

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-2939-NM

Petition of Randolph Davis Solar LLC for a
certificate of public good, pursuant to
30 V.S.A. §§ 248 and 8010, authorizing the
installation and operation of a 500 kW group
net-metered solar electric generation system in
Randolph, Vermont

PREFILED TESTIMONY OF MICHAEL BINDER
MAY 6, 2022

Exhibits:

MB-1	Picture of our Vernal Pool with Amphibian Eggs
MB-2	Vt Center Ecostudies
MB-3	TRORC Regional Plan
MB-4	June 2021 PC minutes
MB-5	Randolph Town Plan
MB-6	Zoe Newmarco FOIA JJ correspondence
MB-7	Letter to Selectboard Jan 6 2022
MB-8	Access Road with slopes
MB-9	My notes on PC criteria and process
MB-10	Town Plan Criteria for this project
MB-11	Randolph Conflict of Interest Policy
MB-12	My notes on Jan 2022 SB
MB-13	My notes on SB criteria and process
MB-14	Oct 21, 2021 Letter to Planning Commission
MB-15	Town Audio recording of December 2021 PC
MB-16	Notice of Discrepancy & responses
MB-17	Zoe Newmarco FOIA, ocr version
MB-18	Jan 2022 SB minutes
MB-19	Feb 2022 SB minutes
MB-20	Our Discovery responses
MB-21	ORCA Randolph SB June 2021
MB-22	ORCA Randolph SB Jan 2022
MB-23	ORCA Randolph SB Feb 2022
MB-24	ANR Slopes Map
MB-25	Civil Beat Article
MB-26	April 2022 PC Minutes
MB-27	Our Public Records Request
MB-28	My notes on Open Meeting Violation
MB-29	Kim Hayden email
MB-30	My notes on Dec PC

Summary of Testimony

Michael Binder is an abutting landowner to the site of the proposed solar Energy Facility Development. He presents evidence about disorderly development in Randolph.

PREFILED TESTIMONY OF MICHAEL BINDER

Q1. Please state your name, address, and occupation.

A1. Michael Binder, 1953 Davis Rd, Randolph Center, Vermont 05061.

I retired in 2000 from the faculty of Dartmouth Medical School where I was Director of the Human Anatomy & Embryology Course and Director of the Anatomical Gifts Program. My research was in genetic and teratogenic congenital heart malformations. After Dartmouth, I spent the next 10 years working part time in Land Surveying as a rod man or crew chief, and writing software for several departments at Dartmouth Medical School. Since 2010 I have spent my work time building a house and homesteading in Randolph.

Q2. Please tell us how long you have been a landowner in Vermont.

A2. I moved to Norwich in 1979 to pursue an Internship in Anatomic Pathology at Mary Hitchcock Memorial Hospital in Hanover, NH. In 1980 I purchased 31 acres in Norwich and by 1986 I had built a cabin and hay barn and established an acre of orchard and a Highland Cattle cow/calf operation. I grazed my cattle on an additional 15 acres in my neighborhood. Within 10 years I had transformed my juniper covered sandy side hill loam into fields of clover, vetch, timothy and other grasses. My wife and I purchased our Randolph Center property in 2009 and began building our house and establishing our orchard. We chose this location because we prefer to live in a working landscape. The hayfields on our property were in use by Tony and Christine Brown, our Davis Rd neighbors who own an organic Jersey farm. They continue to use our hayfields, and provide ample manure for our fields and gardens. We see their cows grazing out of our west windows and drink their milk. Our woodland is in the Use Value Appraisal program, and we regularly hear our neighbor's chainsaws.

1 Q3. Have you previously testified before the Public Utility Commission (PUC) or in other
2 judicial or administrative proceedings?

