

Exhibit CS-BW-12

*Transcript of August 14, 2017
Bennington Select Board Meeting*

TOWN OF BENNINGTON
SELECT BOARD MEETING

Partial transcription of a recording
of proceedings held on 8/14/17
by Kim U. Sears, Registered Professional
Reporter

Select Board Members:
Tom Jacobs, Chairman
Jim Carroll
Jeanne Connor
Don Campbell
Jeannie Jenkins
Chad Gordon
Carson Thurber
Stuart Hurd, Town Manager

CAPITOL COURT REPORTERS, INC.
P.O. BOX 329
BURLINGTON, VERMONT 05402-0329
(802) 863-6067
EMAIL: info@capitolcourtreporters.com

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1 CHAIRMAN JACOBS: The next item on our
2 agenda is the Apple Hill Chelsea Solar. I will be
3 recusing myself and transferring the responsibilities
4 of chair over to vice chair, Donald. Are you ready
5 to take that on?

6 MR. CAMPBELL: You bet.

7 CHAIRMAN JACOBS: I'm recusing myself
8 now.

9 MR. CAMPBELL: Recuse away. All right.
10 Well thank you for the pass off, Tom.

11 So tonight we will be hearing from Rob
12 Woolmington who is -- I think I saw him slip in at
13 some point. Good. He's with us. Rob is our town
14 attorney. By way of history, of course, we have had
15 two long meetings on this subject and a couple of
16 long, well not long, but very intense executive
17 sessions on the subject. And I guess I'm just going
18 to take a brief opportunity to remind the board that
19 depending on what happens tonight, and maybe not even
20 depending, we are in litigation. And as much as we
21 may want to express our opinions, and we may want to
22 engage in this, we can't right now because anything
23 we say will potentially be used as fodder against us.
24 So we are going to continue to try to bite our
25 tongues when we feel like expressing our opinions on

1 things like this.

2 But I think what we have come up with
3 as a process is that at the last -- at the last
4 meeting that we had in executive session we had a lot
5 of time to talk about things. We made no decisions,
6 but we were -- asked our attorney essentially to come
7 up with the best recommendation for a path forward.
8 And so Rob, if you're willing, I would love to invite
9 you up and have you explain to us how you think the
10 town should proceed.

11 MR. WOOLMINGTON: Thank you. I think
12 it might be helpful if I do it this way, just
13 summarize the recommendation, and then go back and
14 give an overview of where we are and how we got here.
15 Because it is -- I think even for people who have
16 been following it closely -- somewhat confusing.
17 There is several cases. There's been a lot of
18 contested proceedings, and there are more ahead.

19 So I'll start with a recommendation.
20 I'll go back and explain how we got here and what the
21 basis for the recommendation is. And I'm happy to
22 answer questions from the board, and if you want to
23 open to the public for them as well.

24 My recommendation is that the town in
25 the two present proceedings adopt the following

1 position. With regard to the Chelsea solar field
2 which has been rejected by the Public Utilities
3 Commission formerly the Public Service Board, and is
4 now before the Vermont Supreme Court, that the town
5 continue its opposition in the Supreme Court to that
6 proceeding.

7 The Apple Hill project is in a somewhat
8 different procedural setting because the revised plan
9 that the developer submitted to the Public Utilities
10 Commission has been accepted for hearing by the
11 Hearing Officer. And so at some point, probably
12 sooner rather than later, there will be a hearing,
13 not on the original plan that the town has filed
14 opposition to, but to a revised plan. And for
15 reasons that I can explain, my recommendation is that
16 the town not take the position with regard to the
17 revised plan that it fails to comply with the Town
18 Plan that was in effect when the original application
19 was filed because of the changes in that plan.

20 The town may want to consider
21 additional conditions that would be appropriate to
22 assure, for example, that landscaping is done and
23 maintained, that there is --

24 MEMBER OF THE PUBLIC: Can't hear you.
25 A little bit closer.

1 MR. WOOLMINGTON: I understand people
2 are having trouble hearing me, so I will pick up and
3 hope I pick up at the right spot. I'm sorry. I
4 didn't realize that earlier.

5 What I was saying in regard to Apple
6 Hill is given the changes in the project which I will
7 describe, and given the fact that the Public
8 Utilities Commission is now going to hear the revised
9 project, not the original project, that my
10 recommendation is the town not oppose the revised
11 project on the grounds that it does not comply with
12 the Town Plan.

13 The town may wish to engage in
14 conditions that assure that landscaping will be
15 maintained throughout the life of the project, that
16 there will be removal when the project is done and
17 other similar types of standards.

18 So let me give a little background as
19 to how we got where we are. There are two separate
20 projects; Chelsea and Apple Hill. They involve the
21 same developer, and they are next to each other.
22 They are being and have been considered separately by
23 what was formerly the Vermont Public Service Board
24 and is now called the Public Utilities Commission.
25 The Chelsea project was heard first, it went through

1 -- it went through a hearing. The Department of
2 Public Service, the state advocacy arm, did not
3 oppose it. The town did not participate, the -- of
4 the many neighbors only one person, Libby Harris,
5 participated. And that went through a complete
6 hearing.

7 Sometime soon after that hearing was
8 completed, and before the hearing on the Apple Hill
9 development, two years ago this summer, this board,
10 and some of you are new and some of the members who
11 participated are now off, heard a presentation about
12 the Apple Hill development, and several days before
13 the hearing in that development decided that it did
14 not meet the criteria of the Town Plan, and the town
15 of Bennington should oppose that development. And we
16 entered an immediate appearance in that proceeding
17 and were able to attend the hearing, and took the
18 position for the town that Apple Hill did not comply
19 with the Town Plan.

20 And the reason for that was I think
21 fairly clearly stated. The Town Plan provided that
22 development in the rural conservation area, I'm going
23 to quote here: Cannot be sited in prominently
24 visible locations and hillsides and ridgelines, shall
25 utilize earth-tone colors and non-reflective

1 materials on exterior surfaces of all structures, and
2 must minimize clearing of natural vegetation.

