

Q1. How did Chair Holt open the discussion of the project at the December 7, 2021 Planning Commission meeting?

A1. Chairman Holt read our letter [exhibit MB-14], Town Plan Chapter 2 Land Use Policy G, and Town Plan Chapter 6 Energy. [Town Plan is exhibit MB-5] Then he said: [exhibit MB-15 at 0:12:02]

“Thus far Randolph’s Planning Commission and Selectboard have designated by joint letters two locations as preferred sites. One of those sites is the Davis Rd project to be constructed by Norwich Solar Technologies. **Both of those sites met the policy guidance contained in the town plan.** The point that we want to address here is whether or not the **solar array, where its going to be sited, especially the panels themselves**, are in soils that have a slant of over 25 degrees [correcting himself] 25%, excuse me.”

He continued on by discussing the expense of Bennington’s court case against a solar developer:

“The Bennington Town Plan [pause] Selectboard and Planning Commission disagreed and they fought a battle about that solar company coming in. It cost Bennington approximately \$200,000 in legal fees to fight the lawyers that this company was bringing in. Finally they gave up and they allowed that company to come in.”

He continued on by discussing how the project conforms to **Town Plan Chapter 2 Land Use Policy G**. He finished his 16 minute long opening monolog with this: [exhibit MB-15 at 0:15:34]

“The solar panels alone for the Davis Rd project will be placed in an old pasture, I’m sure you are familiar with that, the place where they will be put in, that did not appear to have ground slopes greater than 25%. The average slope of the area north south is 15.5% and area east west slope of the panels is 10%. It should be noted also that the **Town of Randolph has no authority to approve or disapprove solar projects**. We can only show support by designating preferred sites as they come to our attention. The state’s Public Utilities Commission has the power to regulate. **The Davis Road solar project is currently undergoing review by this commission and I don’t believe they consider steep slopes as a disqualifier for solar projects.**”

Q2. What happened when the topic was open for discussion?

A2. Planning Commission member Hooper said: [exhibit MB-15 at 0:18:00]

“We seem to have a difference of opinion over the slopes, obviously there is the natural resources map that has the slope layer, of course the colors, you know, showing that the slopes are greater than 25% on this map. You’re saying [speaking to Chair Holt] that when you visited, the average slope was what, 15%? Is that what you said?”

Chair Holt responded:

“No, when I visited the site and I viewed it from a ridgeline [pause] there are steep slopes within the 10 acres OK one of the steep slopes that caught my attention was, that was a slope that would hide the place where the arrays would go from Route 14 and **I didn’t notice any adverse, or real slopes over 25%. That just didn’t come to mind at the time**” [interrupted]

Planning Commission member Hooper interrupting: “What’s a 25% slope?”

Chair Holt responded: “A 25% slope is pretty steep!”

Planning Commission member Hooper continued:

“My impression growing up on east hill, and I lived there on a steep hill, is that 25% is extremely steep! Now we’ve got a map [ANR Slopes] that’s supposedly, you know, generated with some real expertise that’s claiming 25%. We have Sonny and Norwich Technology’s [site plan] right? because I, based on this email to Brendan Malley, right, from Kim. Who’s Kim? You have an email in there to Brendan Malley and Martha Staskus” [interrupted]

Chair Holt responded: “Oh she’s a, I believe she’s a lawyer for Norwich Technologies”

Planning Commission member Hooper continued:

“so she’s their attorney. oh, and then there’s this, a site plan that just based on this, you know, I mean **it’s a little bit grainy here** but this doesn’t, the way this is shown doesn’t look like a terribly steep slope. **Clearly we have a difference of opinion here, you know, on what the slope is.**”

Q3. Were you able to shed any light on this difference of opinion at the December 2021 Planning Commission meeting? [exhibit MB-15 at 0:21:04]

A3. I passed around the copy of the developer’s Site Plan (RDS MS-2) and Elevation Drawing (RDS MS-3) which I received from the developer and pointed out that Line A-A’, **showed a 40% slope under some of the solar panels.**

Q4. How did the Planning Commission respond to your demonstration of the elevation drawing?

A4. The printed site plan may have been grainy and difficult to read, but the elevation drawing was unambiguous. Commission member Hooper said: [exhibit MB-15 at 0:22:37]

“OK so is Norwich Solar acknowledging that this is, in fact, that the siting here is in fact on largely on greater than 25% slope. They are not disputing that fact, right?”

Chair Holt responded:

“There are definitely slopes greater than 25%, probably much greater than 25%”

Planning Commission member Hooper continued:

“They are not disputing that fact, right?”

Chair Holt continued: [exhibit MB-15 at 0:23:15]

“What we considered, OK, when we viewed that area, it looked, as I said before, like a pasture, an old pasture, that’s where the panels themselves would be placed, OK.