3 A3. No.
4

5 Q4. What is the purpose of your testimony?

6 A4. There are two purposes of my testimony. First, to make the Commission aware that the
7 project violates the Randolph Town Plan which prohibits Energy Facility Development on slopes
8 greater than 25% and that permitting this project will result in Disorderly Development in
9 Randolph and therefore the project should be denied; and Second, to show the Commission that
10 it should give no consideration to the Preferred Sites Letters from the Town of Randolph because
11 the Letters are A) tainted by the deception of the Petitioner in their presentations to both the
12 Planning Commission and Selectboard, and B) tainted by violations of Randolph's Conflict of
13 Interest Policy, and C) tainted by violations of Vermont's Open Meeting Laws, and D) tainted by
14 the lack of process or criteria for issuing the Letters.
15

16 Q5. Why do you care if this project is built as proposed?

17 A5. There are three reasons. The first reason is that from a carbon perspective, I believe this
18 project is not in the public interest. The second reason I care is that I am personally offended by
19 the process by which the Preferred Sites Letters were issued and that this conversion of working
20 forest land into a solar development on extremely steep slopes does not conform to the Town
21 Plan. The third reason I care is that it adversely affects our property.
22

23 Q6. Why, from a carbon perspective, is the project not in the Public Interest?

1 A6. Since learning about this project, I have read extensively about the carbon cost of logging
2 and excavation, and the embedded cost of solar array materials. I have also learned about the
3 carbon benefits of forest land and wetlands. The 1100 ft of proposed access road will require an
4 excavated swath of soils up to 40 ft wide, will require 1500 square yards of fabric, will require
5 that 490 cubic yards of gravel be quarried, trucked to the site and applied to the road. The same
6 fabric and gravel will be removed at decommissioning and trucked somewhere for disposal.
7 That's just the road, I haven't calculated the amount of additional fabric and gravel that will be
8 used for the staging area. To sum it up: For the carbon benefit of only 2.5 acres of solar panels,
9 11.9 acres of forest on steep slopes will be cleared, 1100 ft of road will be excavated on
10 extremely steep slopes, gravel will be quarried and trucked, and forests, soils, wetlands and
11 wildlife will be adversely impacted. My research on carbon tells me that I cannot put verifiable
12 numbers on the exact carbon cost of this development because there are too many site specific
13 assumptions to make.

14
15 Q7. How does this project affect your property?

16 A7. It will have an undue adverse impact on our forest and its vernal pool complex. Wherever
17 we have forest edges we struggle with invasive species, especially honeysuckle and buckthorn.
18 This proposed development will create a new forest edge for us and lead to invasive species
19 growing into our forest, including our vernal pool complex. I measured our vernal pool
20 complex last month (April) when it was full and it is a 165 ft long by up to 37 ft wide cluster of
21 interconnected and isolated pools. Most years the two largest pools in the complex have
22 amphibian eggs. [Exhibit MB-1] The proposed Limits of Disturbance are 111 ft from the edge
23 of our amphibian pools and contiguous with the vernal pool complex. According to the Vermont

1 Center for Ecostudies [Exhibit MB-2], fauna of this complex depend on a 400-600 ft (species
2 dependent) buffer of forested habitat, and the proposed loss of woodland habitat caused by this
3 project will be adverse to the vernal pool ecosystem. The TRORC Regional Plan states that
4 “Scientists recommend a continuous forested buffer of roughly 500 feet around vernal pools.”
5 [Exhibit MB-3]

6
7 Q8. When did you learn about this project?

8 A8. I learned about this project when my wife was alerted to it by a neighbor a day or two
9 before the June 2021 Selectboard meeting. I downloaded the Selectboard Packet which
10 contained a preliminary Site Plan. At this time the Planning Commission had already issued
11 their Preferred Sites Letter. The Planning Commission’s review took place without notification
12 to adjainers.

13
14 Q9. What were your first impressions of the project?

15 A9. My initial thoughts were about the possible use of Herbicides and the effects on our Vernal
16 Pool Complex contiguous with the project site. The project site is very steep and gnarly and I
17 wasn’t sure if it was practical to control vegetation on the site by mechanical means. Most of the
18 disturbed area that is to be kept open around the array has slopes of 25% - 40%.

