at times unless I use a parade field voice
18 that they taught me in the Army, and that's a very
19 unpleasant thing for people to experience. So I
20 really tried to dissuade myself over the years from
21 using it.

22 In any case, it's really truly -- it's
23 important to me that you folks understand that it's a
24 real honor for me to be here with you tonight and to
25 be entrusted with hearing from you your thoughts

1 about the plan that has been proposed for
2 certification under this law by my Department. I'm
3 looking at the sign-up sheet, and I'm seeing that
4 there really is nobody who has said they
5 affirmatively want to speak tonight, which is the
6 purpose of tonight's hearing. What I have here are
7 maybes and possibly and a couple people who didn't
8 say anything at all.

9 Now something that happened at a
10 meeting I did not too long ago in Bennington of this
11 nature was that over time, as the evening unfolded,
12 folks who had said they are not going to speak, in
13 fact, decided that they did want to speak. So by all
14 means, feel free to change your mind. Feel free to
15 put your hand up, and I'll try to do some orderly way
16 of calling on you to make sure you have a chance to
17 speak your piece.

18 The reason I'm concerned about this is
19 that this is your opportunity tonight to let my
20 Department know, specifically me, and the attorney,
21 Geoff Commons, who is working on this matter with me,
22 and the planning director, Ed McNamara, who is also
23 working in my Department on this matter, to let us
24 know your thoughts. It's not so much us here to tell
25 you something about your plan.

1 So what I would ask you to do is to
2 take that information in while we ask Ms. Barrett, I
3 believe, who is a member of your select board which
4 is -- Ms. Barrett, are you here?

5 MS. BARRETT: Yes.

6 COMMISSIONER TIERNEY: In the back.
7 Right. My understanding is, ma'am, that you were not
8 prepared to speak tonight. But we have asked you to
9 speak about the plan tonight, and you're willing to
10 do so; is that correct?

11 MS. BARRETT: Yes.

12 COMMISSIONER TIERNEY: All right. So
13 what I propose is that you come up to the front and
14 be prepared to speak. In the Army -- I realize it's
15 not something that people are familiar to, having
16 folks hold out as model things to do, but it's a
17 model I know that works pretty well for me. I'll try
18 it to see if it works for you. In the Army I was
19 taught to always ask first in the training session
20 who was already familiar with the material so that as
21 a training officer I wouldn't waste your time. And
22 so what I would like to do tonight first is ask of
23 the people here how many consider themselves to be
24 familiar with the Town Plan that New Haven recently
25 adopted? If you just put your hand up.

1 (Raising hands.)

2 COMMISSIONER TIERNEY: Overwhelmingly,
3 Ms. Barrett, we have folks here who feel that they
4 are familiar with the plan. For the folks who do not
5 feel they are familiar with the plan, if you will
6 listen to the discussion, and listen to Ms. Barrett's
7 overview, and you have follow-on questions, I would
8 ask you to contact her to see if you can get further
9 information about that.

10 Following Ms. Barrett's overview, I
11 think the town attorney, Attorney Hill, is prepared
12 to provide a little context. You are smiling. You
13 look very familiar to me. Act 174. You were at the
14 first public access hearing.

15 MR. RYBKA: Oh, yes. I have been around
16 here and there.

17 COMMISSIONER TIERNEY: And very
18 effectively, I think, too. It's nice to see you
19 again.

20 MR. RYBKA: I want to thank the name
21 change to the Public Utilities Commission. I know we
22 discussed that personally.

23 COMMISSIONER TIERNEY: We certainly
24 did, and if I were a person of less integrity, I
25 would sit here tonight and say we did that just for

1 you, but we didn't. But nonetheless, welcome, and
2 thank you. I know it's been quite a struggle for you
3 being engaged in the Public Service Board process,
4 and the civic spirit you're exhibiting by being here
5 tonight is truly appreciated.

6 So we have Ms. Barrett who is about to
7 speak, and Attorney Hill will follow. One point of
8 order for speaking tonight, if you wouldn't mind, we
9 have a court reporter here tonight who is making a
10 transcript of proceedings. It's very helpful to me
11 as I weigh the determination I have to make. It's
12 also helpful, I think, to the public at large so that
13 you're free, free of charge, also a fairly recent
14 thing, to go on to our website and see the transcript
15 to check your memory or check to see whether things
16 you said were properly transcribed. So we would just
17 ask you to give your name before you speak, and we
18 are ready to go.

19 I think with no further ado, I will ask
20 Ms. Barrett to give us that overview. Thank you.

21 MS. BARRETT: Hi. My name is Kathleen
22 Barrett. I am the chair of the select board. There
23 are three other select board members with us tonight
24 and a former select board member. The Town Plan was
25 a -- the last Town Plan was adopted in 2011, town

1 meeting day. So it expired in 2016. So we had to do
2 -- the planning commission did a rewrite. They have
3 been working on it for several years already of the
4 Town Plan. And so we went for a year with no Town
5 Plan. That was a year of turmoil when it came to
6 things like solar projects.

