

Exhibit CS-BW-25

*Rule 30(b)(6) Deposition of Dan Monks
for the Town of Bennington*

STATE OF VERMONT
BEFORE THE
PUBLIC UTILITY COMMISSION

PETITION OF APPLE HILL SOLAR LLC
for a Certificate of Public Good,
authorizing the installation and
operation of a 2.0 MW solar
electric generation facility at 1133
Willow Road, Bennington, Vermont

D E P O S I T I O N

-of-

DANIEL MONKS

11:11

held on Friday, September 29, 2017, at the law
offices of Witten, Woolmington, Campbell & Bernal,
4900 Main Street, Manchester, Vermont, commencing at
a.m.

APPEARANCES:

THOMAS MELONE, ESQUIRE
Allco Renewable Energy
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New York, New York 10019
On behalf of Apple Hill Solar LLC;

ROBERT WOOLMINGTON, ESQUIRE
Witten, Woolmington, Campbell & Bernal, P.C.
4900 Main Street
Manchester Center, Vermont 05255
On behalf of the Town of Bennington.

Also Present: Mary Doud, Videographer

BARRY COHEN, RPR - DEPOSITION REPORTER

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the attorneys of record for the respective parties hereto, as follows:

1. THAT the testimony of DANIEL MONKS may be taken and treated as if taken pursuant to notice and order to take deposition and that all formalities of notice and order are waived by the parties and the signatures to this stipulation are in like manner waived.

2. THAT all objections, except as to matters of form and motions to strike, are reserved until the deposition or any part thereof is offered in evidence.

3. THAT the deposition may be signed by the said DANIEL MONKS before any Notary Public.

4. THAT all exhibits offered for identification are reserved by counsel until the time of trial.

1 DANIEL MONKS,
2 having been duly sworn by the Notary to tell
3 the truth, the whole truth and nothing but the
4 truth, deposes and says as follows:

5
6 EXAMINATION BY ATTORNEY MELONE

7

8 Q. Good morning, Dan.

9 A. Good morning. I just want to mark the
10 deposition notice as Exhibit 1, so you know
11 what we're going to be going over. I'm sure
12 Rob has gone over that with you.

13 (Exhibit No. 1 was marked for
14 identification.)

15 Q. If I ask any questions which aren't clear,
16 please let me know.

17 A. Okay.

18 Q. So we'll just get right into it. I'm going to
19 hand you Exhibit 2, which is Bennington Town
20 Plan dated October 11th, 2010.

21 (Exhibit No. 2 was marked for
22 identification.)

23 Q. You're familiar with the Bennington Town Plan
24 as of 2010?

25 A. Yes, I am.

1 Q. So my first questions relates to development
2 in what's called the rural conservation
3 district.

4 A. Okay.

5 Q. The town plan describes that district on page
6 25. Is there anything in this town plan which
7 prevents the development of commercial scale
8 solar facilities in a rural conservation
9 district?

10 ATTORNEY WOOLMINGTON: Objection as
11 to form.

12 A. I'm happy to answer with regard to the
13 specific project, if that's what you're
14 looking for. It would be hard for me to make
15 a comment regarding any project.

16 Q. I'm not asking you to make a comment regarding
17 any project in the sense that we know there is
18 the screening ordinance and other things that
19 apply right now. But the basic question right
20 now is, is there anything that would not allow
21 the development of a commercial scale solar
22 facility, in general?

23 A. I'm not trying to be evasive, it's just that
24 it depends on the particular project, there
25 are many criteria to review. If you're saying

1 is it automatically excluded, the answer is
2 no.

3 Q. That's basically the question.

4 A. Okay. I just want to make -- be clear about
5 that.

6 Q. And the criteria that you're referring to
7 would be what?

8 A. Well, specifically with regard to the rural
9 conservation zone there are several criteria:
10 Cannot be sited in prominently visible
11 locations on hillsides or ridge lines; shall
12 utilize earth tone colors and nonreflective
13 materials on exterior surfaces of all
14 structures; and must minimize clearing of
15 natural vegetation. Those are the criteria
16 that are explicit in the rural conservation
17 zone. There are other criteria in other
18 sections in the natural scenic resources
19 section, for instance. Ah, so those are the
20 types of criteria that we would look at for
21 any project, including a solar site.

22 Q. Right, the King project, including a solar
23 project?

24 A. Right, it's not just solar sites, that's
25 correct.

1 Q. Right. So solar in that sense is treated the
2 same as any other type development, they would
3 have to meet these criteria?

4 A. That is correct, yeah.

5 Q. Now, the sentence you just read talks about
6 hillsides or ridge lines. Is there a
7 definition in the town plan of a hill site?

8 A. Not to my knowledge, not a specific definition
9 as a term of art or anything like that, no.

10 Q. Is there a definition of ridge line in the
11 town plan?

12 A. Not to my knowledge.

13 Q. So how do you decide what's a hillside?

14 A. You just use the common understanding of what
15 a hillside or a ridge line is.

16 Q. So based on the slope or is it not based on
17 any kind of specific --

18 A. It's not based on any kind of specific
19 criteria. Like I said, it's not defined, so
20 it's not like if it's a twenty percent slope
21 or a ten percent slope, and that's a hillside.

22 Q. So if you were to try to determine if
23 something was a hillside, what would you do?

24 A. I would see if there's any kind of -- mostly I
25 would refer to visibility, you know, is it

1 visible from a valley or from a lower point,
2 and is there a slope of some significance.

3 Q. Okay. But you'd have to be able to see the
4 slope of some kind?

5 A. When you're considering aesthetics, then you
6 would have to see it, yes, because they're
7 talking about prominent visibility.

8 Q. Correct, right. So that brings up the other
9 question on that sentence, which is, is there
10 a definition in the town plan of "prominently
11 visible location"?

12 A. No explicit definition, no.

13 Q. So what does that mean to you?

14 A. It means to me is it visible from public areas
15 and from adjacent properties would be how I
16 would interpret it.

17 Q. So you would interpret that as just being
18 visible from neighboring properties or the
19 public roads?

20 A. Well, they use the qualifier "prominently
21 visible."

22 Q. Right. So how would you define --

23 A. So is it clearly visible from those locations.

24 Q. Okay.

25 A. Can you determine what it is, you know,

1 features of it, that sort of thing, versus
2 being fully screened?

3 Q. Okay. So at least to your knowledge, the Town
4 of Bennington has always followed this
5 guideline in terms of solar projects in the
6 rural conservation zone?

7 A. I guess I don't know if I could answer that.
8 It's obviously the guidelines that they should
9 follow, yes.

10 Q. Okay. But you can't say if they actually did
11 follow them?

12 A. In every instance? I don't know.

13 Q. Okay. Another part of that sentence that you
14 read is "Development in the rural conservation
15 zone must minimize coloring of natural
16 vegetation." Is there a specific definition
17 of what that phrase means, "minimize clearing
18 of natural vegetation"?

19 A. No specific definition.

20 Q. So how has that been applied as far as
21 development?

22 A. In the past what the Planning Commission has
23 done when they've applied this criteria,
24 they've looked to see what is necessary for
25 the type of development proposed. For

1 instance, if you're building a home, are you
2 clearing more vegetation than you need to
3 actually construct the structure and have a
4 reasonable lot or are you clearing more so you
5 can have a view for yourself, those sorts of
6 things; what is necessary for the construction
7 of the project versus other types of
8 objectives, like a view or having a large lawn
9 or something like that.

10 Q. Okay. Now, if you could go back to that page
11 26, the first sentence in the last paragraph
12 in the rural conservation district, it says,
13 "Specific design standards shall apply in new
14 development rural conservation districts."

15 What are those design standards?
16 Are those only the design standards in the
17 last sentence that you read?

18 A. No. With regard to something that's not
19 exempt from review by the Planning
20 Commission -- or the Development Review Board,
21 excuse me -- it would involve the scenic
22 resource protection regulations for the rural
23 conservation zone and the land use and
24 development regulation.

25 Q. Okay. So you're saying that the first

1 sentence there refers to another part of the
2 town plan?

3 A. No, it refers to the land use and development
4 regulation.

5 Q. Okay. The land use and development
6 regulation?

7 A. Yes.

8 Q. Right.

9 A. Which are -- what we -- most people call the
10 zoning bylaws, but we call them the land use
11 and development regulations.