3 And we submitted a fairly extensive
4 brief to the Public Service Board to argue that the
5 Apple Hill project which would have took up the
6 entire parcel involved, which would have been visible
7 from many locations, and which did not have any
8 meaningful on-site screening, did not comply with
9 those standards, and therefore, did not meet the
10 aesthetic criteria under the statute governing the
11 Public Service Board, and would not be consistent
12 with orderly development of the region under our
13 plan.

14 And after we filed that brief, Libby
15 Harris, who has been very, I think, effective and
16 dogged in her advocacy took those arguments and
17 submitted them along with others to the Public
18 Service Board in connection with the Chelsea
19 proceeding which the town was at that point not a
20 party to because it had already had the hearing.

21 And the Public Service Board came down
22 here for a site visit on Apple Hill. We had all the
23 submittals in. And then in -- and the Hearing
24 Officer proposed that the Chelsea project be approved
25 with some sort of standard conditions, found that it

1 complied with the Town Plan, found that it was a
2 perfectly fine project. The Public Service Board in
3 the first instance that I'm aware of in which they
4 have ever rejected an alternative energy project
5 based on non conformance to the Town Plan overruled
6 their own Hearing Officer, relied on the arguments
7 that we had made in Apple Hill and that Libby had
8 presented to them in Chelsea, and found that the
9 project as it was originally conceived did not comply
10 with the Bennington Town Plan.

11 The developers immediately filed, I
12 lost track of the number of pages of motions,
13 challenging that on many grounds, on many grounds.
14 And that -- those filings essentially sat for a year
15 before the Public Service Board. The board didn't
16 rule on them. It was just silence up there.

17 And finally, earlier this year the
18 board rejected all the challenges to the Chelsea
19 decision, reaffirmed its decision in the Chelsea
20 case, and left a number of them still undecided in
21 the Apple Hill case, but gave it back to the Hearing
22 Officer who decided that he would review a revised
23 plan. The plan was revised by the developer, I would
24 say in an attempt to deal with the obvious
25 deficiencies of the original plan as compared to the

1 requirements of the Town Plan.

2 At the same time, they were filing
3 voluminous papers before the Public Service Board I
4 think they recognized that the plans that they had
5 originally submitted really, this is my words, not
6 theirs, but really didn't conform with the Town Plan,
7 and that the position that had been advanced by the
8 town had merit and was likely to prevail. And so
9 they proposed a number of changes to both projects,
10 significant number of changes. And I'm just going to
11 summarize them briefly. I think that probably most
12 of the people here know what they were, but I'm going
13 to refer to the ones principally in Apple Hill.

14 They changed the tilt of the units.
15 They reduced their height from nine feet to seven
16 feet. They reduced the space between the rows. They
17 used -- they proposed to use a new higher wattage
18 unit which allowed them to compress the footprint.
19 For the two projects together, I know I started by
20 saying I was going to deal with Apple Hill, they
21 reduced the footprint by about nine acres. And they
22 reduced -- that is they reduced the clearing by nine
23 acres. By doing that, they changed the buffering,
24 and actually put in buffering around the project.

25 I mean one of the real deficiencies in

1 their original plan was that they -- they had no
2 buffering whatsoever, and they made a deal with the
3 Public Service Department and with the Vermont Agency
4 of Transportation whereby the Agency of
5 Transportation would allow them to plant a small
6 number of shrubs or trees between the site and the
7 Welcome Center on State of Vermont land, which the
8 State of Vermont would -- could make them rip up at
9 any time. They had no right to put it there. They
10 just had the opportunity, but no guarantee it would
11 stay there. And the Public Service Department said
12 but you don't have to spend more than \$5,000. And
13 the Hearing Officer said, and you can figure out
14 whether you need this after the project's built.

15 It was defective because it didn't
16 involve their own property. They had no control over
17 it. It was defective because there was a completely
18 arbitrary negotiated dollar amount on it, and it was
19 defective because they didn't make the proposal at
20 the time it was going through the hearing process.
21 They were proposing to sort of walk the property
22 later.

23 That's all gone in the revised project.
24 The vegetation is going to be on their project, and
25 it was called out in detailed plans. The type of the

1 modules that they proposed are now all black in most
2 of the locations where there would be any visibility.
3 They have proposed a fence with black meshing to
4 partially screen that boundary along the west side
5 parallel to Route 7. They have increased and
6 specified new landscape mitigation on the north
7 project by the neighborhoods. And they have
8 submitted a quite detailed site plans which really
9 specify what they are going to be doing.

10 They brought their aesthetic expert in
11 to one of the earlier hearings on this project who --
12 and based on the documentation they provided, gave a
13 pretty much unqualified view about the absence of
14 visibility. And they did some other studies dealing
15 with wind and noise to look at the impacts of the
16 project.

17 And having done all that, they proposed
18 to this board, as I think everyone knows, that they
19 wanted the board to support both projects. They
20 wanted the board to agree to the remanding of the
21 Chelsea project from the Vermont Supreme Court back
22 to the Public Utilities Commission with a stipulation
23 that it could be approved as revised. And they asked
24 that the board stipulate to approval of the Apple
25 Hill project as revised, and they offered to pay the

1 town of Bennington a total of \$200,000, 100,000 for
2 each project, when and if the projects were
3 constructed, started operation.

4 And I think everyone here knows that
5 you've held two public hearings about that. There's
6 been a lot of comment about that. We have had a
7 chance to talk about it. And it raises a number of
8 issues. I think from the beginning the charge that
9 you've given us as your lawyers has been to make sure
10 that the provisions of the Town Plan are implemented.
11 And so we needed to address that in terms of where
12 the projects are in litigation right now.

13 Right now the Chelsea project is the
14 old project that is before the Vermont Supreme Court
15 that has the deficiencies that we have talked about.
16 And our recommendation is that if they want to
17 continue to litigate that before the Vermont Supreme
18 Court, you should continue to oppose that for the
19 reasons you've opposed those early projects, the
20 earlier version of the project from the beginning.