7 So we revamped the Town Plan. We
8 updated facts and figures, statistics from Census
9 Bureau and other sources that we could find. And
10 then we updated the solar -- the --

11 MR. DUPOISE: Energy.

12 MS. BARRETT: Energy. Sorry. I wasn't
13 ready for this.

14 COMMISSIONER TIERNEY: You're doing
15 just fine.

16 MS. BARRETT: We updated the energy
17 portion of this. And we went through -- Cindy Hill
18 did a fantastic job of going through all the criteria
19 that needed to be in a Town Plan according to state
20 statute, made sure that everything was in there.
21 Then when it came to the solar piece specifically and
22 siting, we got language in there that would
23 specifically say where we do or do not want solar
24 panels.

25 And we didn't actually talk about size.

1 We talked more about siting, setbacks, impact on
2 neighbors. And so -- and it's a long section, I
3 totally agree, and it seems in many cases very
4 redundant. But that's what the statutes require is
5 these -- these pieces put in a very specific order.
6 And that's what we did.

7 So then that Town Plan was adopted by
8 the voters at town meeting 2017. Okay.

9 COMMISSIONER TIERNEY: That's about it
10 so far?

11 MS. BARRETT: That's it.

12 COMMISSIONER TIERNEY: Okay. Attorney
13 Hill, did you want to give us your contextual
14 presentation?

15 MS. HILL: Sure. I'll just add to
16 that, if you don't mind. It's Cindy Hill, Town
17 Attorney, who I will speak more slowly for the court
18 reporter.

19 COMMISSIONER TIERNEY: I used to have
20 that problem too. It was actually Kim who broke me
21 of that.

22 MS. HILL: Kim will give me that look
23 that says slow down. Yeah, so I actually think Kathy
24 gave a good overview. The former Town Plan had
25 expired. That did cause awkwardness in terms of town

1 position on a number of things as well as things like
2 losing village center designation, not being eligible
3 for various grants, so there was quite a push to get
4 that Town Plan -- get a Town Plan adopted. And some
5 segments like things like census data or school
6 population data were quite out of date. So it was a
7 bit of a thorough revamp to bring all of that data up
8 to speed. I believe there were a number of historic
9 properties that were missing that we got in there.

10 And so while we were in the process of
11 doing that, the planning statute, Title 24, requires
12 you to have some energy components where you have to
13 look at your electrical, thermal and transportation
14 energy use to an extent. But then there was the
15 opportunity to do the enhanced energy planning to
16 apply for certification from the Department of Public
17 Service. So for those of you, it's a bit of a
18 nuance, it's also a bit new. But the difference is
19 now that we have -- we have a Town Plan. That Town
20 Plan is to be given due consideration by the Public
21 Utilities Commission, the agency formerly known as
22 the Public Service Board.

23 COMMISSIONER TIERNEY: May I break in
24 for just a second?

25 MS. HILL: Sure.

1 COMMISSIONER TIERNEY: Under the
2 statute if the Town Plan is certified, it's to be
3 given substantial deference.

4 MS. HILL: Right. That's what I was
5 saying. Right now we have a Town Plan. It's
6 supposed to be considered by the Board and/or
7 Commission rather and given due consideration. And
8 this plan also included some specific language we
9 didn't have before about some of the important view
10 sheds in the town. So one of the standards before
11 the Public Utilities Commission is do you have
12 specific conservation standards and specific
13 aesthetics standards. This Town Plan includes some
14 of those, and directs the town will be engaged in
15 additional scenic view shed planning, all of which
16 relates to utility and other kind of project siting.

17 However, if this enhanced energy
18 component, that long chapter on energy, is certified
19 by the Department of Public Service, then the Public
20 Utilities Commission is supposed to give it
21 substantial deference. Now because there has not
22 been a plan in front of it with substantial
23 deference, we are not entirely clear what it means,
24 but the point is they are supposed to be far more
25 deferential and just accept whatever that plan says

1 rather than just throwing it into the mix of things
2 that they consider. So that Town Plan is passed. It
3 is in effect. The regional planning certified it.
4 It's in effect. We have a Town Plan. It has all of
5 the statutory components of an ordinary Town Plan.
6 And this is about whether or not it should receive
7 the heightened -- the certification by the Department
8 which would allow it to get that heightened deference
9 in any utility cases that we're before the Public
10 Utility Commission on.

11 Just in terms of the process of how we
12 did that, of course it went through all the regular
13 Town Plan issues, the process of planning commission
14 hearings. There was a planning commission workshop
15 on the weekend seeking public comment. The select
16 board had a number of hearings prior to adoption and
17 discussion at town meeting. And the statute, Act
18 174, that allowed for this -- the certification and
19 enhanced deference, was really just coming into
20 effect as we were doing all of that. So therefore,
21 we are the first town. You just certified the
22 Bennington Regional Plan.

23 COMMISSIONER TIERNEY: The regional
24 plan. Correct. Yes.

25 MS. HILL: The regional plan, and they

1 had been in the works as an early -- sort of early
2 adopter all along on this. And they have some wicked
3 amazing planning people down there actually. So this
4 is the first town one that has been through this
5 process.

6 And one of the things that happened is
7 that the statute came out, and part of the statute is
8 that the Department of Public Service was directed to
9 set standards and criteria for reviewing plans. I
10 went through the old statutes and created a checklist
11 of my own, and then about midway through our process
12 they came out with a checklist that fortunately, I
13 was very heartened to find, looked remarkably like
14 the one that I had drawn up. We were all reading the
15 same little green books; right?