Norwich Technologies came back to me, and, cause **I was surprised when this 25% slope issue came up and I asked Norwich Technologies** to take the distance from north and south and east and west and tell me what those slopes are. OK And they came back and said the average slope north-south is 15.5% and the average slope east-west is 10% for the panels, for the panels.”

Planning Commission member Hooper then said: [exhibit MB-15 at 0:24:03]

“They’re calculating the steep sections averaged against the flatter more” [interrupted]

“Correct” I interrupted, “that’s what they’re doing” [interrupted]

Chair Holt: [interrupting] “No, No, No” [interrupted]

Planning Commission member Hooper: [exhibit MB-15 at 0:24:18]

“Its a different metric, they’re talking about averages and this is, what we talked about in the town plan was not averages. If a site is that steep it’s out of the game.”

Q5. Did Chair Holt have anything to say about the ANR Slopes map in our October 21, 2021 Letter to the Planning Commission?

A5.. Yes, changing the subject, he said: [exhibit MB-15 at 24:27]

“One thing you should recognize in the map that was supplied with [pause] your people’s [referring to Allen & Binder] present letter. There’s a disclaimer on that [ANR Slopes] map OK that map is very course as far as showing elevations. and, can you read that disclaimer?”

Planning Commission Hooper started to read the disclaimer:

“This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.”

but after that first sentence of the disclaimer he continued: [exhibit MB-15 at 25:02]

“that was why I was asking, I understand that this is a map and there is a lot of thought that went into this, using LiDAR and other kinds of technologies, but in my personal experience having mapped a considerable amount of farmland, I find that there are often, you know, not major, but you know” [interrupted]

“I agree” I interrupted, “I’ve seen the same thing, I worked as a land surveyor”

Planning Commission member Hooper, bringing the discussion back to average slopes: [exhibit MB-15 at 0:25:35]

“so it actually sounds to me like Norwich technologies is in fact disputing the claim that they’re [pause] they’re maintaining that the av [pause] they’re going with the average and we’re talking about specific areas where panels are to be installed cannot exceed over 25%. No averages. Averages do not apply. If its over 25% grade it can’t go there, right?”

Chair Holt tried to explain how, on the the Site Plan RDS MS-2, the north-south line A-A’ was not steep: [exhibit MB-15 at 26:11]

“I think you’ll find the gridlines [contour lines] that are presented by Norwich technologies that’s in your final site plan if you go to look at it [pause] the A-A that is shown on there, I don’t think that means the A-A of the north- south line OK, this is in reference to something else...” [several interruptions]

I and two Planning Commission members corrected him (because the north-south line on the Site Plan is B-B’), and it is not steep because it, more or less, follows the contour lines.

Continuing, Chair Holt said: [exhibit MB-15 at 27:37]

“But I’m pretty sure what they gave us was a line this way, OK and a line that way”

I responded: [referring to the Site Plan]

“this is what they submitted to PUC, that’s all I have. I don’t know what they told you.”

Q6. What happened next?

A6. Attendee Brooke Dingleline spoke about the Bennington lawsuit, the Apple Hill decision, town plans, preferred sites letters, slopes, and average slopes for about 7.5 minutes [exhibit MB-15 at 27:58 - 35:35] Then Chair Holt explained that the North-South elevation drawing was not an average slope: [exhibit MB-15 at 35:35]

“I don’t think we’re talking about averages here, what Norwich Technologies did, they measured from the northern gridlines to the southern gridlines in one axis and...”

After he finished his explanation, Attendee Brooke Dingleline continued explaining why the Planning Commission must rescind their Preferred sites letter because of the slopes issue.

Q7. What was the outcome of the discussion?

A7. After Attendee Dingleline spoke, Planning Commission member Hooper said: [exhibit MB-15 at 37:49]

**“It seems to me we need to rescind the letter”**

Planning Commission member Armstrong replied:

**“Well I’m not quite ready to rescind the letter.** I think before you rescind the letter I think its upon them to prove to us so they can easily do that by hiring a surveyor and going in there and getting the appropriate information that we can review...”

Planning Commission member Walters said: [exhibit MB-15 at 39:34]

“Why don’t we just do the real thing we should have done in the beginning and rescind it and make them come and get a surveyor make them provide proper data do proper methods...” [interrupted]

Planning Commission member Armstrong: [interrupting]

“Before I do that I’d like to consult towns legal counsel”

Planning Commission member Hooper asked: [exhibit MB-15 at 39:57]

“what’s this piece in the email from Kimberly. about... I’m just asking I don’t have an opinion”

I interjected: “we haven’t seen this”

Planning Commission member Hooper read part of Kimberly Hayden’s letter [exhibit MB-29] and then Attendee Brooke Dingleline explained that the arguments in the letter did not apply to Randolph because Randolph does not have an enhanced energy plan.