19
20 Q10. When you attended the June 2021 Selectboard meeting, were you aware that in your
21 Town Plan, slopes greater than 25% are a prohibited location for Energy Facility Development?

1 A10. No. I was not familiar with any provisions in the Town Plan relating to Energy Facility
2 Development. I had read the Minutes of the June 2021 Planning Commission, and this is an
3 excerpt: [Exhibit MB-4] (emphasis mine)

4 “Mr. Holt explained his site visit with Mr. Malley and described minimal to no
5 visibility from the Town Road and neighboring properties. **Reviewing the Town Plan,**
6 **this site seems to meet the criteria of a preferred site.”**

7
8 Q11. What is the language in the Town Plan that this project violates?

9 A11. It violates this portion of Chapter 6 Energy in the Randolph Town Plan: [Exhibit MB-5]
10 (emphasis in the original)

11 **Prohibited Locations:** Energy facility development shall have to meet principal
12 structure setback for the relevant area in the town zoning, and shall be prohibited in
13 floodways, class 1 and 2 wetlands, lands within 50 feet of the top of bank of perennial
14 streams, lands over 25% slope.”

15
16 Q12. Does this project have lands over 25% slope within the Limits of Disturbance?

17 A12. Yes. See ANR Slopes Map. [Exhibit MB-24] See Petitioner’s Exhibit RDS MS-2B. A
18 more extensive slope layer was provided by the Petitioner to the Town of Randolph. [Exhibit
19 MB-6, page 24] I produced and submitted to the Randolph Selectboard Exhibits MB-7 and MB-
20 8 demonstrating some of the steep slopes on site. My assessment of the slopes on Exhibits MB-7
21 [page 3] and MB-8 has not been challenged by the Petitioner or anyone else at the Selectboard
22 meetings, or elsewhere to my knowledge. Brendan Malley, representing the developer, admitted

1 that there are slopes within the Limits of Disturbance that are greater than 25%. [Q35 in this
2 testimony]

3
4 Q13. Does the Disturbance of the steep lands within the Limits of Disturbance constitute
5 Development of this Energy Facility?

6 A13. Yes, if there is physical action on the land. I cannot find a definition of Development that
7 does not include excavated structures such as roads and trenches.

8
9 Q14. When the Planning Commission issued the Preferred Sites Letter in June 2021, did it
10 consider anything other than aesthetics?

11 A14. No. They only considered Town Plan Chapter 2 Land Use, Policy G which is primarily
12 about Aesthetics. [See Exhibit MB-9]

13
14 Q15. Did you find provisions in the Town Plan (in addition to the Slopes Prohibition) that
15 should have been considered but weren't, by the Town Boards in June 2021?

16 A15. Most certainly. [See Exhibit MB-10]

17
18 Q16. Did any members of the Planning Commission or Selectboard have a conflict of interest?

19 A16. Planning Commission member Paul Rae, a real estate broker, was brokering the sale of the
20 project site to Norwich Solar Technology. Selectboard Chair Trini Brassard's father (and later,
21 his estate) was the owner of the project site. Both officials recused themselves from voting on
22 the Preferred Sites Letter in their respective boards.

23

1 Q17. Were there violations of Randolph's Conflict of Interest Policy [Exhibit MB-11] at the
2 June 2021 Planning Commission or the June 2021 Selectboard meetings?

3 A17. Yes. Randolph's Conflict of Interest Policy (emphasis mine) states:

4 "A public officer who has recused him or herself from a proceeding **shall not sit with**
5 **the board, deliberate with the board, or participate in that proceeding as a board**
6 **member in any capacity**"

7 Both Planning Commission member Rae and Selectboard Chair Brassard recused themselves
8 from voting but participated in their respective June 2021 proceedings.

9
10 Q18. Were you familiar with Randolph's Conflict of Interest Policy in June 2021, and did you
11 observe anything that struck you as unethical at the June 2021 Selectboard meeting?