12 Q. And in the land use and development
13 regulations that govern the rural conservation
14 zone, are there specific guidelines as to what
15 the development should be?

16 A. Yes, in the rural conservation zone, yes.

17 Q. When the town plan was written with this
18 sentence that referred to specific design
19 standards, did those guidelines exist at the
20 time?

21 A. I don't recall; I'd have to look at the date.
22 I don't recall. I think they were adopted in
23 2006, so I believe there were but I don't
24 recall --

25 Q. They were adopted in 2006.

1 A. So the answer is yes.

2 Q. Was it always -- so this sentence, though, in
3 the town plan wasn't imposing specific
4 standards, it was referring to these other
5 guidelines --

6 A. That is correct, yes.

7 Q. -- that either existed or would be amended
8 from time to time?

9 A. Right, yes.

10 Q. And those specific standards in the land use
11 regulations, did they also specifically
12 address the issues that you just went over in
13 the last sentence, the development -- being
14 the development can't be prominently visible
15 on hillsides?

16 A. Yes, I would say that, I would say it's fair
17 to characterize that they expand upon those
18 criteria.

19 Q. So when the town looks at any kind of
20 development, do they try to interpret what
21 this last sentence means in the town plan or
22 did they look only to the specific standards
23 in the land use regulations?

24 A. Um, well, it depends on the development. So
25 if it's something that is subject to the land

1 use and development regulations, ah, then we
2 would look first at the land use and
3 development regulations because they're
4 considered more specific, and they may also
5 look to the town plan as well because our land
6 use and development regulations bring in the
7 town plan criteria as well for review of the
8 projects that would be subject to those
9 regulation.

10 Q. So can you recall if any development in rural
11 conservation zone, just say in the last five,
12 ten years, was stopped from being developed
13 based on just the town plan rules?

14 A. Based on just the town plan rules?

15 Q. Yes.

16 A. Um, any development?

17 Q. Yes.

18 A. Um, a cell tower expansion on the top of Mount
19 Anthony didn't proceed. I don't know if it
20 was -- when we've raised objections based on
21 this; um, but there was no ruling, or anything
22 like that, at the public utilities commission
23 or anything like that. So we did object to
24 it.

25 Q. So was that cell tower going along the ridge

1 line?

2 A. It would be on the top of Mount Anthony, yes,
3 which is a very prominent, ah, feature in our
4 landscape in Bennington.

5 Q. Right. So being at the top of the mountain it
6 would be prominently visible?

7 A. I think that would be fair to say, yes.

8 Q. Okay. So what other standard?

9 ATTORNEY WOOLMINGTON: Hold it a
10 second.

11 ATTORNEY MELONE: Sure.

12 (Discussion off the record.)

13 Q. So you had mentioned that there were other
14 potential rules in the town plan regarding
15 scenic resources that might apply to any
16 development in the rural conservation zone.
17 Where are those?

18 A. It would be natural scenic and historic
19 resources, chapter -- ah, page -- it looks
20 like page 41.

21 Q. So are these guidelines or is -- this part of
22 the town plan refers to special regulations.
23 What regulations are those?

24 A. Um, if you could point me to the section that
25 you're referring to. You know, it does refer

1 to the scenic resource inventory.

2 Q. Down at the bottom, page 41, there is
3 something that says "Special regulations have
4 also been adopted."

5 A. Yup. That -- let me just read this.
6 (Perusing.) So that would be the scenic
7 resource protection regulations in the rural
8 conservation zone. And there are also, ah,
9 regulations in our subdivision regulations
10 portions of our land use and development
11 regulations that addressed similar issues.

12 Q. You're familiar with the Apple Hill Solar
13 project as proposed and its location?

14 A. I am, yes.

15 Q. Have you seen the simulations that were
16 prepared by SE Group that were included as
17 Exhibit AHS-MK7 in Apple Hill Solar's most
18 recent filing?

19 A. I have seen it, yes.

20 Q. I'm going to mark these as Exhibit 3.

21 (Exhibit No. 3 was marked for
22 identification.)

23 Q. I guess I'll show these to you one at a time
24 to make it easier, and we can refer to page
25 numbers.

1 So I'm showing the witness right now
2 a simulation that's marked AHS-04, which shows
3 existing conditions from the Welcome Center.

4 Does that look familiar to you, look
5 like it is an accurate depiction of existing
6 conditions when leaves are full?

7 A. It does appear to be accurate, yes.

8 Q. Okay. I'm going to show the witness now the
9 simulation that's marked AHS-05.

10 This shows the depiction of the
11 summer view, which means full leaf condition,
12 from the Vermont Welcome Center.

13 Have you seen this one before?

14 A. Yes.

15 Q. So can you see the solar project anywhere?

16 A. I don't see it based on this simulation, no.

17 Q. So you would think -- would it be your view
18 that the solar project, at least from this
19 viewpoint, would satisfy whatever screening or
20 scenic rules the Town of Bennington would have
21 in the town plan of 2010?

22 A. Okay. I just want to be clear.

23 Q. Yeah.

24 A. The Select Board has withdrawn its objections
25 to this project --

1 Q. Right.

2 A. -- based on these plans that were presented to
3 them. So that's their position. I'm happy to
4 answer as an individual looking at those, but
5 I can't speak for the Select Board on
6 specifications like that, and I just want to
7 be clear on that. So I don't know how you
8 want to proceed with that. The Select Board
9 has not made individual findings regarding
10 each one of those particular perspectives.
11 They have simply withdrawn their objections
12 based on any noncompliance with the 2010 plan,
13 which includes obviously all of those criteria
14 which you've referenced.

15 Q. Right.

16 A. So.

17 Q. All right. So just give me your view then.

18 A. Yes.

19 Q. So yes meaning --

20 A. It complies with the screening.

21 Q. It complies?

22 A. Yes.

23 Q. And there's nothing in the 2010 town plan that
24 the project, from this standpoint, would be
25 violating?

1 A. Yes, I concur can with that.

2 Q. So I'm going to show the witness the
3 simulation that's marked AHS-06, which is the
4 winter view from the Welcome Center. And this
5 assumes again that both the Chelsea and Apple
6 Hill Solar projects are built, as all of these
7 simulations do.

8 A. Yes, I do understand that.

9 Q. You understand that?

10 A. Yes.

11 Q. So do you think what's depicted here also
12 satisfies any rules in the 2010 town plan?

13 A. Yes, I do.

14 Q. Now, specifically is it your view that the
15 solar project is prominently visible?

16 A. I would say, based on this simulation, it is
17 not prominently visible in this simulation,
18 that's correct.

19 Q. So then referring to the specific language of
20 the town plan, this project is not sited in a
21 prominently visible location; is that correct?

22 A. Just to clarify, as it is depicted in the
23 simulation with the screening that is
24 proposed, it is not prominently visible, I
25 would agree with that.

1 Q. Right, not prominently visible, you answered
2 that. But what I'm asking is, just to make
3 sure we understand it in the language of the
4 town plan that says it is not sited in a
5 prominently visible location; to me it's the
6 same thing but some people may think it's
7 different, so I just want to be clear.

8 Based on this simulation is it your
9 view that the project is not sited in a
10 prominently visible location?

11 A. Yes.

12 Q. Thank you. Now, I'm going to show the witness
13 the simulation that's a marked AHS-08.

14 This shows the existing conditions
15 on Route 7 heading north, again leaf-on
16 condition. Have you seen that before?

17 A. Existing conditions?

18 Q. Yes, leaf-on conditions.

19 A. Yes, I have.

20 Q. Unfortunately, I don't have Apple Hill only
21 simulations, we only have the ones that the
22 Select Board has seen which depict combined
23 Chelsea and Apple Hill. So I'm going to show
24 the witness AHS-09. This shows the summer
25 view coming up Route 7.

1 So based on that depiction will you
2 conclude that from this view the project is
3 not prominently visible?

4 A. That is correct.

5 Q. And you would also -- would you also include,
6 based on this depiction, that the project is
7 not sited in a prominently visible location?

8 A. That's correct, yes.

9 Q. One other question on this depiction. Would
10 you -- again just from this vantage point --
11 conclude that the project is on a hillside?

12 A. From this vantage point it's difficult to tell
13 if it's on a hillside or not, because it could
14 be on a hillside and not be visible, but it
15 could still also be on a hillside.

