

[this email is extracted from exhibit MB-27 Page 8]

From: Kimberly K. Hayden <KHayden@pfclaw.com>

Date: Wed, Nov 10, 2021 at 1:16 PM

Subject: RE: Randolph Davis Solar Project - [PFC-CLIENTS.FID539672]

To: Brendan Malley <malley@norwichtech.com>, Martha Staskus <staskus@norwichsolar.com>

Good afternoon,

I have reviewed the neighbors' comments to the PUC and Town raising a concern that the Project site may be in a "prohibited" area due to some areas being on a steep slope.

There are multiple reasons that the steep slopes language in the Randolph Town Plan does not and should not be considered to preclude the Town from designating the project site as preferred:

- First, municipal plan provisions regarding solar generation siting are not zoning ordinances and cannot prohibit solar generation siting. In fact, the Supreme Court has held that Section 248 preempts municipal zoning. In re Petition of Rutland Renewable Energy, LLC. for a Certificate of Public Good Pursuant to 30 V.S.A. § 248, 2016 Vt. 50, ¶ 36. The steep slopes language in the energy section actually looks like a municipal zoning provision, not an energy plan provision. In any event, the Town would be preempted from prohibiting siting based on this language.

- Second, Randolph's Town Plan has not received a determination of compliance under Act 174 of 2016. This is significant. Pursuant to Act 174, in siting cases before the PUC, provisions in a municipal plan may be afforded substantial deference by the PUC, but only those plans that have received an affirmative determination of energy compliance by the regional commission. See 30 V.S.A. § 248(b)(1)(C). Plans that have not received an Act 174 determination of energy compliance are afforded only "due consideration." Id.

- Third, the steep slopes language set forth in the energy chapter of the Randolph Town Plan is not consistent with Act 174, which calls for mapping exercises to identified "preferred", "suitable" and "unsuitable" locations, but does not speak to designations as "prohibited." Instead, the framework under Act 174 allows municipalities to identify preferred and constrained areas, based on standards developed by the Vermont Department of Public Service (DPS) pursuant to Act 174. Attached are the Standards developed by the DPS that govern municipal energy plans (also available

at available at

<https://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards> Steep slopes are not mentioned as a possible constraint under these standards.

Nothing in Act 174, the State Energy Plan, the TRORC Plan, or the DPS Standards for Energy Compliance suggest a blanket prohibition on steep slopes, but rather encourage and require identification of suitable areas to meet the GHG reduction targets of VT law.

- Finally, the steep slopes language in the Town Plan is provided in the context of protecting water resources. The Section 248 criterion that addresses soil erosion, and the Vermont Stormwater permitting program, provides protections for erosion control and stormwater protection. The project application has stated that the project will obtain a stormwater construction permit and that permit will also be a condition of the PUC CPG.

Regards,

Kim

Q1. Did Kim Hayden's email letter [exhibit MB-27 page 8] have any effect on the recipients?

A1. Kim Hayden's November 11, 2021 letter influenced Planning Commission Chair Holt's words and actions. He negotiated with the applicant because her letter caused him to believe that the Town had no right to a slopes prohibition in its Town Plan. [see exhibit MB-28]

Apparently Josh Jerome also believed the irrelevant legal arguments in her letter. The same day he received her [forwarded] letter he advised the planning commission: [exhibit MB-27 page 58] (emphasis mine)

Good Afternoon,

"Just wanted to close the loop with everyone about the Davis Rd. solar project with Norwich. As you know, two abutters asked the Town to reconsider their preferred siting letter and citing language in the Town Plan that prohibits siting of solar installations on property with slopes of greater than 25%. There are slopes of 25% or greater present at the site location of the proposed array, but it does not make up the entire site. **What I have learned is:**

1) **Municipalities cannot regulate solar arrays through zoning or bylaws.**

2) Act 174 – Enhanced Energy Planning allows towns to come up with a plan for their renewable energy development, but it requires approval from the Regional Planning Commission. The Town of Randolph does not have an EEP that has been approved by the RPC. This means the Public Utility Commission does not have to give the Town substantial deference in their review of the solar project.

In essence, just because our Town Plan says it prohibits solar on slopes of 25% or greater, does not carry any regulatory authority and is purely aspirational, at best.

The abutters are aware of the next meeting and I would anticipate that they will want to participate to discuss the matter.

Thank you, Josh"