12 A18. No, I was not aware of Randolph's Conflict of Interest Policy. Selectboard Chair
13 Brassard's comments about Process & Criteria were extremely self-serving. [Exhibit MB-13 Q5]
14 She was negotiating the sale of her father's property to Norwich Solar Technology and arguing
15 that the Selectboard should, in effect, "Rubber Stamp" [not my words, see Exhibit MB-13 Q5]
16 the decision of the Planning Commission to issue a Preferred Sites Letter. By participating in the
17 discussion about the issuance of a Preferred Sites Letter, on which she recused herself, she was
18 influencing the outcome.

19
20 Q19. Did you make any attempt to get the Town of Randolph to correct their mistakes in issuing
21 Preferred Sites Letters?

22 A19. Yes. On October 21, 2021 my wife and I wrote a letter [Exhibit MB-14] to the Planning
23 Commission alerting them to their error and asking them to rescind their Preferred Sites Letter at

1 their next meeting in November 2021. We included the ANR slopes map for the site with our
2 letter. The November meeting was cancelled, but “Discussion on slope issues related to the
3 Solar Array project on Davis Road in East Randolph” was on the Agenda for the December 7,
4 2021 meeting.

5
6 Q20. In your October 21, 2021 Letter to the Planning Commission, [Exhibit MB-14] did you
7 bring up any of the Town Plan provisions, other than Slopes, that bear on the project?

8 A20. No. The Steep Slopes prohibition in the Town Plan is a threshold issue. We know that as
9 slopes increase, the adverse impact on natural resources also increases, and that the Town has
10 drawn a line (25% slopes) above which it is in the Public Interest to avoid the development
11 rather than to mitigate the development. We based our request (to rescind the Preferred Sites
12 Letter) on the Slopes Prohibition.

13
14 Q21. Did you attend the December 7, 2021 Planning Commission meeting?

15 A21. Yes. I also have a copy of the audio recording made by the Town [audio Exhibit MB-15]
16 which I have used to assist me in accurately transcribing the quotations in my testimony and
17 exhibits.

18
19 Q22. What was the outcome of the December 7, 2021 Planning Commission meeting?

20 A22. There was unanimous agreement [see Exhibit MB-30] that the project was sited on slopes
21 greater than 25%. There were differences of opinion expressed as to whether the Preferred Sites
22 Letter should be immediately rescinded, or whether the applicant should be given a chance to
23 prove that they were in conformance with the Town Plan before the Letter would be rescinded

1 (or not). That difference of opinion was not resolved informally or by vote at the meeting. It
2 was agreed that Trevor Lashua (Town manager, in attendance) would ask the Town Attorney
3 how the Planning Commission might rescind the Letter and what sort of liability, if any, the
4 Town might incur. [see Exhibit MB-30 Q11]

5
6 Q23. Did the Planning Commission ultimately rescind their Preferred Sites Letter?

7 A23. No. On December 14, 2021 the Planning Commission informed us by email [Exhibit MB-
8 16] that they had issued a “Notice of Discrepancy” to the developer, had received assurances that
9 the developer would not place panels on slopes greater than 25% slope, and voted by email not to
10 rescind the Preferred Sites Letter. Details of how this came about are in Exhibit MB-28.

11
12 Q24. How did you feel when you read that email?

13 A24. Surprised and frustrated. I was surprised because I had never heard of a “Notice of
14 Discrepancy”. I felt like the Planning Commission was inventing a new process. The only
15 action agreed to at the June 2021 Planning Commission meeting was to seek the advice of the
16 Town’s Attorney. I was also surprised to realize that the Planning Commission violated the
17 Open Meeting Laws and voted by email. The frustration I felt was because the Planning
18 Commission was persisting in the fiction that the language “Energy Facility Development” in the
19 Town Plan applies only to the solar panels themselves.

20
21 Q25. Did you continue your effort to have the Preferred Sites Letters rescinded?