16 Q. Right. I guess I'm just kind of asking more
17 when you try to determine what's a hillside,
18 you're going to you said look at the
19 topography basically, you know, from where
20 you're seeing it?

21 A. Hm-hmm. From this view it's difficult for me
22 to say. It is not prominently visible,
23 clearly, but I -- I don't know if the
24 topography is a hillside from this view.

25 Q. All right. So I'm going to show the witness

1 the depiction marked AHS-10. This shows
2 winter view Route 7 north.

3 Now, again, this is combined, but
4 based on this depiction do you think the solar
5 project is prominently visible?

6 A. I think this is a harder question to answer
7 definitively, and because it includes Chelsea,
8 which I understand is the most closely located
9 property or project to the road, it may not be
10 relevant to the Apple Hill. So I guess I
11 would say that you can see that there's a
12 project there. And since the Select Board
13 didn't make a determination regarding Chelsea,
14 the revised Chelsea project, I don't think I
15 can give you a determination regarding that.

16 Q. So can you see that there is a project there
17 or you can see something?

18 A. Yes.

19 Q. But can you see what it is?

20 A. Based on this simulation it's difficult to
21 make out what it is, that's correct.

22 Q. Right.

23 A. Yes.

24 Q. Okay. I am going to move this along. I am
25 going to show the witness AHS-13, which shows

1 the summer level view after the project is --
2 we're assuming the project or both projects
3 are constructed, from one of the neighbors.
4 This is the home of Libby Harris.

5 From that depiction does the project
6 look prominently visible?

7 A. I just want to confirm that is the Chelsea and
8 Apple Hill --

9 Q. Combined?

10 A. -- combined with leaf-on condition. It does
11 not appear to be prominently visible based on
12 that simulation.

13 Q. Can you see any kind of project there at all?

14 A. It is difficult to make out any specifics,
15 yes, of any project. Yes, it is screened.

16 Q. So from your perspective from this vantage
17 point there would be nothing in the town plan
18 2010 which would be violated?

19 A. 2010, yes, that's correct.

20 Q. I'm going to show the witness now AHS-14,
21 which is the winter view, again, from
22 Residence 1.

23 From this depiction would it be
24 correct to say that the project is not
25 prominently visible?

1 A. From this perspective, based on this
2 perspective drawing, I would say the project
3 is not prominently visible.

4 Q. And would it be correct to say that, based on
5 this perspective, there's nothing in the town
6 plan of 2010 which is violated by the project?

7 A. Based on this perspective, yes.

8 Q. I am going to show the witness a depiction
9 marked AHS-17. This shows the depiction from
10 a neighbor directly to the north that's
11 slightly west of the other house; so this is
12 the summer level view.

13 Based on this depiction is it
14 correct to say the project is not prominently
15 visible?

16 A. It would be correct to say that it is not
17 prominently visible based on this perspective,
18 yes.

19 Q. I am going to show the witness the depiction
20 marked AHS-18. This shows the winter view
21 from that same residence.

22 Based on this depiction would it be
23 correct to say that the project is not
24 prominently visible?

25 A. Although there is some visibility, I would say

1 it is not prominently visible, yes.

2 Q. Okay. So would it be correct to say that from
3 this depiction there is nothing that
4 development of this project violates in the
5 2010 town plan?

6 A. Yes, that's correct, in the 2010 town plan.

7 Q. Okay. There is one more, which is from a
8 residence that looks over across the apple
9 orchard. This is a summer level view.

10 ATTORNEY WOOLMINGTON: What's the
11 number?

12 ATTORNEY MELONE: Oh, I'm sorry.

13 Q. We're looking at AHS-21.

14 Is it correct to say that the
15 project is not prominently visible from this
16 location?

17 A. Based on this perspective, yes, correct, it is
18 not prominently visible.

19 Q. Would it be correct to say that you can't
20 even -- you can't see it at all?

21 A. I don't see any -- I don't see the project,
22 not in that perspective.

23 Q. I'm going to show the witness depiction
24 AHS-22; again, it's from that same Residence
25 No. 3; this is on leaf-off winter conditions.

1 Would it be correct to say that the
2 project from this standpoint is not
3 prominently visible?

4 A. Yes, that would be correct to say. It is
5 correct that it is not prominently visible.

6 Q. So would it also be correct to say that the
7 project, from this point of view, does not
8 violate any provision of the 2010 town plan?

9 A. That would be correct, yes.

10 Q. Okay. I have the 2015 town plan here; I don't
11 know if we want to mark it as an exhibit. But
12 my question -- well, I guess, yeah, I will
13 mark it as an exhibit; might as well, so you
14 have it.

15 (Exhibit No. 4 was marked for
16 identification.)

17 Q. My question is, is there anything different in
18 the 2015 town plan?

19 ATTORNEY WOOLMINGTON: Is that
20 Exhibit 4?

21 ATTORNEY MELONE: I'm sorry; the
22 2015 town plan is being marked as Exhibit 4.

23 Q. Is there anything in the 2015 town plan that
24 differs from the 2010 town plan as far as
25 development in the rural conservation zone?

1 A. Ah, there is one section, um, I can -- that I
2 know of off the top of my head. Again, I have
3 not compared it word for word, but I do know
4 of one section that was added. Let me find
5 that section. It is not relevant to solar,
6 per se, but I'll just find it and point it
7 out. The -- I know this sentence was added, I
8 don't think there is any other significant
9 changes in that in the rural conservation
10 district section.

11 ATTORNEY WOOLMINGTON: Could you
12 reference the page number.

13 A. Page No. 28 under the "Rural Conservation
14 District" section. This sentence I believe
15 was added, I don't think we had a specific --
16 it says, "Zoning regulations shall maintain
17 large blocks of working agriculture land and
18 productive force land."

19 I think, I believe that was the only
20 substantive section changed with regard to the
21 rural conservation district. Obviously, there
22 are many changes throughout the document that
23 I couldn't tell you word for word what was
24 changed, but as far as the rural conservation
25 district that was changed.

1 Q. Okay; thank you. But aside from that sentence
2 as far as you know or can recall the same
3 rules that were in the 2015 town plan are --
4 I'm sorry -- 2010 town plan are in the 2015
5 town plan as far as development in the rural
6 conservation district?

7 A. That's specific to the rural conservation
8 district, correct, yes. There are other
9 sections that deal with aesthetics, and many
10 different issues that -- throughout the plan,
11 and I certainly couldn't show you every single
12 change. But as far as explicit to the rural
13 conservation district, that was the only
14 change that I'm aware of.

15 Q. So is there anything in the 2015 town plan
16 that would have changed in relation to
17 development of a commercial scale solar
18 project in the rural conservation district?

19 A. Let me check because I don't remember if it
20 was changed or not. I think there was only
21 one other minor section, if I recall. I think
22 the one section that I recall being added that
23 addresses solar projects is on page 99 in the
24 "Energy" section. I believe we added this
25 sentence: "Commercial scale solar electric

1 generating projects are under development in
2 town. These projects are important but should
3 be carefully sited to avoid impacts to
4 important resources. I believe that was the
5 only thing added that was explicit to solar
6 projects. I don't think there are any other
7 specific things about solar in the 2015 town
8 plan before it was amended, as you know, a
9 specific section regarding solar siting.

10 Q. Right, that's good, a good sentence to point
11 out.

12 Based on the depictions we just went
13 over for the Apple Hill Solar project, is it
14 correct to say that that project, as you have
15 seen it in the depictions, has avoided impacts
16 to important resources?

17 A. I just want to reiterate the Select Board made
18 their determinations based on the 2010 town
19 plan, they made no findings regarding the 2015
20 town plan. Again, I'm happy to -- if the
21 appropriate answer is the planning director's
22 personal opinion, but that does not carry any
23 weight with regard to the town's position on
24 the project. So I don't think there is
25 anything in the 2010 town plan absent the

1 amendment regarding solar siting that would
2 change my opinion about the project as
3 depicted in those perspectives.

4 Q. Yes, we are going to get to the 2016 amendment
5 in just a little bit.

6 A. Okay. The town has taken no position as to
7 anything after the 2010 town plan.

8 Q. Correct, I understand.

9 A. Okay.

10 Q. Now, the other sentence you pointed out on
11 page 28 of the 2015 town plan refers to
12 maintaining large blocks of working
13 agricultural land.