16 And then, however, the Department later
17 came out with its guidance document with a lot more
18 detail and more of a workbook for how towns and
19 regional plans are supposed to go through this. That
20 was released in March which by that point, of course,
21 this Town Plan had already gone through all of its
22 public hearings and was -- had already been warned
23 for town meeting.

24 So this hearing and this process is
25 about whether we successfully created an enhanced

1 energy plan component that meets the requirements
2 that these folks want to see in a plan and get that
3 certification.

4 COMMISSIONER TIERNEY: So what I would
5 add to that -- thank you so much for that very
6 helpful contextual piece, Ms. Hill. What I would add
7 to that is the hearing tonight is not so much about
8 whether the plan successfully met the Department's
9 standards. The hearing tonight is to hear from you
10 folks what your impressions are about whether this
11 plan should be certified by the Department.

12 So in that sense I would say the scope
13 of tonight's hearing is broader, and I'm very eager
14 to hear from you. So what I'm going to do now is go
15 down the list here and tap the individuals who have
16 indicated possibly or maybe to speak, and see if
17 you've made up your minds.

18 My very first person would be Mr. John
19 Madden. Mr. Madden? Did you wish to speak tonight?

20 MR. MADDEN: Well I do have a couple of
21 questions. As to -- I have been having difficulty
22 hearing everything that was said. You may have
23 covered this already. But at any rate, it occurs to
24 me that if the Public Service Board has done a review
25 of our Town Plan already, if that review has been

1 done in writing, so that we can have a copy of it,
2 it seems as though that would be a real good guide
3 for us in terms of what's required and where to look
4 and so on like that. So if that sort of thing is
5 available, I would really appreciate a copy of that.
6 You can send it to my E-mail. My E-mail address is
7 there.

8 Also one of the other things that comes
9 to mind, you know, a lot of the discussion that we
10 have had in town there is a reference to Act 74 or
11 something like that. And I haven't been able to
12 translate that into a cite to a specific statute.
13 And so I haven't been able to really find out what
14 that particular act was all about and so on, like
15 that. So is there a particular statute that you
16 could cite now?

17 COMMISSIONER TIERNEY: I think we can
18 help you with both questions, Mr. Madden. To the
19 first one to my knowledge the Public Service Board
20 now Commission has not -- has not reviewed the town's
21 plan, at least not under the statute you were just
22 referring to. Originally adopted as Act 174. I
23 believe it's now been codified under Title 24.
24 There are various provisions of Title 24 that have
25 been amended by inserting the Act 174, and this is

1 where I get to turn to Mr. Commons and say, Mr.
2 Commons, would you be so kind as to contact Mr.
3 Madden with the citations?

4 MR. COMMONS: I would be happy to. And
5 I can send you the entire Act 174 which, as the
6 Commissioner said, amends various sections of
7 statute. And those will be clear in that as well.

8 COMMISSIONER TIERNEY: And that E-mail
9 -- and I'm showing you here as Johnag37@gmail.com.

10 MR. MADDEN: Right, yes. And actually
11 if there is too much to E-mail or whatever, I can get
12 it by regular mail. Just John Madden New Haven will
13 get me.

14 COMMISSIONER TIERNEY: We can help you
15 with that too.

16 MR. MADDEN: The mailman knows where I
17 live. So also one last question.

18 I saw on the news the other night that
19 the Public Service Board is not -- is now the Public
20 Utility Commission.

21 COMMISSIONER TIERNEY: Indeed it is.
22 That is correct.

23 MR. MADDEN: Congratulations on your
24 new name.

25 COMMISSIONER TIERNEY: It's not mine.

1 My Department is still the Department of Public
2 Service, but this renaming was to supposed to cure
3 some of the confusion that exists out there about the
4 two different agencies. So it's the Public Service
5 Board that is now the Public Utility Commission. And
6 I will be sure to pass on to them your
7 congratulations.

8 MR. MADDEN: Thank you.

9 COMMISSIONER TIERNEY: My pleasure.

10 Did you have any other comment for tonight, sir?

11 MR. MADDEN: No.

12 COMMISSIONER TIERNEY: I do have your
13 written submission here as well.

14 MR. MADDEN: Yes, right. If you would
15 -- I put out several copies of my handout. At some
16 point, not tonight necessarily, but at some point I
17 think there might be some good information in there
18 for you to read. So --

19 COMMISSIONER TIERNEY: Thank you.

20 MR. MADDEN: I really hope you have a
21 chance to take a look at it at some point.

22 COMMISSIONER TIERNEY: Thank you. And
23 the exchange with Mr. Madden has reminded me of
24 something else I meant to say earlier, which is
25 should you have thoughts after the fact, tonight,

1 meaning, you know, the immediate moment you might say
2 something but later you think I wish I had said this
3 or that to the Department, please feel free to send
4 us your comments in writing. Be happy to look at
5 them that way.

6 I think we have contact information for
7 you. You would be sending them to planning.
8 standards@vermont.gov. I will say that again just in
9 case folks are taking notes. Planning.standards --
10 planning.standards@vermont.gov. My memory, Mr.
11 Commons, is that this determination is due -- done by
12 July 13.

13 MR. COMMONS: July 18.

14 COMMISSIONER TIERNEY: So if you were
15 to get me your written comments before July 18, then
16 I can assure I would have a chance to have a look at
17 them before I issue a determination. Did you have
18 something more?