21 Apple Hill is a different issue. The
22 issues that we argued and that we brought out before
23 the Public Service Board have been addressed
24 substantially by this revised project. And I don't
25 want to get into here statements about what that

1 board will do or what that board won't do. Anything
2 we say here can and will be used against us by
3 someone, I suppose. But I think that my advice to
4 you is that these changes are directly driven by the
5 requirements of the Bennington Town Plan and
6 represent an attempt to comply with those
7 requirements of the Town Plan that we have
8 identified. And that based on the fact that that's
9 the project that the Public Utilities Commission, as
10 it's now called, is going to consider, our
11 recommendation to you is not that you enter into a
12 stipulation that it's great, but that you not oppose
13 it on the grounds that it had the same demerits and
14 didn't conform to your Town Plan for the reasons that
15 the earlier project clearly did not.

16 I think there is one other issue that
17 I've heard in some of the discussion here which is
18 the question of whether the Town Plan bars
19 alternative energy projects entirely in the rural
20 conservation district. That's not something we have
21 ever developed our briefing to the Public Service
22 Board, nor do I think that that is a position that
23 you could or should take. I mean this board recently
24 approved and supported a project out by the paper
25 mill bridge that's in that district. There is

1 another project in the west end that's been, you
2 know, approved by this board that's in that district.
3 That's the GMP substation is in that district. And
4 your bylaws have a number of commercial uses, zoning
5 bylaws, that are allowed in that district, and though
6 the town has not completed the map it's working on of
7 favored areas for solar, the most recent draft has, I
8 think, well over 30 percent of the sites in that
9 district. So I don't think the position that somehow
10 the Town Plan bars alternative energy projects in the
11 rural conservation district is consistent with your
12 zoning. It's not consistent with the precedence that
13 had been done, and it's not consistent with the
14 planning process that seems to be going on now. So
15 that issue I don't think is grounds to argue that the
16 Town Plan bars all alternative energy projects in the
17 rural district.

18 So if you choose tonight to adopt this
19 recommendation, I think what that means is that in
20 connection with the Supreme Court appeal it's --
21 Chelsea will continue to fight it. In connection
22 with the Apple Hill project when that gets scheduled
23 for a hearing, and in discovery, we will not make the
24 same assertions that we made against the original
25 project, but we will still continue our appearance

1 and make sure that the project remains in conformance
2 with the Town Plan by virtue of conditions that
3 assure that the things that this board has cared
4 about and directed previously are accomplished.

5 So I would be happy -- that's a summary
6 of where we are. I would be happy to answer
7 questions from the board.

8 MR. CAMPBELL: Okay. So thank you,
9 Rob. Board, I know that we have heard this a lot.
10 We have been through this a lot. It's always good to
11 hear Rob explain it because he lays it out so
12 clearly, and we are very lucky to have you as our
13 town attorney.

14 I think first I would entertain
15 questions from the board, although not opinions, on
16 the elements of Rob's proposal to us.

17 Are there any questions or
18 clarifications that need to be made? Jeannie, I know
19 you and I had some conversations. You're settled
20 with --

21 MS. JENKINS: I am.

22 MR. CAMPBELL: A question for Rob?

23 MR. CARROLL: Yes. Rob, should the
24 town or the board here tonight accept your
25 recommendation with respect to Apple Hill, now when

1 you say that you would appear, the town would appear,
2 in what way? Let's say Libby is going to -- I
3 presume that Libby is going to oppose this.

4 MR. WOOLMINGTON: I would expect so
5 given her previous positions.

6 MR. CARROLL: And when she and her
7 representatives appear in Montpelier, we would be
8 there as well?

9 MR. WOOLMINGTON: My recommendation to
10 you, Jim, is to handle this the way we have handled
11 other cases in the Environmental Court. Which is
12 that, first of all, we have appeared, and we are in
13 the thick of it already. But that we continue to
14 review everything and attend the hearing. The things
15 that concern me as a policy motive for the town is
16 that there is not a switcheroo somewhere in the
17 process. That happens sometimes; things change.
18 That matters of real concern to the town are
19 emphasized. And that we have the ability to cross
20 examine and participate, as needed.

21 MR. CARROLL: We would.

22 MR. WOOLMINGTON: We would. And I
23 think that's -- given how hard the town has fought on
24 the earlier version, I think that it would be
25 sensible to maintain your appearance and continue on

1 and be sure that what we think is being proposed
2 stays proposed. And that if it's approved by the
3 Board, it's approved with conditions that make sure
4 there is not going to be sloppy implementation.

5 MR. CARROLL: So in essence, our
6 position when we would appear, as you would appear
7 for us as the town, would be in support of our
8 original position with respect to the -- our position
9 on the Town Plan.

10 MR. WOOLMINGTON: I am not recommending
11 any changes in the position that we had in connection
12 with the original project.

13 MR. CARROLL: But we would be there in
14 support of Libby and anybody else.

15 MR. WOOLMINGTON: Well I'm not -- in
16 connection with the current proceeding, which deals
17 with the amended plan, you know, my recommendation is
18 not that we oppose it on the grounds that it fails --
19 the amended plan fails to comply with the Town Plan.
20 They have made enormous changes to this project.

21 MR. CARROLL: I'm still a little
22 confused.

23 MR. WOOLMINGTON: Okay. It is -- well
24 it is confusing. I'm not recommending any change in
25 our position.

1 MR. CARROLL: In our position.

2 MR. WOOLMINGTON: Towards the original
3 plan.

4 MR. CARROLL: That is in opposition to
5 the Town Plan.

6 MR. WOOLMINGTON: The Town Plan, I
7 would continue to argue, is violated by the original
8 proposal. But what we are having before us now as a
9 result of a ruling by the Public Service Board is a
10 hearing on the revised proposal which I do not think
11 has the same problems under the Town Plan as the
12 original one.