14 So my question on that is if the
15 town were to develop preferred locations for
16 solar, does this sentence mean that they would
17 avoid prime or important agricultural soils?

18 A. This sentence, in itself, does not necessarily
19 mean that. The only reason I have -- can be
20 fairly certain about that is because I
21 remember when we drafted this language, it had
22 to do with actual agricultural operations that
23 were ongoing, as opposed to simply having good
24 or prime agricultural soils.

25 Q. Okay.

1 A. Yeah.

2 Q. And would the same concept apply to the term
3 "productive forest lands," that it's -- a
4 forest land that's actually producing timber
5 or some other product?

6 A. I think it would be forest lands that had the
7 potential of actually producing timber, like
8 you said. There are obviously forested,
9 quote/unquote, areas that would not
10 necessarily be commercially viable as a
11 forestry operation or a logging operation. So
12 this has to do with productive forest lands;
13 therefore, lands that would likely produce
14 some sort of usable timber or logging
15 operations. So.

16 Q. Okay, great. I'm going to mark as Exhibit 5
17 the Bennington Solar Screen Bylaw, which is
18 also Exhibit AHS-ECOS-18 in the most recently
19 filed amendments.

20 (Exhibit No. 5 was marked for
21 identification.)

22 Q. Do you recognize this? It's not the signed
23 copy; I thought we had filed the signed copy.

24 A. I do recognize that this is the screening
25 ordinances that the town adopted.

1 Q. Okay. So can you explain to me what the
2 screening ordinance is intended to, from the
3 town's standpoint?

4 A. Um, the intention was to develop criteria for
5 the screening of solar facilities that would
6 have some weight at the Public Utility
7 Commission -- during the Public Utility
8 Commission's review of a project.

9 Q. Okay. And what type of screening is the town
10 trying to impose on solar facilities through
11 this ordinance?

12 ATTORNEY WOOLMINGTON: Objection as
13 to form.

14 Q. Do you understand the question?

15 A. Yeah, I'm not really sure. If you want to
16 restate it, so I can understand what you're
17 getting at.

18 Q. I'll take it in parts.

19 What does screening of a solar
20 facility mean to you?

21 A. Ah, well, it can take many different forms.
22 It can be a landscaping screen, it can be
23 screening with topography; um, there are many
24 different forms that screening can take, there
25 is not one form. There could be natural

1 vegetation that screens a project, it could be
2 new landscaping, it could be construction of a
3 barn. There are multiple ways to screen
4 anything, including solar projects.

5 Q. Okay. So if you could look at paragraph 2 in
6 Section B.

7 A. Sure.

8 Q. It says, "All solar facilities shall be sited
9 and screened so that visual impacts of such
10 facilities..." then it continues "are
11 mitigated as viewed from public streets and
12 thoroughfares, scenic viewpoints, and/or
13 adjacent properties."

14 So what does that mean, "are
15 mitigated"?

16 A. I think what that, if you go to the next
17 paragraph, it would be essentially a year-
18 round visual screen of the project.

19 ATTORNEY MELONE: Are we off the
20 record for a second.

21 (Discussion off the record.)

22 (Recess.)

23 Q. Dan, so I'm going to show you a photo which I
24 took this morning, it's marked Exhibit 6, of
25 the Paper Mill solar project off Murphy Road.

1 A. Okay.

2 (Exhibit No. 6 was marked for
3 identification.)

4 Q. So this Exhibit 6 shows the view from the road
5 in the most screened location.

6 Is it your opinion that this screen
7 depicted in this picture satisfies the
8 screening bylaw?

9 A. That's a very difficult question to answer
10 because, ah, we have not -- the town hasn't
11 taken a position regarding the as-built
12 project, whether or not it complies with the
13 screening ordinance. I don't know how to
14 answer that question since the town hasn't
15 taken a position on that. If you're asking
16 was this project objected to at the public
17 Utilities commission, no, it wasn't.

18 Q. Did the town review the project before or
19 during the process at the you P.U.C.?

20 A. Yes.

21 Q. And did the town make any objection?

22 A. They did not make a -- they found that there
23 would be no adverse impact. However, they
24 did -- and I'd have to look at the letter, and
25 I think it was in some of the materials you

1 submitted -- that there was a comment to the
2 public Utilities commission about maintaining
3 a robust screen year around, or something like
4 that. I just know that was the only comment
5 that was given to the public utilities
6 commission.

7 Q. But the town did not object to the visual
8 simulations that the project provided as
9 violating the screening ordinance, did it?

10 A. No, I don't recall them having objections to
11 any simulations that were submitted. The only
12 comment was to the public utilities commission
13 regarding maintaining screening or something
14 like that. We could look it up in the
15 documents to see what exactly was said, but I
16 believe the language was, no, they don't
17 believe it would have an adverse impact.
18 However, they requested that the public
19 utilities commission deal with some sort of
20 screening, um, condition.

21 Q. All right. I'm going to show the witness
22 Exhibit 7, which is a black and white photo,
23 again, of the Paper Mill project taken from
24 Murphy Road. This photo depicts virtually no
25 screening; you know, again this is on the

1 other end of the spectrum.

2 A. Hm-hmm.

3 (Exhibit No. 7 was marked for
4 identification.)

5 Q. So my question is do you think the town should
6 be objecting to that under the screening
7 ordinance?

8 A. Again, the town hasn't taken any position, and
9 I don't know if all the landscaping included
10 in the plan has been installed in this
11 location. So if you're asking me personally
12 if that meets the zoning ordinance in that
13 condition that you're showing me right now,
14 probably not.

15 Q. Okay; we'll get back to those. I just want to
16 go back to this Exhibit 6 for a minute.

17 A. Sure.

18 Q. Again, I just want to refer back to that
19 paragraph B where the ordinance says the view
20 should be mitigated. Now, some people would
21 think that what's in Exhibit 6 would satisfy
22 that because there is some screening.

23 Do you think this would satisfy the
24 mitigation requirement of the screening
25 ordinance from this view?

1 A. Again, the Select Board hadn't taken a
2 position on the as-built condition. Ah, they
3 did not object to the project when it was
4 submitted. Um, as me, personally, do I think
5 that likely meets the mitigation standards?
6 Depending upon -- it's hard to say because I
7 don't know where it is or how long that view
8 is kept while you're driving. Um, I would say
9 probably does.

10 Q. That this does meet the screening standard?

11 A. Probably.

12 Q. Okay.

13 A. But, again, I'd need more information to make
14 a definitive determination.

15 Q. Yeah, I'm not trying to disagree with you.

16 So just referring back to Exhibit 6
17 again, this shows the leaf-on current
18 conditions as of today; leaf-off the project
19 would be a little bit more visible, but there
20 would still be some screen.

21 So would you think in the leaf-off
22 condition from this view the screening
23 ordinance is still probably satisfied?

24 A. Without seeing it I just -- I don't feel
25 confident saying personally whether or not it

1 would be.

2 Q. Okay. Now, paragraph C of the screening
3 ordinance says that "The Town of Bennington
4 may make recommendations to the Public Utility
5 Commission applying the ordinance."

6 Did the town make any
7 recommendations --

8 A. Yes.

9 Q. -- as to compliance with the screening
10 ordinance?

11 A. Ah, I would say not specifically, although
12 there was a reference to screening in the
13 letter, which may make sense for us to try to
14 find that, if it's available. I just don't
15 recall the exact wording and wouldn't want to
16 mischaracterize it. But the Board didn't --
17 the Select Board did not object to the project
18 and, but they did raise one concern, um, that
19 they asked the public utilities commission to
20 address, in my recollection.

21 Q. Yes, no, that's my recollection as well. I
22 thought I had this with me. Ah, here it is.

23 A. Okay.

24 Q. So I'll mark this Exhibit 8, so you can look
25 at it.

1 (Exhibit No. 8 was marked for
2 identification.)

3 ATTORNEY WOOLMINGTON: Can you
4 identify the date of the letter.

5 Q. So I'm looking at a letter dated October 13th,
6 2016, from Stuart Hurd to Judith Whitney,
7 clerk of the Vermont Public Service Board,
8 regarding the ER Paper Mill Village Solar
9 Project. There you go (handing).