19 MS. HILL: Well there's two lawyers in
20 the room, so we are arguing.

21 MR. COMMONS: I don't know if we are
22 arguing or not, Ms. Hill. Do you have a different --

23 MS. HILL: I had believed it was July
24 20 because I had checked both the statute and our
25 submission date, and I got confirmation that the

1 submission had been received on -- it was E-mailed on
2 May 19.

3 COMMISSIONER TIERNEY: Thank you.

4 MS. HILL: The statute doesn't say 60
5 days. It says two months. So from May 19 you start
6 counting the next day, and I thought that it --

7 COMMISSIONER TIERNEY: Very helpful.
8 The way I would settle this after years of being a
9 hearing officer would be to say for purposes of
10 public comment, to make sure that I consider your
11 comments if you kindly get them to us by July 18.
12 That would be helpful. Then I can assure you that I
13 will look at them, and then we can settle later
14 whether the determination is due on the 18th or the
15 20th. Is that acceptable to counsel?

16 MR. COMMONS: That sounds fine. Thank
17 you.

18 MS. HILL: Yes.

19 COMMISSIONER TIERNEY: My next person
20 on the list, I apologize in advance, I believe it's
21 Steve Dupoise.

22 MR. DUPOISE: Dupoise. That's okay.
23 Just as a member of the select board, I reserved the
24 ability to speak. But the board voted in favor of
25 this, and I would certainly encourage obviously

1 everyone to speak. But number two is that we want
2 substantial deference to this Town Plan, and I would
3 encourage you to, you know, consider that.

4 COMMISSIONER TIERNEY: Thank you. And
5 to give it an affirmative determination so you in
6 fact get the deference, is that fair?

7 MR. DUPOISE: Yeah.

8 COMMISSIONER TIERNEY: Understood.
9 Very good. Did you have anything else you wanted to
10 add, sir?

11 MR. DUPOISE: No. Not at this time.

12 COMMISSIONER TIERNEY: Okay. Dupoise?

13 MR. DUPOISE: Poise. Yeah. Poise.

14 COMMISSIONER TIERNEY: I met with
15 somebody today whose name could have been pronounced
16 Bombardier, Bombardier, or Bombardier. And I just
17 wasn't sure, so I'm off my game tonight. I want to
18 say -- Mr. James Walsh.

19 And thank you. You introduced yourself
20 or reintroduced yourself earlier this evening. Sir,
21 what did you have to say?

22 MR. WALSH: I guess I'll give a brief
23 history. Do I need to stand?

24 COMMISSIONER TIERNEY: Can people hear
25 Mr. Walsh? Fine, thank you.

1 MR. WALSH: I think in just writing
2 some notes I go back to the Public Service Board and
3 Department 2003. 6860. McNamara.

4 COMMISSIONER TIERNEY: The NRP, I
5 think?

6 MR. WALSH: Northwest Reliability
7 Project, yeah, with VELCO. Mr. Coen and Mr. Burke.

8 COMMISSIONER TIERNEY: And Mr. Dworkin.
9 That's right. Okay.

10 MR. WALSH: You were there for that
11 process too?

12 COMMISSIONER TIERNEY: Indeed. In fact
13 I think Mr. McNamara was as well.

14 MR. WALSH: Shortly thereafter I was
15 Chairman of the planning commission. We dealt with
16 the first large solar facility, one of the first
17 large solar facilities in the state, and that would
18 be Cross Pollination up here.

19 So at that point we had no siting. It
20 was all new to everybody, including us, and we had no
21 standards. So we were kind of writing the plan and
22 shooting from the hip as best we could. So we lifted
23 -- at the last minute we lifted a lot of our energy
24 plan from Brookfield, and some of you folks know who
25 the chairman of the planning commission was in

1 Brookfield. That was our attorney that I met in the
2 Northwest Reliability Project being Aaron Adler.

3 COMMISSIONER TIERNEY: Our former
4 colleague, that's correct.

5 MR. WALSH: We lifted his Brookfield
6 plan and inserted into ours which served a purpose
7 for awhile. And then we moved forward.

8 And from that point on, I was on the
9 planning commission, we dealt with siting. And on
10 the periphery I was working in Montpelier with
11 Senator Starr, Rogers, Zuckerman, at that time new
12 Lieutenant Governor Ashe, Chris heard my calls on
13 occasion, not always what he wanted to hear. Tony
14 Klein, and Kesha Ram, and Ms. Ellis his disappeared
15 into the state government now. So I worked on siting
16 over the years. Tried to get something accomplished,
17 and I think we accomplished something in this Town
18 Plan that a lot of towns probably haven't
19 accomplished and may never accomplish.

20 I worked and met with Annette Smith
21 over the last five or 10 years with some advice,
22 sound advice here and there. So I would advise -- I
23 would expect and advise, and I hope that we receive
24 approval for this. There's a lot of work that went
25 into it, a lot of history, a lot of experience; good

1 and bad. And that's where we are.

2 COMMISSIONER TIERNEY: Thank you very
3 much, Mr. Walsh. The next person who indicated a
4 desire to perhaps speak would be Senator Bray. And
5 how are you feeling about that, sir?

6 MR. BRAY: I'll jump up. So my name is
7 Chris Bray. I live here in town down on South
8 Street, and one of your two state Senators. So --
9 and I served as chair of the Natural Resources and
10 Energy Committee for the last three years.