13 MR. CAMPBELL: Jim, I would ask you not
14 to press him too much further on that if we remain in
15 court on that particular --

16 MR. CARROLL: I just wanted
17 clarification.

18 MR. CAMPBELL: I understand.

19 MR. WOOLMINGTON: Did that clarify,
20 Jim?

21 MR. CARROLL: Yes, it did.

22 MR. CAMPBELL: Thanks. I'm sorry. I
23 didn't mean to be (inaudible).

24 MR. CAMPBELL: Other questions from
25 board members?

1 MR. THURBER: I don't have any
2 questions.

3 MR. CAMPBELL: You don't have any
4 questions. Okay. We will take a minute here for the
5 public. If you have questions for the town attorney
6 about his position, you may ask them. And if you
7 have brief suggestions to our attorney for amending
8 his recommendation, you certainly may make those
9 also, but I'm going to ask you all to direct your
10 questions to Rob, not to the board, because we are
11 supposed to be biting our tongues tonight.

12 So Libby, would you like to start? And
13 Rob, I guess I would ask you to shift over one seat
14 if you would please.

15 MS. HARRIS: I'm fine standing here.

16 MR. CAMPBELL: I think everyone's going
17 to want to hear what you have to say probably, Libby,
18 so Rob, you can be in charge of shifting the mic back
19 and forth please. Thanks. Thank you, Libby, I know
20 you don't like the limelight, but I appreciate you
21 coming.

22 MR. WOOLMINGTON: You have to be close.

23 MR. CAMPBELL: So questions for the
24 attorney; brief suggestions on his recommendation.

25 MS. HARRIS: Okay. First question, it

1 wasn't clear to me about the settlement. Are you
2 recommending that the board reject the 200 thousand
3 dollar settlement?

4 MR. WOOLMINGTON: Yes.

5 MS. HARRIS: Thank you. So secondly,
6 the revised project or projects, if Chelsea is going
7 to relive in some form, are still in the rural
8 conservation district. And you mentioned the Murphy
9 Road and the Cabelia (phonetic) that the town has
10 already permitted certain forms of commercial
11 development in a rural conservation district; is that
12 right?

13 MR. WOOLMINGTON: What I said was that
14 the Town Plan I do not think can credibly be
15 construed to bar alternative energy projects in the
16 rural district because of the precedence, because of
17 the language of the plan, because of the way the
18 zoning bylaws allow specific uses in that area, and
19 because of the planning that's been underway for the
20 future that includes a number of properties in that
21 area for solar energy. That was my summary.

22 MS. HARRIS: Okay. In one of the
23 Public Service Board's answers to the motion of
24 Chelsea they related to that specific point. And
25 what they said in the answer to that motion was:

1 Chelsea also emphasizes that the Board has approved
2 other projects seeking review under Section 248 in
3 the rural conservation district. Chelsea contends
4 that while these projects did not meet the
5 development standards in the Town Plan, the Board
6 nonetheless found them to be in the public good. We
7 disagree with Chelsea's position. Most significantly
8 these cases differ because no party in those cases
9 produced evidence that these projects did not conform
10 with the Town Plan. The issue was not decided in
11 these cases, and these cases are thus readily
12 distinguishable. Chelsea's second allegation of
13 factual error is without basis.

14 MR. WOOLMINGTON: I think it's a
15 mistake, Libby, for us to try to litigate this on
16 camera before the entire town when we are going to be
17 litigating it somewhere else, but what that case says
18 is that this issue hasn't really been briefed and
19 decided in connection with the other projects. And I
20 think there is no doubt that Chelsea -- that in Apple
21 Hill those issues will be fully developed by the
22 developer. So I'm confident that they can see that
23 issue as well as anyone else. So that's not a
24 binding precedent as to Apple Hill.

25 MS. HARRIS: Okay. Thank you. Now

1 just two other. When you were talking about the
2 history, and what they have done to correct it, you
3 said that they have added significant buffering on
4 the highway side, and they have added significant
5 buffering for -- offered in their revised plans for
6 Chelsea and Apple Hill. However, if you look at the
7 revised plans, they have taken away buffering on the
8 east wall of Chelsea and on the north wall of Apple
9 Hill.

10 And so those projects now remove any
11 buffering that the neighborhood of Apple Hill had,
12 and so when you say they have offered buffering
13 around the projects, they have only offered buffering
14 on the highway and Welcome Center side. But they
15 have taken away buffering on the area that protects
16 Apple Hill.

17 MR. WOOLMINGTON: I don't think it's
18 appropriate to beat the buffering provisions tonight.
19 I'm happy, if the town accepts my recommendation, to
20 talk to you about how that issue might be developed
21 in the hearing.

22 MS. HARRIS: Okay. So the other point
23 is, which I'm hoping you say the same thing, is that
24 the wind and noise issue has never been accepted by
25 me or by the experts that they use. They asked me

1 what expert I would use. I told them, and then they
2 used their own. And we found that the findings were
3 unacceptable to us as did the Apple Hill
4 neighborhood.

5 So would it be allowed that in ongoing
6 discussion that the wind and noise issue is taken
7 into consideration as well?

8 MR. WOOLMINGTON: My recommendation to
9 the town is that we would consider to -- we would
10 continue to work cooperatively with you on issues of
11 concern like that. How they will resolve, I can't
12 make any promises. But I would recommend that we
13 stay in communication on that particular issue.

14 MS. HARRIS: Okay. So my final
15 question to you is this. It appears that you are
16 withdrawing your presence as the town on discovery
17 for what Apple Hill is, the opening of rediscovery
18 you've said that you will not be part of the
19 rediscovery, but you will be there in presence to
20 participate in any way you deem that you need to or
21 choose to; is that right?

22 MR. WOOLMINGTON: No. That's not
23 right.

24 MS. HARRIS: Okay.

25 MR. WOOLMINGTON: Our participation in

1 discovery will be driven to a considerable extent by
2 the developer. They get to ask discovery. If they
3 want to flood the zone with the town for reasons that
4 I think would have would have no technical or
5 strategic value, they are free to do that. We will
6 have to deal with it. Whether we do discovery, my
7 expectation would be it would be focused on very
8 particular issues to try to get them clarified and
9 understand.