10 A. That's the one I was thinking of; thank you.
11 (Witness perusing document.)

12 A. I do recognize this letter.

13 Q. Okay. So did the town make any specific
14 reference to the screening ordinance?

15 A. They made no specific reference to the
16 screening ordinance, but they did reference
17 screening.

18 Q. Okay. Let's talk a little bit about the
19 amendment to the town plan in 2016. So I am
20 marking Exhibit 9, it's entitled "Amendment to
21 Town Plan approved by Select Board on April
22 11, 2016." There you go (handing).

23 (Exhibit No. 9 was marked for
24 identification.)

25 Q. So what was the town's purpose of enacting

1 this amendment to the town plan?

2 A. Um, to the best of my knowledge, it was to
3 have more specific standards regarding where
4 solar electricity generation facilities should
5 be located within the town, ah, and what sort
6 of, um, criteria should be considered in
7 determining whether or not a site is
8 appropriate -- a solar generation site is
9 appropriate under the standards in the town
10 plan.

11 Q. Okay. So when the town goes through the
12 process, which we know they're doing now, of
13 identifying certain areas for solar or
14 preferred areas for solar, does this require
15 establishing some kind of objective criteria?

16 ATTORNEY WOOLMINGTON: Objection as
17 to form.

18 Q. Do you understand the question?

19 A. Yeah, maybe you could rephrase it; so I'm not
20 really sure what you're getting at.

21 Q. Does this amendment to the town plan require
22 basing decisions on objective criteria related
23 to a site?

24 A. I guess one's person's objective is another
25 person's subjective. It does set forth

1 criteria that are important to review with
 2 regarding -- or that should be reviewed
 3 regarding whether or not a site is appropriate
 4 for a solar generation facility. Um,
 5 objective versus subjective, those are
 6 difficult things to define, I guess.

7 Q. So I would say that if there's a class 2
 8 wetland on the property, that that's an
 9 objective criteria.

10 A. Yes.

11 Q. If there is some other kind of rare or
 12 endangered species that live on the site, that
 13 would be an objective criteria.

14 A. Yes.

15 Q. If the site is prime agricultural soils, that
 16 can be consideration as well.

17 A. Correct, yes.

18 Q. Those are what I'm referring to as objective
 19 criteria.

20 A. Well, there are objective criteria in there
 21 under that definition, yes.

22 Q. Is it your understanding that the intention is
 23 to include objective criteria in determining
 24 what would be a preferential site in the Town
 25 of Bennington?

1 A. I'm not trying to be evasive, it's just to the
2 extent possible. For instance, I mean,
3 aesthetics is not -- it's very difficult to be
4 completely objective about.

5 Q. Yeah, I agree.

6 A. Okay.

7 Q. Aside from aesthetics, you have a project
8 that's next to a river versus one where there
9 may be no features of significance, there
10 would be objective criteria that could define
11 the difference between the two.

12 ATTORNEY WOOLMINGTON: Objection as
13 to form.

14 Q. So if we put aside aesthetics --

15 A. Okay.

16 Q. -- is one of the purposes of this amendment to
17 say do what the region did, which is go
18 through some objective criteria, and then use
19 that as a filtering system for what's a
20 preferred site?

21 ATTORNEY WOOLMINGTON: Objection as
22 to form.

23 A. The objective of this particular section of
24 the town plan is to identify criteria that
25 could be used to determine whether or not a

1 facility, a location is appropriate for a
2 solar generation facility. Um, whether or not
3 it's all objective criteria or possibly some
4 subjective criteria with some discretion, you
5 know, that's -- it -- I think the -- ah, you'd
6 have to read through the section itself line
7 by line and we can talk about what's objective
8 and what's subjective.

9 Q. Okay. All right. So let's go through on page
10 4 the, quote, "preferred areas" are defined.

11 A. Okay.

12 Q. The town plan lists certain preferred areas:
13 roof mounted systems, it also lists systems
14 located in close proximity to existing large
15 scale commercial or industrial buildings.

16 What do you mean by "close
17 proximity."

18 A. Again, that's -- you know, that's difficult to
19 define it specifically. But you would have to
20 use the common-sense interpretation, which
21 would be nearby to that particular project.
22 Certainly, a mile's probably not close.

23 Q. Right.

24 A. But a thousand feet, five hundred feet, that's
25 close I don't know; that's why we have a

1 Planning Commission and Select Board to make
2 those determinations.

3 Q. Now, would you agree that the home depo in
4 town is a large-scale commercial building?

5 A. I would, yes.

6 Q. All right. We'll get back to the specific map
7 issues in a second.

8 So then the town plan lists excluded
9 areas. So this list of exclusions, is it
10 correct to say, is intended to just prevent
11 solar development in these locations
12 regardless of any other conditions, whether
13 you can see them or not see them?

14 ATTORNEY WOOLMINGTON: Objection as
15 to form.

16 A. Maybe just restate it. I just want to make
17 sure I understand what you're --

18 Q. Sure. So on page 4 there is a list of
19 excluded areas. Can you tell me what that
20 list is supposed to do?

21 A. Okay. That list is supposed to identify
22 conditions that would make it such that the
23 town would not support a project that is
24 located within those conditions. For example,
25 if a project was in wetlands, it would not be

1 supported; if it was in a floodway, the town
2 plan is saying that that should not be
3 supported; those types of criteria.

4 Q. So there's a difference between not supported
5 and prohibited by the town plan. Are you
6 saying that the list is just intended to
7 indicate what the town will not support or
8 does it mean the town plan prohibits that?

9 ATTORNEY WOOLMINGTON: Objection as
10 to form.

11 A. I think I know what you're asking, but maybe
12 if you'll ask it again.

13 Q. Okay.

14 A. I'm not...

15 Q. So does that provision mean that the town is
16 just not going to support a project in these
17 areas?

18 A. I think that's fair to say. Um, you have
19 to -- the reason -- you have to remember that
20 these are solar facility generations -- or
21 solar generation facilities, so our only real
22 recourse regarding these projects is appearing
23 at the public utilities commission. So I
24 think that why we're saying shall not support
25 at the public utilities commission these

1 projects, or projects located within these
2 locations; we have no right to exclude them on
3 our own because they are Section 248 projects.

4 Q. Okay. So then I'll ask the second part of the
5 question, which is does the town plan prohibit
6 solar projects in these categorized areas?

7 ATTORNEY WOOLMINGTON: Referring to
8 the ones at the bottom of page 4?

9 Q. Bottom of page 4 and the top of page 5 or most
10 of page 5.

11 I'm just trying to draw the
12 distinction between whether this amendment is
13 saying: well, the town is not going to support
14 these at the P.U.C.; or this is saying, no,
15 our town plan establishes this clear community
16 standard that you cannot build in these
17 locations?

18 A. I would say the latter, it provides a standard
19 that they shall not be constructed within
20 these locations.

21 Q. Okay.

22 A. Listed here explicitly.

23 Q. So would it surprise you that some of the
24 designated preferred sites have a number of
25 these classifications associated with them?

1 ATTORNEY WOOLMINGTON: Objection as
2 to form. What do you mean by "designated
3 proposed sites"?

4 ATTORNEY MELONE: I'm sorry. Yeah,
5 let's go through that.

6 ATTORNEY WOOLMINGTON: To my
7 knowledge, nothing has been designated.

8 ATTORNEY MELONE: That's true.

9 Q. All right; I'll come back to that.

10 A. Okay.

11 Q. I'll come back to that.

12 So if you go to the top of page 5,
13 the third one down, it says, "A site in
14 proximity to and interfering with a
15 significant woodshed identified in the scenic
16 resource inventory..." And then below that,
17 the question I have is below that: "A location
18 where a site cannot be screened from the view
19 of neighbors, and thus prohibits them from
20 exercising the peaceful enjoyment of their
21 property."

22 So, again, we have a question of
23 what "screened" means. Does screened mean
24 what is in Exhibit 6 or does screened mean the
25 neighbors can't see it?

1 ATTORNEY WOOLMINGTON: Objection as
2 to form.

3 A. I don't think I can answer that question
4 because it is a determination made on a case-
5 by-case basis by the Select Board and the
6 Planning Commission.

7 Q. Let me try to reask it.

8 If you look at Exhibit 6, does this
9 view satisfy this provision of the town plan
10 amendment that prohibits the location where a
11 site cannot be screened from the view of
12 neighbors?

13 A. I can't make that determination based on a
14 single photograph. If you're asking me
15 personally, I wouldn't feel comfortable
16 without having more information deciding
17 whether or not that met this requirement.