22 A25. Yes. We contacted our Regional Planning Commission. This email (emphasis mine) sums
23 it up:

1 From: Kevin Geiger <kgeiger@trorc.org>
2 Sent: Dec 17, 2021 at 1:31 PM
3 To: michaeljbinder@yahoo.com <michaeljbinder@yahoo.com>
4 Cc: Sonny Holt <holt7850@gmail.com>, Trevor Lashua <trevor@randolphvt.org>,
5 Peter G. Gregory <pgregory@trorc.org>, Steven Bauer <sbauer@trorc.org>
6 Subject: RE: steep slopes and town plan - Davis site
7 Michael,
8 Good to talk with you this morning. **To reiterate, TRORC has no role in deciding**
9 **if a 248 application conforms to the town plan.** We do our own project review
10 based on application (or preapplication) materials and, if that is okay, rely on the
11 town SB and PC to support preferred status before we do. As long as that support
12 does not change, it is unlikely that our position would change.
13 I have noted your slope concerns, and we will be watching as this goes through the
14 248 process to see if any new information warrants further review.
15 Sincerely,
16 Kevin Geiger | Director of Planning, AICP CFM
17

18 Q26. Rebuffed by your Planning Commission and your Regional Planning Commission, what
19 did you do next?

20 A26. We wrote a letter to the Selectboard [Exhibit MB-7] asking them to rescind their Preferred
21 Sites Letter at the January 2022 meeting. We described the actions of the Planning Commission
22 that violated the Open Meeting Law. Page 3 of the letter is a clipping I took from the Site Plan
23 [Exhibit RDS MS-2] onto which I placed 50 foot diameter red circles indicating the slope as
24 determined by counting the LiDAR contour lines. The Selectboard added "Discuss Davis Road
25 Solar Project" to the agenda of the January 13, 2022 Selectboard meeting.
26

27 Q27. Was Planning Commission Chair Holt fair and impartial in his role as Chair of the
28 Randolph Planning Commission in December 2021?

29 A27. No. In his words and actions he has been a booster for this project. He framed the slopes
30 issue as applying to only the solar panels. Swayed by the irrelevant legal arguments of the

1 applicant's lawyer, he claimed the Town of Randolph has no authority to approve or disapprove
2 solar projects or to have a steep slopes prohibition. He ignored the contrary advice of Attendee
3 Brooke Dingledine who he knew to be a lawyer qualified in this area of the law. Twice he
4 pointed out that the PUC, which regulates solar projects, does not consider steep slopes as a
5 disqualifier for solar projects. He communicated with the applicant developer in private and
6 invented a "Notice of Discrepancy". He ignored the Town Manager's advice to base any letter
7 to Norwich Solar Technologies on the advice from the Town Attorney. He created a false sense
8 of urgency to resolve the issue by the artificial deadline of December 14, 2021, but the only
9 urgency was his. There was no urgency, from our perspective, to NOT rescind the Letter. He
10 wrote that if he waited for the Town Attorney's opinion and delayed accepting Norwich Solar
11 Technologies' offer, it might prompt us (my wife and I) to request an Evidentiary Hearing at the
12 PUC. Finally, he sought the approval of his actions from Selectboard Chair Brassard who he
13 knew to have a Conflict of Interest in the matter before him. These are the reasons that
14 demonstrate that Chair Holt was not fair and impartial.

15
16 Q28. Did you attend the January 13, 2022 Selectboard meeting?

17 A28. Yes. I have reviewed the Onion River Community Access (ORCA) video recording
18 [Exhibit MB-22] of the proceedings to assist in my testimony and exhibits.

19
20 Q29. Are there any factual errors in the Minutes [Exhibit MB-18] of the January 13, 2022
21 Selectboard meeting?

1 A29. Yes, there are two factual errors. First, Jim Merriam and Brendan Malley of Norwich Solar
2 Technologies are not listed as attendees, and Second, the bolded part of this excerpt from the
3 minutes is incorrect:

4 “Trini opened the topic by disclosing a potential conflict of interest. **After discussion**
5 **with the Vice Chair and the Board** it was decided that she continue to chair the
6 meeting.”