10 But I don't think it's correct to say
11 that we will be completely absent from discovery.

12 MS. HARRIS: Okay. That's it. Thank
13 you.

14 MR. WOOLMINGTON: Okay.

15 MR. CAMPBELL: Thank you very much.

16 MS. HARRIS: Thank you.

17 PUBLIC SPEAKER 1: I would just like to
18 ask before any vote is taken that the exact wording
19 of the resolution get read aloud and formally put
20 into the record, just so that everybody is perfectly
21 clear on what the actual resolution is.

22 MR. CAMPBELL: We didn't actually read
23 it. We had you summarize it, didn't we? Would you
24 like to read it, Rob, or --

25 MR. WOOLMINGTON: Well --

1 MR. CAMPBELL: Would you like me to
2 read it?

3 MR. WOOLMINGTON: Here's the resolution
4 that I would propose that the town adopt. Okay.
5 That the town of Bennington direct its counsel to
6 advance the following position in the pending
7 litigation and in connection with the settlement
8 offer by Allco.

9 One, reject the proposed settlement
10 offer. Two, continue to oppose Chelsea in the
11 Vermont Supreme Court. Three, not oppose Apple Hill
12 on the grounds that the project fails to comply with
13 the Town Plan in effect when the application was
14 filed. The town will consider whether additional
15 conditions would be appropriate to satisfy statutory
16 standards. Period.

17 MR. CAMPBELL: Okay. Laura.

18 PUBLIC SPEAKER 2: Just a question
19 about what you said at the end there, the third part
20 of the resolution. What are you referring to as
21 statutory standards? What does that mean?

22 MR. WOOLMINGTON: That is something
23 that I would like not to get into publicly here.

24 PUBLIC SPEAKER 2: Okay.

25 MR. WOOLMINGTON: What it means is that

1 the town reserves its right to deal with any
2 conditions applicable to the project based on the
3 Town Plan and applicable law. I don't think getting
4 into that, which would be somewhat speculative at
5 this point, would advance the town's position.

6 PUBLIC SPEAKER 2: I guess what I was
7 wondering is does that mean it's a distinction from
8 objecting to Apple Hill based on the Town Plan
9 because you're already saying that you believe that
10 the revised Apple Hill does comply with the Town
11 Plan, but there may be other conditions not based on
12 the Town Plan? Or maybe I'm misunderstanding.

13 MR. WOOLMINGTON: Well I tried to make
14 the recommendation broadly because the statutory
15 criteria are all of the criteria that the Public
16 Utilities Commission must address in issuing a
17 permit. That includes the Town Plan, that includes a
18 whole range of aesthetic, natural, environmental
19 issues. And I don't have a laundry list here of
20 exactly how that would play out in this case. But I
21 wanted to make sure it was broad enough to deal with
22 any issue that the Public Utilities Commission might
23 take up under its statute.

24 PUBLIC SPEAKER 2: Okay. And just also
25 to clarify because the way you're recommending the

1 actual motion to read is pretty much the same
2 language that was circulated publicly, I think.

3 MR. WOOLMINGTON: I hope it is.

4 PUBLIC SPEAKER 2: Well right. And so
5 that means that I would just want to be clear that
6 when you say -- I don't have the exact words, but the
7 first part, reject the proposed settlement from the
8 developers. Does that mean that the town would also
9 reject other proposed settlements?

10 Are you saying that this includes not
11 negotiating in the future either, because maybe they
12 will come back with another negotiated settlement?

13 MR. WOOLMINGTON: It doesn't preclude
14 anything in the future. It says that everything they
15 put on the table we are rejecting.

16 PUBLIC SPEAKER 2: Just in this moment.

17 MR. WOOLMINGTON: No. That's what I
18 just said, Laura. Everything they put on the table
19 we are rejecting. If something comes back that --
20 the town will have to decide what to deal with it.
21 That's all speculative.

22 PUBLIC SPEAKER 2: Okay. I just was
23 curious what that meant. It just means this
24 particular proposal that they have offered. Okay.
25 Thanks.

1 MR. CAMPBELL: Thanks, Laura.

2 PUBLIC SPEAKER 3: Is it possible for
3 you to vote on the three points individually?

4 MR. CAMPBELL: I don't know.

5 MR. WOOLMINGTON: They can do whatever
6 the majority of them wish to do.

7 MR. CAMPBELL: Okay, yes.

8 PUBLIC SPEAKER 3: So you can?

9 MR. CAMPBELL: Sounds like it.

10 PUBLIC SPEAKER 3: Okay.

11 (Inaudible)

12 MR. CAMPBELL: We don't have a motion
13 yet.

14 MR. WOOLMINGTON: Someone would need to
15 make motions separately if that's what you wanted to
16 do. But that's not the resolution that I read out.

17 PUBLIC SPEAKER 3: So you can do that.
18 Okay. Thank you.

19 MR. CAMPBELL: Other questions for the
20 attorney? Mary. I'm sorry. I should be asking
21 people to state their names. I'm not very good at
22 this. Do please come up and join us. We are getting
23 kind of used to seeing each other, Mary.

24 MS. GARRISH: Mary Garrish from here in
25 Bennington. I have three questions, but one

1 clarification from the last one. So it was my
2 understanding that all three of these resolution
3 clauses are a portion of the Settlement Agreement
4 that we are talking about. No. Just the first two?

5 MR. WOOLMINGTON: We are not -- the
6 only thing that's dealing with the settlement is that
7 we are rejecting it.

8 MS. GARRISH: Okay, thank you. That's
9 great. And relative to the third part which is the
10 decision not to pursue the Apple Hill, I understood
11 you, or what I wrote down that you said, and tell me
12 if I'm misquoting you. Is that in their new plan
13 they have quote: Attempted to comply with the Town
14 Plan. End quote.