18 Q. Would you feel comfortable if the entire view
19 were like this? I mean, I know it's not
20 Exhibit 7, but would this view --

21 A. Again, that's just one snapshot. I don't know
22 what the rest of it would look like. So I
23 just can't answer that question.

24 Q. Okay.

25 A. So much has to do with context and the

1 adjacent lands. I just don't think there is
2 any way to answer it in a blanket fashion.

3 Q. Okay. Now, at the bottom of the page it says,
4 "Except for solar facilities located in
5 preferred areas, solar facilities larger than
6 ten acres individually or cumulatively cannot
7 be adequately screened or mitigated to blend
8 into the municipality's landscape and are,
9 therefore, explicitly prohibited."

10 So my first question is how do you
11 measure the ten acres? And I'll give you a
12 little background because the state of
13 Massachusetts has a rule specifically that
14 does that, and the state of Massachusetts
15 determines acreage occupied by solar, based on
16 the actual area of the solar panels
17 themselves, the physical solar panels. So you
18 just take the square footage of each solar
19 panel, multiply it by the number of panels and
20 then come up with total area. That doesn't
21 mean that the town can't have a different
22 standard, but in light of that what is the
23 standard as far as how acreage is determined?

24 A. Well, how I would determine --and, again, we
25 haven't run up against this, so there has been

1 no formal decision regarding this, how it
2 would be interpreted -- but I'm happy to say
3 that what I would do is look at the beginning
4 of the ordinance that defines what a solar
5 facility is, and it include a solar
6 electricity generation and transmission
7 facility greater than -- blah, blah, blah --
8 including all onsite and off-site improvements
9 necessary for the development and operation
10 and ongoing maintenance of the facility. So
11 that's what -- if you were to ask me how I
12 would initially determine it, and then advise
13 the Planning Commission and the Select Board,
14 I would look at the solar electricity
15 generation transmission, the actual panels,
16 and any onsite and off-site improvements
17 necessary for the development and operation
18 and ongoing maintenance of the facility,
19 that's how I would interpret it. Now, again,
20 is it crystal clear? No. But that's how I
21 would interpret it.

22 Q. All right. So let me ask you one question
23 about off-site improvements. As you know,
24 most solar electric generation facilities, at
25 least the larger ones, require some upgrades

1 to the transmission or to the distribution
2 grid that they connect to. And in the case of
3 Apple Hill, for example, Green Mountain Power
4 is extending the line to the site.

5 So are you saying that those are
6 off-site improvements that would be captured
7 under the size of the facility?

8 A. That would be my interpretation. Again, that
9 has not been a determination made explicit by
10 either the Planning Commission or the Select
11 Board. Just reading the amendment, that's how
12 I would interpret it.

13 Q. Okay. Now, to your knowledge, did the Select
14 Board make a calculation of the acreage of the
15 Paper Mill solar project based on the criteria
16 that you just said or some other criteria?

17 A. To my knowledge, there was no explicit
18 calculation of the size of the array, other
19 than what was shown on the plan submitted to
20 them.

21 Q. Okay. Where did the ten acres come from?

22 A. That was the -- I don't know. I mean that was
23 what the, ah, Planning Commission and the
24 Select Board adopted. I couldn't tell you
25 where it came from or what was the impetus for

1 it or why that number was chosen.

2 Q. Now, this concludes or it seems to say that
3 the ten acres "Is a metric beyond which a
4 project cannot be screened." Do you agree
5 with that?

6 A. Maybe just restate it. Do I agree with that
7 that's what it says.

8 Q. No. Do you agree that ten acres establishes
9 some boundary, not just in -- I'm not
10 referring to what this says.

11 A. Okay.

12 Q. I'm saying do you believe that a project -- or
13 that it's impossible to fully screen a project
14 greater than ten acres?

15 A. I think it's possible. You can screen
16 something larger than ten acres, certainly.

17 Q. So then what would be the purpose of excluding
18 those facilities from the town?

19 ATTORNEY WOOLMINGTON: Objection as
20 to form.

21 A. Yeah. I don't know if I can speak to that
22 purpose. I don't know -- I can't read
23 everybody's mind who adopted this and why they
24 chose to do that. I just don't know what
25 motivated those individuals.

1 Q. Okay. But is it correct to say that the
2 purpose of this rule is to ensure adequate
3 screening?

4 A. I don't think so. I don't think that is the
5 only purpose. Reading it, I don't think that
6 is the only purpose.

7 Q. What would be the other purpose?

8 A. To limit the scale of projects within the
9 community.

10 Q. Right. Okay. But you don't know why someone
11 would want to do that if it could be fully
12 screened?

13 A. I can imagine the reasons why, but I don't --
14 I can't surmise what the select -- the
15 individual Select Board members who adopted
16 this thought or what they wanted to accomplish
17 with that particular section.

18 Q. Okay. And then when this says "Solar
19 facilities larger than ten acres individually
20 or cumulatively," what is individually or
21 cumulatively intended to mean?

22 ATTORNEY WOOLMINGTON: At this point
23 I'm going to enter an objection. There is
24 case law in Vermont that you can't even call
25 legislators to explain the bills they passed.

1 The things speak for themselves. In this
2 case, this is way beyond the Apple Hill
3 project. That project, as I understand it, is
4 being considered under the 2010 town plan.
5 There's been no objection by the town voiced
6 or raised about compliance of Apple Hill with
7 this provision.

8 ATTORNEY MELONE: Right.

9 ATTORNEY WOOLMINGTON: And I don't
10 think that it's admissible or calculated to
11 lead to admissible evidence to ask the
12 planning director to answer speculative
13 questions about a bylaw when it doesn't even
14 apply to a project; so I'm going to ask you to
15 please move on.

16 ATTORNEY MELONE: All right.

17 Q. So I'm going to mark as Exhibit 10 the
18 Bennington land use and development
19 regulations applicable to the rural
20 conservation zone; it's also Exhibit
21 AHS-ECOS-19.

22 (Exhibit No. 10 was marked for
23 identification.)

24 (Witness perusing document.)

25 Q. So let me ask you the primary question: Is

1 there anything in this land use regulation
2 that the Apple Hill Solar project, as the
3 Select Board has recently seen, would not
4 comply with?

5 ATTORNEY WOOLMINGTON: Objection.
6 And these things don't apply to that project
7 because they are preempted by the Section 248
8 process. So if you have some specific
9 question about some standard, I mean, I guess
10 we can talk about that, but I don't see how
11 this is relevant or likely to lead to
12 admissible evidence because it just doesn't
13 apply. And public law case law, although I
14 disagree with it, seems to indicate that they
15 are not going to pay any attention to
16 screening regulations. So if you want to make
17 an offer of proof, I am happy to continue, but
18 I don't see where we're going.

19 ATTORNEY MELONE: The town plan
20 itself refers to specific guidelines, specific
21 design standards. We've already established
22 that these are in fact the specific design
23 standards. So I think there is a question as
24 to whether those are in fact incorporated into
25 the town plan, because these existed when that

1 town plan was enacted.

2 ATTORNEY WOOLMINGTON: Okay. Thank
3 you for that clarification. So if you want to
4 ask him any specific design standards in
5 there, I do not object to that.

6 ATTORNEY MELONE: Okay.

7 Q. Okay. So let's go to page 4, where it talks
8 about hillsides and ridge lines. Again, let
9 me get those out.

10 So the first criteria is in "B(i):
11 Development shall be blended into the existing
12 natural landscape to minimize its visual
13 impact from public roads and lands."

14 Based on the visual simulations that
15 we previously went over regarding the Apple
16 Hill Solar project, do you think the project
17 has satisfied that criteria?

18 A. Okay. Based on the caveat that the Select
19 Board has made no determination regarding
20 this, I personally do believe that the
21 simulations depict -- that were shown to me
22 today do comply with the standard.

23 Q. The standard in "2(i): Development shall not
24 cause undue alteration of natural topographic
25 patterns." Is it your opinion that the

1 project, as shown to you today, satisfies
2 that?

3 A. Yes.

4 Q. And as to No. 3, "Tree removal shall not cause
5 undue alteration of the natural vegetation
6 patterns"; do you believe the project
7 satisfies that?

8 A. That one I don't think I have enough
9 information to say for sure, because there's
10 no, um, view shown from off-site at a height
11 where you could see how much of that
12 vegetation was removed. Um, the visual -- the
13 simulations you've shown me meet that
14 standard, but there may be other viewpoints
15 that it may not meet that standard. I just
16 don't know.