7 In fact, there was no discussion. This is what actually happened:

8 Selectboard Chair Brassard said: [Exhibit MB-22 at 0:44:26]

9 “For the record I am recusing myself from this conversation or from any decision
10 because the property is owned by my late dad. So its all yours Larry”

11 Vice Chair Satcowitz replied: [Exhibit MB-22 at 0:44:40]

12 I believe you can still, um [pause]

13 Chair Brassard finished his sentence: [Exhibit MB-22 at 0:44:46]

14 “Lead the discussion?”

15 Vice Chair Satcowitz continued: [Exhibit MB-22 at 0:44:48]

16 “Lead the discussion even if you’re not voting. I’m happy to do it I just think, I
17 don’t see any reason you couldn’t, is my thought”

18 Chair Brassard replied: [Exhibit MB-22 at 0:44:57] “OK” and then led the discussion, once
19 again in violation of Randolph’s Conflict of Interest Policy.
20

21 Q30. Did any Selectboard members at the January 2022 meeting comment on the Planning
22 Board’s violation of the Open Meeting Law?

23 A30. Yes, Vice Chair Satcowitz said: [Exhibit MB-22 at 1:27:40]

1 “I do agree that the process, at best, was flawed and at worst has been illegal with
2 some of the open meeting laws violations...”

3 Selectboard member Ayers said: [Exhibit MB-22 at 1:39:50]

4 “I do have a concern, and it’s almost an overarching one, about the potential violation
5 of open meeting laws here and way the decision was made.”
6

7 Q31. What was the resolution of the January 13, 2022 Selectboard meeting?

8 A31. The Slopes issue and the Open Meeting Law violations were entangled. Chair Brassard’s
9 conduct of the meeting influenced the outcome and prevented the slopes issue from being voted.
10 She asked, four times, for more information about the Planning Committee’s actions and wanted
11 to hear their side of the story. Planning Commission and Selectboard member Armstrong, in
12 attendance, declined twice when asked, to comment on the Planning Commissions actions. The
13 Selectboard, tabled the discussion of both topics until the February 2022 meeting. [Exhibit MB-
14 12]

15
16 Q32. Did you attend the February 10, 2022 Selectboard meeting?

17 A32. Yes. I have reviewed the Onion River Community Access (ORCA) recording [Exhibit
18 MB-23] of the proceedings to assist in my testimony and exhibits.
19

20 Q33. Did Selectboard Chair Brassard participate in the February 10, 2022 Selectboard discussion
21 of the Davis Road Solar project?

22 A33. Yes, she once again violated Randolph’s Conflict of Interest Policy.
23

1 Q34. Are there any factual errors in the Minutes [Exhibit MB-19] of the February 10, 2022

2 Selectboard meeting?

3 A34. Yes, there is a factual error. Planning Commission Chair Sonny Holt is not listed as having
4 attended the meeting. He attended in person and participated.

5
6 Q35. Did Norwich Solar Technologies admit at the February 2022 Selectboard meeting that their
7 project was sited on slopes greater than 25%?

8 A35. Vice Chair Satcowitz asked: [Exhibit MB-23 at 0:57:41]

9 “Are there 25% or greater slopes within the current area, planned current area
10 of disturbance?”

11 Bendan Malley replied:

12 “There are. That would be an example of areas, not where the solar panels
13 are, over 25%”

14
15 Q36. Was there any resolution to the issue at the February 2022 Selectboard meeting?

16 A36. There was a long discussion about what constitutes development of a road. After being
17 warned that upgrading the road would constitute development, Vice Chair Satcowitz, apparently
18 believing what he had been told by the developer, said at the February Selectboard meeting:
19 [Exhibit MB-23 at 1:11:32]

20 “I don’t know where you draw the line between it being development and not
21 development. ... I know that this is an existing road and that any changes are going to
22 be rather modest”

1 Vice Chair Satcowitz asked if there were any more comments. There were no comments or
2 motions and the Selectboard moved onto the next topic without taking action.

3
4 Q37. Did Norwich Solar Technologies' presentation to the Town misrepresent the scale of the
5 project to the Town?