15 And I'm wondering does that mean
16 attempted or they did?

17 MR. WOOLMINGTON: What I said was that
18 I believe they have attempted to do it.

19 MS. GARRISH: Right.

20 MR. WOOLMINGTON: And my advice to the
21 board is not to take the position that they have
22 failed.

23 MS. GARRISH: Thank you. Okay. I
24 guess that answers -- I guess for me the translation
25 of that is that we are not sure whether they have

1 complied, but they have tried to, so we shouldn't say
2 they didn't.

3 MR. WOOLMINGTON: That's a possibly
4 correct interpretation of what I actually said. What
5 I meant to say was I do not want to litigate on
6 public television these issues. I'm trying to be
7 simple and clear, but I don't think it's appropriate
8 to try to pin us down on that exact point.

9 MS. GARRISH: Okay. And I hear you,
10 and I actually agree. But my concern is that we are
11 pinning the board down here. They are going to
12 actually vote on this tonight. So it's kind of hard
13 to say we are having, you know, comments from the
14 public and the public hearing, but by the same token
15 we really don't want to get into it. We just want --
16 do you know what I'm saying?

17 MR. WOOLMINGTON: I understand the
18 difficulty. What the resolution says, if they
19 approve it, is that they will direct their lawyers
20 not to oppose on Town Plan grounds the issuance of a
21 permit before the Public Service Board.

22 MS. GARRISH: Okay, thank you. And
23 then I have two other questions. One is that in
24 terms of not opposing based on the fact that it
25 violates the Town Plan, because we have other things

1 in rural conservation districts, I guess I had two
2 questions about that.

3 One is what's the time frame for
4 intervening on the Apple Hill project so that if the
5 board said right now that we are not -- if they made
6 number three to say we are not going to oppose it
7 right now or at the present. Okay, what would be the
8 time frame? Because I honestly can see where there
9 might be a big difference between an energy
10 conservation district in one place and in another.
11 And I think that's probably at the heart of this.
12 And I think that's probably at the heart of the whole
13 issue for that matter.

14 And so I would hate to set a precedent
15 just because it doesn't say that it, you know, that
16 we say, oh no, it can't violate the Town Plan because
17 it's -- we have another one in an energy conservation
18 district. I mean what is the land like beneath that
19 one? What is the rest of the surrounding area like?
20 What is the screening like? What's the wildlife
21 habitat? So I can see where there would be
22 differences.

23 And so my question is do we want to get
24 ourselves into a position where from now on we are
25 never going to be able to oppose one of these arrays

1 in a rural conservation district because we granted
2 one somewhere along the line.

3 And then my other question also has to
4 do with precedent, which is that so if we allow this,
5 and by allow I mean don't oppose it right now, or
6 don't oppose it at all, aren't we setting a precedent
7 to allow anyone to come in and decide to build
8 whatever kind of alternative industry in a rural
9 conservation district?

10 MR. WOOLMINGTON: I think your first
11 question was can someone still intervene, and you can
12 certainly try. The Town of Bennington got in two
13 days or three business days before the hearing. If
14 you want to try to intervene, you know --

15 MS. GARRISH: No. I mean could the
16 town intervene later?

17 MR. WOOLMINGTON: The town has
18 intervened.

19 MS. GARRISH: To Apple Hill?

20 MR. WOOLMINGTON: The town is a party
21 to Apple Hill. That's where we have submitted our
22 briefs. That's where we taken our position. Look,
23 in terms of the town changing its position, the
24 provision -- the resolution that I've proposed says
25 no settlement. It's not going to be a contract with

1 the developer. If something came up and there was
2 some compelling reason for the town to take its
3 position before the hearing is over, there is nothing
4 in this resolution that would prevent it from doing
5 so because it's not entering into a contract. But
6 quite frankly, I don't think that there is going to
7 be further developments on this -- interpreting this
8 language that would lead me to recommend a change.
9 But if it turned out there was, I would tell the town
10 what I thought. What I think you may want to
11 consider is that the Town Plan is being reviewed
12 right now. And one of the issues in town plans --
13 and this is not really a Bennington issue as much as
14 it is other towns -- because Bennington's Town Plan
15 is quite good. But to the extent you or anyone else
16 thinks the Town Plan needs to say something else
17 explicitly, that you're hoping it would say
18 implicitly, there's a process underway to talk to,
19 you know, the planners to the town and suggest
20 certain language. That's not foreclosed.

21 MS. GARRISH: So I guess in that case I
22 would still like to suggest that in -- if the board
23 is going to accept the third resolution or segment of
24 the resolution, I'm not sure how it's written, that
25 they at least amend the language to say at this time,

1 or relative to the facts currently known to us.
2 Because I'm still concerned that by saying no this
3 doesn't violate the Town Plan, or at least failing to
4 affirmatively state that it might, it might put us in
5 a position of having to be in -- say the same thing
6 when further projects come up. So that would be my
7 suggestion. Thank you.

8 MR. CAMPBELL: Thank you. Okay. We
9 are going to wrap this up. Other questions for
10 attorney? Come on up.

11 MS. LAMPRIN: Hi. My name is Vickie
12 Lamprin. And my question has to do with helping to
13 heal our town and fix the rift that's developed over
14 this huge issue. I would like to ask the attorney
15 have you or the town considered employing an energy
16 democracy strategy? And if you give me a second I'll
17 explain what I mean by that. Okay?

18 MR. CAMPBELL: I'm going to ask you to
19 be brief. Brief.

20 MS. LAMPRIN: Real quick. Energy
21 democracy is a political, economic, social and
22 cultural concept that merges a technological energy
23 transition with a strengthening of democracy and
24 public participation. Waitsfield, Vermont. They are
25 building a solar array on a municipally-owned piece

1 of property. It's going to --

2 MR. CAMPBELL: I'm going to ask you to
3 really direct your questions to Rob, please.

4 MS. LAMPRIN: It's going to supply with
5 energy the town office, the Waitsfield elementary
6 school, the Wake House, the Waitsfield-Fayston fire
7 station, the town garage and Joslin Memorial Library.
8 So has any of that ever been considered for our town?