17 Q. Yeah, okay. All right. This is on, I think,
18 at the top of page 5. If you look at image
19 5-A, it shows two viewpoints; one which is
20 labeled "This," and one which is "Not This."

21 Can you describe what you sees as
22 the difference between those two?

23 A. Sure. The "This" particular graphic shows a,
24 ah, landscaping feature, tree in this case
25 that is, that screens the development above it

1 from the view of someone viewing it from below
2 the project; so, in other words, looking up
3 from the valley onto a hillside, this
4 particular graphic shows a landscaping feature
5 that would screen that development from view,
6 that had a height adequate enough to screen
7 that from view.

8 Q. And if a development did meet the, quote,
9 "This" standard, would that satisfy this
10 criteria of the land use rules?

11 A. Yes. I mean that's depicted as something that
12 does satisfy the criteria, something that is
13 not visible from the valley and does not break
14 the height of the ridge line.

15 Q. All right. So even assuming for the moment
16 that the applicable solar project is on a
17 hillside -- which we'll just assume that for
18 this question -- is it correct to say that the
19 simulations you were shown today fall into the
20 "This" category?

21 A. The simulations you showed me today do appear
22 to fall into the "This" category, for lack of
23 a better word.

24 Q. All right. I just had one other question on
25 the screening ordinance. Does the screening

1 ordinance apply to other nonsolar development
2 or development that's not solar?

3 A. No. It applies to solar facilities.

4 Q. Does the town have screening requirements
5 applicable to nonsolar development?

6 A. Yes.

7 Q. And how do they differ?

8 A. They're intended to be similar, if not the
9 same, as far as screening development that is,
10 ah, deemed, ah, in need of screening. How
11 about that?

12 Q. Okay.

13 ATTORNEY MELONE: I think that's all
14 I have.

15 ATTORNEY WOOLMINGTON: I have a
16 couple of questions.

17 ATTORNEY MELONE: Sure.

18

19 EXAMINATION

20 BY ATTORNEY WOOLMINGTON:

21

22 Q. Dan, you were shown a number of simulations
23 from the filing that was recently made in
24 connection with Apple Hill; they were marked,
25 I believe, as Exhibit 3.

1 In your review of the three volumes
2 of supplementary plaintiff's testimony
3 exhibits that were submitted, did you find a
4 site plan that appeared to show the
5 landscaping along the boundaries that was
6 depicted in the simulations?

7 A. I did not.

8 Q. Go ahead.

9 A. My review revealed -- and perhaps I missed
10 something, so I'd be happy to take another
11 look if I was directed to a specific plan --
12 but the simulations included vegetation that
13 is not depicted on the amended site plan, and
14 I assume that's simply just an oversight. But
15 that's why I noted that particular
16 inconsistency. I also noted there was an
17 inconsistency with regard to the location and
18 orientation of the driveway between the
19 amended site plan and the plan that appeared
20 to be used to generate the simulations.

21 Q. Would you request that the applicant provide
22 such a site plan supplemental filing and
23 clarify the location of the driveways prior to
24 the filing of prefiled testimony in this case
25 by the other party?

1 A. Yes. I would request that the landscaping be
2 clearly depicted and identified based on size
3 and type of species as well as a clarification
4 of where the driveway would be located
5 specifically so we could be assured that the
6 simulations accurately depict what would be
7 constructed on site.

8 Q. Did you have any concerns about the clarity
9 with which the other electrical three-phase
10 power connection was depicted in the plans?

11 A. What I would say is there was no -- I did not
12 see any simulation of what the new three-phase
13 power would look like as it accessed the
14 property. I understand that it does go
15 underground once it get -- becomes -- gets on
16 site, which is perfectly appropriate. But
17 what that impact is aesthetically of upgrade
18 utilities, I don't think there was a picture
19 of that, so I wouldn't be able to formulate an
20 opinion of whether or not that would be
21 something of concern; it may or may not be.

22 Q. Is there anything that you testified to
23 earlier that on reflection you want to clarify
24 or elaborate on?

25 A. The only thing that I'd like to -- and, again,

1 you brought this up, but it's very clear from
2 our land use and development regulations that
3 Section 248 proceedings are not subject to
4 review under the land use and development
5 regulations. Um, ah, so any discussion
6 regarding the land use and development
7 regulations would not be relevant to our
8 review of Apple Hill.

9 ATTORNEY WOOLMINGTON: I have
10 nothing further. Thank you.

11

12 EXAMINATION

13 BY ATTORNEY MELONE:

14

15 Q. So I have one follow-up on just that.

16 Just so I understand what the issue
17 is, I'm showing the witness a site plans, it's
18 AHS-03 at the bottom. So I do see on the left
19 side of your additional plantings on this
20 part. What specifically on this site plan do
21 you think there should be more clarification
22 on?

23 A. Okay. So this was not the site plan that I
24 was referring to. My concern was this was
25 inconsistent with the amended site plan that

1 was filed; it does not show any landscaping at
2 all, and even this particular illustrative
3 site plan doesn't give details about the
4 landscaping, and it also doesn't show the
5 proposed mitigation landscaping in the north.

6 ATTORNEY WOOLMINGTON: Can we just
7 identify on the record what this is, because I
8 don't think it is marked as an exhibit, unless
9 I missed it.

10 ATTORNEY MELONE: No, it is not. We
11 can mark it as Exhibit 11, which is AHS-03.

12 (Exhibit No. 11 was marked for
13 identification.)

14 Q. Okay. So just so I understand the items for
15 more clarification, you said there's an issue
16 with the driveway?

17 A. Yes. Would it be appropriate to put the
18 amended site plan in, so that I can refer to
19 it. I think it's just very clear if you see
20 them together.

21 ATTORNEY WOOLMINGTON: Can we go off
22 the record.

23 (Discussion off the record.)

24 Q. So I'll mark this Exhibit 12, so we have it.
25 Exhibit 12 is also Exhibit AHS-ECOS-12?

1 (Exhibit No. 12 was marked for
2 identification.)

3 A. This will be difficult; I'll try to verbally
4 explain. But the amended site plan, I think
5 it's Exhibit 12 -- is that correct? -- doesn't
6 depict any, um, mitigation landscaping; this
7 is the Apple Hill project versus the Chelsea
8 and Apple Hill, so the mitigation landscaping
9 for the Chelsea project is probably not really
10 relevant to Apple Hill. However, the
11 mitigation landscaping between the Welcome
12 Center and Apple Hill and between the neighbor
13 to the north and Apple Hill is relevant and is
14 not depicted at least on this particular plan.
15 Maybe there was another plan that wasn't
16 included in the submission, but I did not find
17 a plan that depicted in any detail the
18 landscaping mitigation here between Welcome
19 Center and Apple Hill and between Apple Hill
20 and neighbor to the north, as, ah, referred to
21 in the, ah, testimony regarding the aesthetic
22 impact. That testimony included an assertion
23 that landscaping was included in his review,
24 but it is not depicted on the amended site
25 plan. I think is just a clarification.

1 Q. So you're asking basically for the site plans
2 to make sure they reflect whatever is Mark
3 King's testimony?

4 A. Yes.

5 Q. Which he then used to generate these visual
6 simulations?

7 A. Yes.

8 Q. Okay.

9 A. The reason that it's important to me, because
10 Mark King's testimony referred to this amended
11 site plan as "the project," and it does not
12 include the landscaping he refers to in his
13 testimony. I'm assuming he assumed that it --
14 these two exhibits are similar, but they did
15 not -- this does not include the landscaping.

16 Q. Right; okay. And this driveway is different
17 than that?

18 A. Yes.

19 Q. I can tell the reason why this was done at the
20 end -- which we should have caught when this
21 was filed -- was to create an offset.

22 A. Yes.

23 Q. So you couldn't -- you know, there's no
24 potential view straight in from anywhere.

25 A. It is my opinion, and I think that most people

1 would share it that this is a better --

2 ATTORNEY WOOLMINGTON: What is

3 "this" referencing?

4 A. Exhibit 12 has a better -- has a less -- has
5 less of an aesthetic impact with regard to the
6 driveway than Exhibit 11. So the town would
7 be perfectly happy with this orientation of
8 the driveway versus the one depicted for the
9 aesthetic simulations.