11 So Act 174 came out of our committee,
12 and it was, in part, you know, because around the
13 state many towns, and in Addison County 18 towns, all
14 said they were unhappy with the way town planning and
15 state energy planning were I want to say integrated.
16 They weren't integrated. So Act 174 just says we
17 have Act 250 that integrates planning, non-energy
18 development. We ought to have an orderly process for
19 how a town would express an energy plan and influence
20 the state's energy planning.

21 And so that came out as Act 174 a year
22 and-a-half ago. And it's been a challenging process,
23 but to me, I'm happy that, you know, that --
24 especially that New Haven is the first town up to
25 bat. And that just last week, Bennington County got

1 their first -- as a regional planning commission got
2 a determination of -- for certification.

3 So you know, I'm always very interested
4 in listening and trying to balance things, I think
5 that's my job. And so, you know, to me it seems as
6 though the state has been charged for many, many
7 decades with doing overall energy planning, and the
8 towns I think for the most part just kind of went
9 along with how things were happening. But now the
10 energy landscape has changed a lot; has a lot more
11 local impact. And towns have been invited in. I
12 hope that towns feel supported in the process.

13 I know the Department's worked really
14 hard on providing technical assistance and outreach.
15 And you know, we are literally learning how to do
16 this together. And I think -- so to me it's a great
17 thing to see New Haven already up to bat with its
18 Town Plan. And I respect the great deal of hard work
19 that New Haven's done, and I'm proud that we are
20 already, you know, bringing forward a plan. And so I
21 just wanted to share that for context.

22 You know, I wear two hats. One as a
23 town resident, and two as someone who happens to be
24 on the committee of jurisdiction at the state level.
25 So I'm here to say thank you to everyone on both

1 sides who is working on it, and then to listen to
2 what people have to share tonight. So thanks.

3 COMMISSIONER TIERNEY: All right.
4 Thank you. Mr. Hastings. Dale Hastings. You're
5 signed up to maybe speak.

6 MR. HASTINGS: I have nothing to say.

7 COMMISSIONER TIERNEY: You're all set.
8 Okay. And how about Mr. David Monger or Monger?

9 MR. MONGER: Like in war.

10 COMMISSIONER TIERNEY: War monger.

11 MR. MONGER: You've got it.

12 COMMISSIONER TIERNEY: How about
13 yourself, sir? Did you wish to speak tonight?

14 MR. MONGER: Sure.

15 COMMISSIONER TIERNEY: Please proceed.

16 MR. MONGER: I put perhaps.

17 COMMISSIONER TIERNEY: Indeed you did.

18 MR. MONGER: Because it depended on how
19 this evening is going and whether it's going south or
20 not. I'm one of those who is not a climate denier.
21 Climate occurs. It's just a matter of how much man
22 impinges on what the sun has been doing. And the
23 difference between weather and climate apart from the
24 difference in time duration is that climate correct
25 itself.

1 As Governor Jim Douglas had stated, we
2 are the only state that actually has a positive
3 carbon credit. One thing that Senator Bray failed to
4 mention in coordinating what was going on at the
5 state level versus the town level was that apart from
6 getting them to communicate with each other, there
7 was a mandate put into play which basically said that
8 the towns had to show support for Act 174 in terms of
9 a 90 percent renewable energy's achievement by the
10 year 2050, something which is not a state law.

11 So and another term that's been
12 bantered about for the last eight years is do your
13 fair share. Well the town has and in the process
14 lost a lot of its prime agricultural land in doing
15 so. So I look at it from the point of view of
16 getting funded in 1968, around the time the billboard
17 act came into play. Unfortunately, we are having
18 billboards being placed throughout our state that are
19 green billboards. But in '68 we were also required
20 to come up with town plans, and it's a hurdle to get
21 the funding that you need.

22 And as Attorney Hill had indicated,
23 losing our -- with the expiration of the Town Plan,
24 I'm on the planning commission, so I'll take part of
25 that hit as well. It expired. The village

1 designation expired as well. And both those
2 expirations put us in a very vulnerable situation in
3 terms of getting funded for various projects that
4 needed to be done around town.

5 So due deference. You know, we -- I
6 was concerned, and I wanted to make sure I came
7 tonight, that the town didn't have a red target on
8 its back because we're basically indicating that we
9 had done our fair share. And as much as we don't
10 want to have more agricultural land being covered
11 with green billboards, we did want to make sure that
12 we can go on with the more important prospect of
13 being able to get grants necessary to be able to get
14 things taken care of in town in terms of roads and
15 buildings that need to be repaired, et cetera, in
16 downtown.

17 That's all I wanted to say. Thanks.

18 COMMISSIONER TIERNEY: Thank you, Mr.
19 Monger. I appreciate that. May I just ask by way of
20 clarification, I think you -- please be seated.

21 I think, Attorney Hill, during your
22 remarks you alluded to the expiration of the Town
23 Plan and funding issues. Am I remembering that
24 correctly?

25 MS. HILL: Yes. Correct.

1 COMMISSIONER TIERNEY: Is that what Mr.
2 Monger -- do you recognize what you were talking
3 about in Mr. Monger's remarks.

4 MS. HILL: Yes. Yes.

5 COMMISSIONER TIERNEY: And Ms. Barrett,
6 it is, and I think also there was another select
7 board member here, Mr. Dupoise. Is that issue
8 familiar to the two of you as well?