9 MR. WOOLMINGTON: I think that that's
10 really a question that is a broader question than
11 what's right here, because what we are dealing with
12 here is a long-standing application to a regulatory
13 board for a specific project. And that project -- we
14 have to deal with that.

15 This resolution that's been proposed is
16 how to deal with a very specific case. How the town
17 deals more broadly with this issue I think is
18 something that's a political question that at some
19 point, appropriate point, you need to deal with the
20 board or whoever on. But really we are focused right
21 now on a pending application that's been submitted,
22 that's been revised, that's going to be set for
23 hearings. And that is a legal regulatory process
24 that is not one that fits with this, unless they want
25 to withdraw their application and start over going

1 through this process. But that's up to the
2 developer.

3 MS. LAMPRIN: I'm not talking
4 specifically the land Apple Hill and Chelsea. I'm
5 talking about municipally-owned property.

6 MR. WOOLMINGTON: Yup. That's not the
7 resolution here.

8 MS. LAMPRIN: I hear you. Thank you.

9 MR. CAMPBELL: Okay. One more thought.
10 One more question and then after --

11 UNIDENTIFIED SPEAKER: We have a
12 couple, so let's make sure we get them on.

13 MS. LEIZER: I'm Diana Leizer. You had
14 mentioned that -- sorry. You had mentioned that
15 there was, and I don't know if I'm quoting you
16 correctly, that there was a plan, a solar siting plan
17 that hadn't been completed. And in fact it has been
18 completed and unanimously approved by the solar
19 siting board.

20 MR. WOOLMINGTON: It hasn't been
21 approved by the select board, so it's not an official
22 town document at this point.

23 MS. LEIZER: It's supposed to be going
24 through the process which seems to be taking a long
25 time. So perhaps that's something that should be

1 noted, that indeed more than likely it will go
2 through. So that should be something to take into
3 account as well.

4 MR. WOOLMINGTON: Okay. Thank you.

5 MS. LEIZER: Thank you.

6 MR. CAMPBELL: Rob, can you move that
7 chair please?

8 PUBLIC SPEAKER 4: I agree with Mary
9 Garrish. I think some of the points she was hitting
10 on, and my questions to you are if you pass this
11 tonight, is this going to allow, like Mary said,
12 other developers to come in under the rural
13 conservation to be able to put more of these solar,
14 wind or whatever, and have we weakened our Town Plan
15 by doing Murphy Road? And are we weakening our Town
16 Plan if the select board does not keep their feet to
17 the fire and continue to fight this at Apple Hill?

18 MR. WOOLMINGTON: I never read the Town
19 Plan as prohibiting all alternative energy everywhere
20 in the district. I think what they have done is
21 consistent with what I see as the text of the Town
22 Plan. If you or other citizens think that all rural
23 conservation zones should be off limits to
24 alternative energy, I think you better get into the
25 discussion we were just talking about, having to do

1 with that map of where solar facilities might go.
2 Because that map isn't consistent with your reading
3 of the plan.

4 PUBLIC SPEAKER 4: But didn't the plan
5 come way before the map? And didn't the plan protect
6 us? Isn't that what we all understood?

7 MR. WOOLMINGTON: The plan protects you
8 according to its terms, and according to its terms
9 the original project didn't comply. The terms dealt
10 very specifically with how developments should take
11 place in that district. But it didn't function as a
12 prohibition of all types of alternative energy all
13 through the rural conservation district. It set
14 standards for that type of development.

15 PUBLIC SPEAKER 4: Were you consulted
16 when it was originally done? This Town Plan? We
17 adopted this Town Plan with that rural conservation
18 --

19 MR. WOOLMINGTON: Not on that issue.

20 PUBLIC SPEAKER 4: You weren't. Will
21 you be, if this group goes forward with the map
22 you're talking about and other things, can we get you
23 people to have him make sure -- I think the majority
24 of people in this town do not want every green space
25 --

1 MR. CAMPBELL: Mike, --

2 PUBLIC SPEAKER 4: I've got to say it
3 to him? Okay.

4 MR. CAMPBELL: Mike, this is questions
5 to the attorney, not opinions.

6 PUBLIC SPEAKER 4: I think you need to
7 help us, this group, as the town attorney to get
8 something in the Town Plan that we are not eating up
9 all our green space, and trees are going to be
10 chopped down, everything else.

11 MR. WOOLMINGTON: All I can say is that
12 the Town Plan has been revised in ways that based on
13 my reading of other town plans it's probably one of
14 the best in the state on this issue. Whether the
15 standards it sets up as revised and under discussion
16 are the ones that you or somebody else here would
17 want, I don't know. But they certainly are making an
18 effort to try to be much more specific in dealing
19 with these issues.

20 PUBLIC SPEAKER 4: We will make sure
21 they are. Thank you.

22 MR. CAMPBELL: So I would like to cut
23 this off, but I'm going to let Mary Morrissey come up
24 and be our last comment. So this is the last
25 question for our attorney. And then this -- we are

1 going to move forward with the meeting.

2 MS. MORRISSEY: This actually may not
3 be for you, Rob. It's more for the board. There
4 were amendments and also other suggestions as to
5 taking the resolution one by one to vote on. How is
6 that going to be dealt with by the board?

7 MR. CAMPBELL: I'll look for motions
8 after we are finished.

9 MS. MORRISSEY: And is that done by the
10 board?

11 MR. CAMPBELL: Yes.

12 MS. MORRISSEY: Thank you.

13 MR. CAMPBELL: All right. I'm going
14 to -- if there are motions for or against, or if
15 there are any motions that have to do with this, I
16 would accept them at this time from the board.

17 MS. JENKINS: I want to make a motion
18 that we address each one of these issues -- each one
19 of these issues separately.

20 MR. CARROLL: I'll second that.

21 MR. CAMPBELL: Okay. Any discussion on
22 that motion?

23 MR. CARROLL: Mr. vice chair, would it
24 be inappropriate for me to --

25 MEMBER OF THE PUBLIC: Can you speak

1 up?