10 Q. Right. That was a change I had to make.
11 Okay.

12 ATTORNEY WOOLMINGTON: Just to make
13 sure the record's clear, my understanding is
14 that the diagonal draw, as shown on Exhibit
15 12, is the one proposed for the project?

16 THE WITNESS: Correct.

17 ATTORNEY WOOLMINGTON: Thank you.

18 ATTORNEY MELONE: That's right.

19 ATTORNEY WOOLMINGTON: Send me the
20 original.

21

22

23 (Whereupon, the deposition was
24 concluded at 1:02 p.m.)

25 * * * * *

SIGNATURE PAGE

I, DANIEL MONKS, do hereby certify that I have read the foregoing deposition transcript of my testimony, taken on September 29, 2017, and further certify it is a true and accurate record of my testimony. (Any corrections should be made on the separate errata sheet, which will then be attached to this signed transcript.):

Signed under the pains and penalties of perjury this 13th day of October 2017.



DANIEL MONKS

STATE OF Vermont
Bennington SS.

At Bennington, in said county,
this 13 day of October 2017,
personally appeared before me the above-named
DANIEL MONKS, and made oath that the foregoing
answers subscribed by DANIEL MONKS are true.

Cassandra Barker

Notary Public

My Commission expires: 2.10.19

C E R T I F I C A T E

STATE OF VERMONT

DEPOSITION OF: DANIEL MONKS

RE: Petition of Apple Hill Solar

DOCKET NO. 8454

I, BARRY COHEN, a Registered Professional Reporter and Notary Public in and for the State of Vermont, do hereby certify as follows:

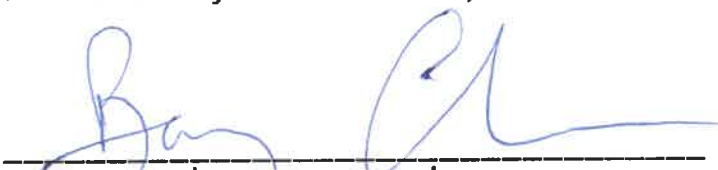
1. That DANIEL MONKS, the witness whose testimony is hereinbefore set forth, was duly recorded by me on September 29, 2017;

2. That such testimony was transcribed by me and is a true and accurate record of the testimony given by the said witness, to the best of my knowledge, skill and ability;

3. I further certify that I am neither attorney for, nor related to or employed by any of the parties, nor financially interested in this matter; and

4. That a dash as used through this transcript is meant to represent an interruption in thought or between a question and answer.

IN WITNESS THEREOF, I hereunto set my hand and Notarial seal this 2nd day of October, 2017.



Barry Cohen, RPR and
Notary Public
New Hampshire License No. 136
My Commission Expires:
February 10, 2019

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C E R T I F I C A T E

STATE OF VERMONT

DEPOSITION OF: DANIEL MONKS

RE: Petition of Apple Hill Solar

DOCKET NO. 8454

I, BARRY COHEN, a Registered Professional Reporter and Notary Public in and for the State of Vermont, do hereby certify as follows:

1. That DANIEL MONKS, the witness whose testimony is hereinbefore set forth, was duly recorded by me on September 29, 2017;

2. That such testimony was transcribed by me and is a true and accurate record of the testimony given by the said witness, to the best of my knowledge, skill and ability;

3. I further certify that I am neither attorney for, nor related to or employed by any of the parties, nor financially interested in this matter; and

4. That a dash as used through this transcript is meant to represent an interruption in thought or between a question and answer.

IN WITNESS THEREOF, I hereunto set my hand and Notarial seal this 2nd day of October, 2017



Barry Cohen, RPR and
Notary Public
New Hampshire License No. 136
My Commission Expires:
February 10, 2019

1 WITNESS'S ERRATA SHEET

2 WITNESS: DANIEL MONKS
3 RE : Petition of Apple Hill Solar
4 DATE : September 29, 2017

5 **INSTRUCTIONS:** Enclosed herewith is the original
6 transcription of your deposition to read and sign.
7 Please use this errata sheet to clearly identify any
8 corrections or changes you wish to make, referring
9 to the corresponding page and line number along with
your change, and sign the next-to-last page of this
transcript before a Notary Public. **DO NOT WRITE
DIRECTLY ON THIS ORIGINAL TRANSCRIPT!** Then return
the errata sheet(s) and signed original transcript
to either your attorney or the attorney who
conducted this deposition.

10 PAGE 26 CORRECTION Change "Force" to "Forest"

11 LINE 18 REASON _____

12 _____
13 PAGE 32 CORRECTION Change "Born" to "Berm"

14 LINE 3 REASON _____

15 _____
16 PAGE 46 CORRECTION Change "Woodshed" to "Viewshed"

17 LINE 15 REASON _____

18 _____
19 PAGE _____ CORRECTION _____

20 LINE _____ REASON _____

21 _____

22
23 
24 _____

25 DANIEL MONKS

DEPONENT: D. MONKS

EXHIBIT # 1 *bc 9/29/17*

STATE OF VERMONT
BEFORE THE
PUBLIC UTILITY COMMISSION

Petition of Apple Hill Solar LLC
for a certificate of public good,
pursuant to 30 V.S.A. § 248,
authorizing the installation and
operation of a 2.0 MW solar
electric generation facility at
1133 Willow Road, Bennington,
Vermont

Docket No. 8454

**NOTICE OF DEPOSITION OF THE TOWN
OF BENNINGTON**

Date: September 29, 2017

Time: 11:00 am

Place: Witten, Woolmington, Campbell &
Bernal, P.C, 4900 Main St, Manchester
Center, VT 05255

PLEASE TAKE NOTICE that Petitioner Apple Hill Solar LLC ("Apple Hill") will take the deposition of the Town of Bennington, Vermont (the "Town"), on September 29, 2017. The deposition will occur at Witten, Woolmington, Campbell & Bernal, P.C., 4900 Main St, Manchester Center, VT 05255, beginning at 1:00 p.m. The deposition will be conducted by oral examination before a certified shorthand reporter duly authorized to administer oaths under the laws of the State of Vermont and will be recorded stenographically. Apple Hill may also record the testimony using audio/video technology and through the instant visual display of testimony.

Pursuant to Rule 30(b)(6) of the Vermont Rules of Civil Procedure ("VRCP"), the Town must designate and produce at the deposition one or more officers, directors, or managing agents, or other persons who consent to testify and who possess sufficient knowledge to testify about the following:

1. The Town Plan's provisions concerning development in the Rural Conservation ("RCON") zone including without limitation how those relate to the Apple Hill project;
2. The October 23, 2006 Amendment to the Land Use and Development Regulations including without limitation how those relate to the Apple Hill project;
3. The Town Plan Amendment regarding solar siting including without limitation how those relate to the Apple Hill project;

4. The Town's land Use and Development Regulations concerning the RCON zone including without limitation how those relate to the Apple Hill project;
5. The Town's solar screening ordinance including without limitation how those relate to the Apple Hill project;
6. The solar siting map developed by the Town's solar siting committee;
7. The Town Plan's provisions concerning renewable energy including without limitation how those relate to the Apple Hill project;
8. The Town's efforts regarding renewable energy including without limitation how those relate to the Apple Hill project;
9. Development in the RCON that was not "limited residential development", including without limitation, the Paper Mill Solar project, the Kobelia Solar project, the Bennington substation project, and cell towers.
10. Proposed commercial scale energy projects in the Town;
11. Communications regarding placing commercial solar energy facilities in the RCON zone;
12. Information provided to the Town regarding the Apple Hill project;
13. The August 13, 2015 Select Board hearing;
14. The Town's communications with Libby Harris and Rick Carroll regarding the Apple Hill Project.

The person(s) designated must testify about all information known or reasonably available to the Town concerning the foregoing topics.

PLEASE TAKE FURTHER NOTICE that pursuant to Rules 30 and 34 of the VRCP, the Town must produce at the deposition all documents and materials that its representative(s) reviewed or relied upon in preparation for the deposition.

Dated: September 14, 2017



Michael Melone
Attorneys for Apple Hill Solar LLC

VERMONT PUC-DOCKET 8454

DEPONENT: D. MONKS

EXHIBIT # 6 — 8/29/17



VERMONT PUC-DOCKET 8454

DEPONENT: D. MONKS

EXHIBIT # 7 BC 9/29/17