9 MS. BARRETT: Yes. We are complying
10 with the village designation, and so that we can get
11 grants for billings within the village, but we
12 couldn't. Some grants are not available without a
13 Town Plan.

14 COMMISSIONER TIERNEY: And again, what
15 we are discussing tonight is whether the Department
16 should certify the energy component of your Town Plan
17 as complying with the Comprehensive Energy Plan that
18 the state has. So that helps me fit that all
19 together in the context of your conversation.

20 Is there anybody else here tonight who
21 wanted to make a comment? Yes, sir.

22 MR. TOLLES: I signed. Douglas Tolles.

23 COMMISSIONER TIERNEY: I've got you
24 here. You're a former select board member?

25 MR. TOLLES: Yes.

1 COMMISSIONER TIERNEY: How about you
2 come on up and let us hear from you.

3 MR. TOLLES: Sure. So I'm a former
4 select board member. I went off after three years at
5 town meeting.

6 COMMISSIONER TIERNEY: That was this
7 year?

8 MR. TOLLES: That was this year. With
9 Cindy Hill, Attorney Hill, I was the principal author
10 of the energy component. Cindy Hill did 99 percent
11 of the work in terms of making sure we had all the
12 components covered and the schedules covered and all
13 that stuff, but I was appointed by the select board
14 as the select board's point person for issues of
15 solar. So it's from that former perspective that I
16 speak.

17 Just to repeat a few things in a little
18 more detail. The Town Plan that you're considering
19 was adopted at town meeting by Australian ballot by a
20 vote of 346 to 140 according to the town's website,
21 so that's a 70 percent approval rating. So I think I
22 can stand here confidently and say that those who
23 voted significantly supported it.

24 I've testified too many times in front
25 of the Public Service Board that New Haven already

1 generates many multiples of its electricity usage.
2 We are a host at Belden Falls hydro dam as well as
3 Cross Pollination and a series of other solar. So
4 our green energy creation as a town, if you look at
5 it, it's just like an island, is significantly in
6 excess of our usage. I've lost count, but at one
7 time I believe that we were faced with 15 active
8 applications for solar arrays. New Haven was overrun
9 was the word I used. We were -- because of the VELCO
10 lines and the nice flat fields with lots of sun, not
11 trees, adequate fields, in all we were an extremely
12 attractive location, and the town and the select
13 board responded by intervening on well more than 20
14 of these with various degrees of success.

15 We were faced with the constant problem
16 of these being proposed to be placed into residential
17 zones, and also as Jim said, with the Cross
18 Pollination there really was no siting, there was no
19 screening. Here it is seven years later. It's still
20 an issue. There are open cases before the Public
21 Service Board where developers did not -- we feel
22 developers did not follow the screening requirements,
23 so we are still seeking clarification on that.

24 The Town Plan that you're under
25 discussion was written over six months ago. We

1 believe -- I believe that we met every requirement of
2 the law. My understanding as part of the Act 174
3 that if there was not an approved regional plan in
4 place, the town could come directly to you. And I
5 believe that's what the town has done. Because
6 Addison County regional plan, while it's in process,
7 it's not approved.

8 So you asked for our opinion as to
9 whether the Town Plan energy portion should be
10 certified. I would state unequivocally I believe, in
11 my opinion, that it should be certified as meeting
12 the requirements that we understand you seek.

13 Lastly, I'll leave with an open
14 question. Do you have any specific questions or
15 issues that you would like to ask our opinion on
16 regarding any part of our Town Plan?

17 COMMISSIONER TIERNEY: Thank you for
18 that question, Mr. Tolles. I do not. And I would
19 like to be clear that that's not because I'm not
20 interested, but because that's not my conception of
21 the process. So what I have before me is the request
22 that's been made by the town and the plan that has
23 been submitted by the town. And it is my
24 understanding that that's what I need to review. And
25 what -- what is added into that mix is then what you

1 folks have told me tonight. And I think that's where
2 the process comes to closure.

3 MR. TOLLES: I'll close by thanking you
4 for coming out, and certainly appreciate this
5 opportunity.

6 COMMISSIONER TIERNEY: Absolutely. I
7 see hands going up, so we will do this in an orderly
8 manner. Before I go to you, Attorney Hill, I thought
9 I saw some hands in the back, or was it you, sir?
10 And over here, this gentleman. Did you wish to speak
11 or no? All set. Okay.

12 So what I'm going to do is do a
13 triangle here, if I may. I'll start with the
14 gentleman in the front. You can tell me your name,
15 sir.

16 MR. BRUHL: Taborri Bruhl. I'm a
17 member of the select board. I just want to say that
18 I also support the Town Plan, maybe from a different
19 perspective than others. I think climate change is
20 real. I think it's caused by humans. I fully
21 support the 90 percent renewable plan. But at the
22 same time, I don't think we do ourselves any favors
23 by cutting towns out of that loop. So because I
24 support renewable energy I think towns need to have a
25 say, and so as this is our town's attempt to have a

1 say, I would like to ask you to approve it. I think
2 it's a well thought out plan. It gives us a place to
3 stand as we move forward.

4 So without that, so anyway -- so I do
5 support the plan and urge you to pass it.

6 COMMISSIONER TIERNEY: Thank you very
7 much. Now two gentlemen in the back. Which one of
8 you would like to go first? Could you please give us
9 your name?