2 MR. CARROLL: Ask just a show of hands
3 of these people for --

4 MR. CAMPBELL: Yes, it would be at this
5 point. We are really -- this is a board discussion,
6 Jim, at this point. So we have got a motion on the
7 table. And a second. So we are really -- this is a
8 board discussion.

9 MR. CARROLL: Okay.

10 MR. CAMPBELL: Right now what we are
11 voting on is Jeanne's motion to take these
12 individually. Any discussion?

13 (No response)

14 MR. CAMPBELL: No. So all in favor of
15 taking these individually say aye.

16 MS. CONNOR: I'll second the motion.

17 MR. CAMPBELL: Didn't I have a second?
18 Didn't Jim second? All in favor of dealing with this
19 resolution in pieces separately say aye.

20 MEMBERS OF THE BOARD: Aye.

21 MR. CAMPBELL: I'm opposed. So
22 Jeannie, how would you suggest -- how would you like
23 to go from here?

24 MS. JENKINS: Well I'm open to anyone's
25 suggestion as to where we start.

1 MR. GORDON: Can we just make a motion
2 that Rob read the first --

3 MEMBER OF THE PUBLIC: Can't hear you.

4 MR. GORDON: Sorry. Can we just make
5 the motion that Rob read the first part, and we vote
6 on the first part?

7 MR. CAMPBELL: Okay. So you've made a
8 motion.

9 MR. GORDON: I made a motion.

10 MR. CAMPBELL: Let's not make a motion
11 that Rob read it, but you've made a motion to accept
12 the first part of the proposal. Did I hear a second?

13 MS. JENKINS: I'll second it.

14 MS. CONNOR: Second.

15 MR. WOOLMINGTON: Would it help if I
16 read it for the record so everyone -- and the record
17 is clear so that --

18 MR. CAMPBELL: I think it would, yeah.

19 MR. WOOLMINGTON: I would be happy to
20 do that for the next two also if you like.

21 The resolution is that the town reject
22 the proposed settlement from the developers.

23 UNIDENTIFIED MEMBER OF THE BOARD:
24 Motion to accept?

25 UNIDENTIFIED MEMBER OF THE BOARD:

1 Second.

2 MR. CAMPBELL: Okay. Discussion.
3 Motion to accept and a second of the number one which
4 is titled Settlement in this -- in the attorney's
5 position. No? No conversation?

6 (No response)

7 MR. CAMPBELL: Okay. We will take a
8 vote. All in favor?

9 MEMBERS OF THE BOARD: Aye.

10 MR. CAMPBELL: We have six in favor of
11 rejecting the proposed settlement from the
12 developers.

13 The second piece that we have is
14 continuing to oppose Chelsea in the Supreme Court.
15 I'm sorry, Rob, you were going to read these, weren't
16 you? Rob, would you please read the second one?

17 MR. WOOLMINGTON: The second resolution
18 is to continue to oppose Chelsea in the Supreme
19 Court.

20 UNIDENTIFIED MEMBER OF THE BOARD: So
21 moved.

22 UNIDENTIFIED MEMBER OF THE BOARD:
23 Second.

24 MR. CAMPBELL: Okay. Discussion on
25 this -- on the motion on the table?

1 (No response)

2 MR. CAMPBELL: No? All right. All in
3 favor of the motion as worded say aye.

4 MEMBERS OF THE BOARD: Aye.

5 MR. CAMPBELL: Opposed?

6 (No response)

7 MR. CAMPBELL: Okay.

8 MR. WOOLMINGTON: Unanimous.

9 MR. CAMPBELL: Yes. Six. Okay. Apple
10 Hill the town -- sorry, Rob. would be would you
11 please read the --

12 MR. WOOLMINGTON: Well there was a
13 suggestion that this be tweaked to say that based on
14 facts currently known, the town will not oppose Apple
15 Hill on the grounds that the project fails to comply
16 with the Town Plan in effect when the application was
17 filed. And I think that's a completely appropriate
18 tweak. I don't have any problem with that.

19 The motion -- the resolution would
20 continue. The town will consider whether additional
21 conditions would be appropriate to satisfy statutory
22 standards.

23 MR. CAMPBELL: Okay.

24 MR. WOOLMINGTON: So the resolution
25 stated includes the amendment that it's based on the

1 facts currently known.

2 MR. CAMPBELL: Based on facts currently
3 known, comma, the town will not oppose Apple Hill on
4 the grounds, et cetera, et cetera. Okay.

5 Do I hear a motion?

6 UNIDENTIFIED MEMBER OF THE BOARD:

7 So moved.

8 UNIDENTIFIED MEMBER OF THE BOARD:

9 Second.

10 MR. CAMPBELL: Second. Okay.

11 Discussion?.

12 MR. CARROLL: I'm very apprehensive
13 about this one. I really am. As I've said to other
14 board members, I think that both of these projects
15 are in opposition to our Town Plan. And --

16 (Applause)

17 MR. CARROLL: I can't support this part
18 of the resolution.

19 MR. CAMPBELL: Other opinions on Rob's
20 recommendation to the town?

21 (No response)

22 MR. CAMPBELL: Okay. I call the vote
23 then. All in favor of number three as revised please
24 indicate by saying aye.

25 MEMBERS OF THE BOARD: Aye.

1 MR. CAMPBELL: Opposed?

2 MR. CARROLL: (Raising hand).

3 MR. CAMPBELL: Okay. Five to one. So

4 --

5 MEMBER OF THE PUBLIC: You've got my
6 vote.

7 MR. CAMPBELL: Thank you very much for
8 your time tonight. I really appreciate it, Rob.
9 It's not been easy, but I also want to thank you for
10 the time you spent with us in executive session, not
11 to mention the time that you will be spending in
12 court going forward.

13 So it's too early to take a break. Why
14 don't we call our illustrious Tom Jacobs back. All
15 right, and take a five-minute break.

16 (Recess was taken.)

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C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript to the best of my ability from the recording of proceedings in the above-entitled matter.

Date

/s/ Kim U. Sears

Kim U. Sears