6 A37. Yes. According to the June 2021 Planning Commission minutes: [Exhibit MB-4]

7 "The array takes up about 3 acres and about 5-6 acres of total associated footprint when
8 you include shade tree cuts, roads and fencing."

9 At the June 2021 Selectboard meeting Mr. Malley said: [Exhibit MB-21 at 0:11:00]

10 "it utilizes between 2.5 and 3 acres of solar array footprint and somewhere between 4
11 and 5 acres of total area including the area around the array where we manage
12 vegetation growth so the array isn't shaded and to account for things like access and a
13 temporary laydown during construction."

14 In fact, the disturbed area is 11.9 acres, twice the area that was described to the Town officials,
15 and according to the April 19, 2022 Affidavit of Martha Staskus:

16 "With respect to tree clearing, Petitioner respectfully responds that the entire area
17 within the limit of disturbance (11.9 acres) is subject to clearing of vegetation."
18

19 Q38. Did Norwich Solar Technologies' presentation to the Town misrepresent the soils of the
20 project to the Town?

21 A38. The Site Plan [Exhibit RDS MS-2B] shows that there are Prime Agricultural Soils (PAS)
22 within the Limits of Disturbance, but according to Jenny Carter and Planning Commission and

1 Selectboard member Armstrong, Mr. Malley told the Planning Commission that there were no
2 PAS on the site. [Exhibit MB-9]
3

4 Q39. Did Norwich Solar Technologies' presentation to the Town misrepresent the wetlands on
5 the site?

6 A39. Yes. According to Planning Commission and Selectboard member Armstrong: "its not
7 near any streams, there's no wetlands in the area." [Exhibit MB-9]
8

9 Q40. Did Norwich Solar Technologies' presentation misrepresent the scale of the access road to
10 the town boards?

11 A40. Yes. Mr. Malley, representing the developer told the Selectboard in June 2021: [Exhibit
12 MB-21 at 0:11:38]

13 "There are more than one existing logging or agricultural paths on the property, the
14 specific path that will be used to access the site for the array will be determined by
15 operations and engineering, but the point is that no new access path will be created, it
16 will be one of the existing access paths, typically upgraded or what we call top dressed
17 with gravel..."

18 At the January 2022 Selectboard meeting Mr. Malley explained how the Public Utilities
19 Commission preferred existing access and said: [Exhibit MB-12 at 1:36:32] "This particular
20 property has several existing access ways"

21 He gave the impression that there was an existing road that would be "top dressed" with gravel.
22 He did not reveal the steepness of the road or that it would involve a 40 foot wide swath of
23 excavation in some areas. When I attended the Site Visit on March 25, 2022, I saw that the path

1 of the proposed road is barely a foot trail. The 1100 feet (includes the turn-around) of road that
2 will be built, on grades of up to 39% [Exhibit MB-8], will, in my opinion require at least some
3 ditching and/or water bars and/or culverts. The Site Plan does not show details of (or even the
4 existence of) ditches, water bars or culverts. The cross section of the road (on the site plan) is
5 shown on a level grade without the embankments and ditch that will be excavated on the steep
6 slopes. These are the reasons why it is misleading to describe the proposed road as an existing
7 access path, way, or road that will simply be “top dressed” with gravel. This deception was
8 influential in the discussion at the February 2022 Selectboard meeting. [see question 36 *vide*
9 *supra*]

10
11 Q41. Did the engineers who drew the Site Plan (Exhibit RDS MS-2) ever visit the site?

12 A41. We asked about that in Discovery and were told that they had not visited the site until after
13 RDS MS-2 was created. [Exhibit MB-20 page 5]

14
15 Q42. If the engineers did not visit the site, how do you know if the road they drew onto the Site
16 Plan map is actually in the location of the so called “existing path or way or road” that the
17 developer claims they will use?

18 A42. Good Question! I wonder about that myself.

19
20 Q43. Does this conclude your testimony?

21 A43. Yes. :-)