10 MR. RYBKA: My name is Ed Rybka. I
11 live in New Haven. I didn't ask to be put on the
12 list because to be honest I wasn't quite sure what
13 was going to transpire tonight or what the purpose of
14 the hearing was. R-Y-B, as in boy, K-A. And of
15 course, I became involved in solar when I began to
16 discover that our properties were being surrounded by
17 solar arrays cropping up everywhere on the side and
18 the back, we have more being proposed nearby. And I
19 have been battling them with the Public Service Board
20 now the Public Utilities Commission for about two
21 years.

22 And in going through the New Haven Town
23 Plan I was just amazed at the degree of work that was
24 put into it. I mean Cindy Hill and Doug Tolles must
25 have spent countless hours putting this plan together

1 to try to meet these renewable energy goals. Here we
2 have Act 74 coming around, and I think the purpose of
3 Act 74 was to acknowledge that we have opened up a
4 can of worms. We have got this, you know, grandiose
5 goal of getting 90 percent of our renewables by 2050.
6 Unfortunately, this goal has no basis in fact. It
7 has no basis in economics. It has no basis in
8 ecology. It has no basis in finance. It was pulled
9 out of thin air. And the legislature in its wisdom
10 decided that we are going to leave it to somebody
11 else to see how to implement this goal. And that's
12 what's been happening. Its burden is being thrown
13 back on to all these towns.

14 Now Act 174 comes back and says, okay,
15 if you do all these things and jump through all these
16 hoops then the Town Plan will be given substantial
17 deference. When I saw Act 174 I was very, very
18 cynical. I thought it sounded to me like it was just
19 a ruse to make it appear that the legislature was
20 actually trying to address these concerns. Because I
21 was concerned that the Department of Public Service
22 would not give substantial deference to any plans,
23 and I was also concerned that the Public Utilities
24 Commission in interpreting substantial deference
25 would probably not do very much with it.

1 Now I've seen all the work that's gone
2 into the New Haven Town Plan. And I'm thinking if
3 this Town Plan cannot get certified by the Department
4 of Public Service, I don't know if anyone's Town Plan
5 is going to be doing it. I don't know if we are ever
6 going to meet any of these goals. And what angers me
7 is it seems that Act 174, perhaps my comments are
8 better addressed to the legislature, Act 174 seems to
9 be throwing the burden of implementation of these
10 renewable energy goals on to the people who can
11 least afford that burden, and that is the small towns
12 of Vermont.

13 We do not have a comprehensive energy
14 policy here in Vermont. The Department of Public
15 Service is not charged with that. The Public
16 Utilities Commission is not charged with that. We
17 have been leaving implementation of solar and wind
18 power basically to private industry, which has been
19 running amok, and doing whatever it wants to do. And
20 I think it's high time that the legislature
21 acknowledges its responsibility. If they want to set
22 these goals, what they have to do is enact some kind
23 of implementation, some kind of a project, some kind
24 of a statewide comprehensive plan that says how are
25 we to do this, instead of throwing it back on the

1 small towns who are being inundated with these
2 applications, who are spending tens if not hundreds
3 of thousands of dollars on legal fees, and trying to
4 battle all these plans.

5 I'm very disappointed in the
6 legislature. I think it's done a very poor job. I
7 would like the legislators doing something more about
8 that. Again, I think New Haven has done an
9 outstanding job on this Town Plan. If this Town Plan
10 cannot get certified, I don't think any Town Plan is
11 going to get certified. I don't think there will
12 ever be substantial deference to any of these town
13 plans.

14 I do appreciate very much your coming
15 here tonight.

16 COMMISSIONER TIERNEY: It's the least
17 that my Department can do. Sir, I think you're next
18 and your name is?

19 MR. COMMINS: Kevin Commins. C-O-M-M-I
20 -N-S. I would ask that you certify us because,
21 frankly, we need it. I think we need it more than
22 any -- certainly more than any other town in Addison
23 County, because we are agricultural land. We are
24 flat. And we have the infrastructure. We have the
25 power lines going over. You don't see incredible

1 amounts of solar projects being proposed for
2 Charlotte because they are wealthier than we are.
3 The burden is falling on us.

4 People in this town feel slammed. You
5 feel like we are under attack by the State of
6 Vermont. Solar people come in, they propose things,
7 and when we try to fight them, they -- first of all,
8 they are very nice. They slough us off. They tell
9 us they are going to do this, they are going to do
10 that, which they don't. Then we find out they have
11 already cut a deal with the Department of Public
12 Service, that we have had absolutely no input. Not
13 only do we not have any input into that deal making
14 process, but it's hidden from us.

15 The Department of Public Service signed
16 a deal with Next Generation for a proposed solar farm
17 which on a personal note it's next to my house. The
18 developer obviously knows what's in the deal. The
19 Department of Public Service knows what in the deal.
20 The Town of New Haven does not. We are barred. It's
21 been stonewalled. And this is the type of mentality
22 where lawyers sign deals giving, you know, lawyer
23 protection, now we have no idea what's going on.

24 And frankly the State of Vermont, we
25 don't trust the State of Vermont anymore. We need

1 local control. We are especially slammed because we
2 have had project after project after project coming
3 down the pike. We are a small town. We can't
4 afford, you know, to go to court on all of these. We
5 need protection. And that's why I would ask for an
6 answer. Thank you.

7 COMMISSIONER TIERNEY: Okay. Is there
8 anybody else this evening who wishes to speak? I'm
9 going to pause in case there is anybody who is
10 equivocating a little bit. Not you?

11 MS. LANDON: I think everyone has
12 spoken all of my thoughts already.

13 COMMISSIONER TIERNEY: You are a
14 fortunate person. May I ask your name?

15 MS. LANDON: Bev Landon. I'm the
16 second person on that list.

17 COMMISSIONER TIERNEY: Takes a lot of
18 self assurance to defer to other people the
19 articulation of your own thoughts. I appreciate
20 that.

21 Is there anybody else this evening who
22 wishes to speak? Don't catch my eye because you find
23 yourself sleeping. All right.

24 I think we have heard from just about
25 everybody this evening. If we have no further

1 comments, then I'm going to close the hearing, and
2 I'm happy to stick around a little longer and talk to
3 people. But we have achieved our purpose for this
4 evening. So with that, I believe we are done, Ms.
5 Carson.

6 One more request, will you kindly make
7 sure that we get an expedited transcript?

8 COURT REPORTER: Yes.

9 COMMISSIONER TIERNEY: All right. Mr.
10 Brabant, you're welcome to roll the camera longer or
11 not. It's up to you.

12 MR. BRABANT: Are we all done?

13 COMMISSIONER TIERNEY: We are
14 officially done, sir. Wait, Senator Bray, are you
15 breaking the rule? The hearing is over so you don't
16 have to raise your hand anymore.

17 (A discussion was held off the record.)

18 COMMISSIONER TIERNEY: Could we go back
19 on the record?

20 MR. BRAY: My apologies.

21 COMMISSIONER TIERNEY: Mr. Brabant, is
22 your camera rolling now?

23 MR. BRABANT: Still rolling.

24 COMMISSIONER TIERNEY: Thank you. Now
25 that we are back on my record, though we are not in

1 an evidentiary hearing, old habits die hard.

2 What transpired after you had ceased to
3 record, Ms. Carson, was that Senator Bray asked if I
4 could just recapture the process that will be gone
5 through to issue this determination I think is what
6 you said.

7 MR. BRAY: Right.

8 COMMISSIONER TIERNEY: I will try to
9 speak up, Mr. Madden. What we have in front of us is
10 the certification request from the town and the plan.
11 And so what my staff is doing right now is assessing
12 that plan against standards that were published
13 pursuant to the law, that you had a substantial role,
14 sir, in offering. That would be Act 174.

15 Mr. Madden, we will get you the
16 citations for that. The staff and I reviewed that
17 analysis, and we take the comments as well from this
18 evening. And what I will do is issue a document that
19 explains whether the town has met the criteria in my
20 judgment or not in order to be certified as compliant
21 with the Comprehensive Energy Plan.

22 You heard a moment ago a dispute, not
23 unusual, between two attorneys as to when precisely
24 that determination is due. I, at this point, am not
25 confident, being a cautious person myself, whenever I

1 hear two attorneys disputing I know to let that
2 dispute be resolved before I boldly speak. So you
3 will have a determination, I think, no later than the
4 20th, but probably before then as a safe side
5 measure.

6 I did say earlier I welcome your
7 comments in writing. And please get them to me by
8 the 18th so I can be sure that they are considered.
9 The determination I issue -- what I try to do is go
10 through it in a thoughtful way that explains what I
11 heard, what I saw, and what my best judgment is.
12 That's about it.

13 MR. BRAY: Can I ask a hypothetical?

14 COMMISSIONER TIERNEY: Oh, why not.
15 Yes. If I can answer it, I don't know.

16 MR. BRAY: If there were 50 elements in
17 the Town Plan, and you felt like you were able to
18 certify 49 of them, is there any sort of back and
19 forth where you would say we are fine with 49 but the
20 50th one we have a concern about it, and then there
21 will be an opportunity for the Town Plan to have any
22 kind of revision? How does that part work?

23 COMMISSIONER TIERNEY: That's a very
24 good question, sir. I don't know. I have not had to
25 cross that bridge yet in the certification process.

1 I can say this. You have a plan that's been approved
2 by the town. And if for some reason the plan -- the
3 component that I'm looking at were found to be
4 deficient under the standards, my understanding,
5 subject to the advice of counsel, is that we can't
6 simply change the plan on the fly. That would be a
7 process the town would need to go through to amend
8 its plan.

9 MR. BRAY: Okay. Thank you very much.

10 COMMISSIONER TIERNEY: It's my
11 pleasure. And I would just hasten to add that that
12 was a hypothetical question and therefore a
13 hypothetical answer. Was there anything else?
14 Senator Bray, if I go off the record we will stay
15 off. We are done. Anybody else? Ms. Landon?

16 MS. LANDON: No.

17 COMMISSIONER TIERNEY: You have the
18 voice of wisdom here. Ms. Carson, we are done now.
19 Thank you.

20 (Whereupon, the proceeding was
21 adjourned at 8:02 p.m.)
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C E R T I F I C A T E


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I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Public Hearing re: New Haven's request pursuant to 24 V.S. A. Section 4352, at the Gymnasium, New Haven Town Hall, 50 North Street, New Haven, Vermont, on July 6, 2017, beginning at 7 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 42 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 10th day of July, 2017.



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