Q8. What happened next?

A8. Planning Commission member Walters said to me: [exhibit MB-15 at 41:56]

“May I see that map?” [referring to site plan and elevation drawing]

I walked up to the table and pointed out (to Planning Commission members Hooper and Walters who were sitting next to each other) how on the Elevation Drawing’s Line A-A’, there is a vertical elevation of 20 ft over a horizontal distance of 50 ft, which is a 40% slope.

Finally, Chair Holt said: [exhibit MB-15 at 43:05]

“It should be noted the Planning Commission cannot regulate solar panels you know that’s strictly the prerogative of the PUC and that’s where this issue is right now, it’s with the PUC, but the PUC has also said that they’re requesting that you [speaking to me & Joan Allen] come back to the Planning commission, which you did tonight OK to somehow resolve the issue, so the PUC s waiting for some response from this meeting tonight. [pause] **I tend to agree with Perry we can say that it appears that they are in violation OK of the 25% requirement and unless you can prove otherwise we plan to rescind the letter of preferred site that was sent forward**”

Planning Commission member Armstrong interjected: [exhibit MB-15 at 44:09]

“**Based on, you know, misrepresentation of the project.** I’d like to have Trevor [Town Manager, in attendance] reach out to town’s legal counsel”

Chair Holt continued: [exhibit MB-15 at 44:20]

“it also should be noted that the PUC does not have a steep slope criteria when they judge...” [interrupted by several voices including mine]

Q9. Did the discussion continue?

A9. Yes. There was more discussion of **the slopes under the array**.

Joan Allen said: [exhibit MB-15 at 47:10]

“I’d like to clarify one thing also, **I keep hearing reference to just the steepness of the slope where the array itself is proposed to go**, but the way I read your language in the town plan, it doesn’t say specifically that its just where the array would go, **its what happens in the entire disturbed area that’s part of the development**”

I continued:[exhibit MB-15 at 47:33]

“thats logging, clearing on steep slopes so they don’t shade the array. The access road. Most of this is on steep slopes if you include the disturbed area, not just under the array”

Planning Commission member Walters said: [exhibit MB-15 at 48:34]

“this diagram [RDS MS-3] is their own document saying that section is in violation of what we’re written and I don’t remember going over this I don’t remember hashing out any kind of discussion about this I don’t remember this being presented. **I feel like we’ve been hoodwinked** by people who have a vested interest in not showing us certain...” [interrupted]

Chair Holt: [interrupting] [exhibit MB-15 at 48:57]

“When they came to us in June you know to ask for support OK there was **no question of steep slopes that ever came up** and I find it hard to believe they would intentionally try to deceive us...”

Chair Holt continued on by describing how very accommodating NST was to a neighbor of the Gifford project.

Planning Commission member Hooper responded: [exhibit MB-15 at 49:58]

“Regardless of the motive, let’s not get into that, **the fact of the matter is that there is a section of the proposed array that is outside the parameters** of what we have written in our town plan. Am I understanding that correctly?”

Planning Commission member Walters: “I think so”

Planning Commission member Hooper continuing: [exhibit MB-15 at 50:20]

“but what you’re maintaining [speaking to Allen & Binder] is that even if they were to eliminate this steep section that’s up on the serious slopes and pare the project down to two thirds of its current proposed size that it would still not be acceptable because of the proximity to other slopes”

I responded: [exhibit MB-15 at 50:53]

“I’d rather wait until they come back with that proposal before I comment on it. I think we have something in front of us that needs to be rescinded.”

Q10. Did Planning Commission members at the December 7, 2021 meeting discuss your proceedings with the PUC?

A10. Several times. I was surprised that they knew or cared about my involvement with the PUC. Later I learned (through Public records request) that Chair Holt had asked Martha Staskus by email on December 6, 2021: [exhibit MB-27 page 79]

“Can you give me the current status? Has the project gone out for public comment and if so has Norwich Solar received any comments? Is the project still on track for PUC approval?”

Martha Staskus replied the same day: [exhibit MB-27 page 83]

Good morning Sonny.

The process is not quite that fast unfortunately. The public comments were due by October 25th.

Last week the Hearing Officer issued the attached procedural order requesting more information from the Allen/Binders and then the Project (us) will respond to all comments filed (attached are agency comments for your convenience). There were numerous documents filed by the Allen/Binders. I'll send those next.

**If the Allen/Binders request a hearing** this will be a much slower process as they will need to file testimony and there are a number of legal back and forths at the PUC that would then occur.

I'll try to keep you up to date as much as possible. Best, Martha

Planning Commission member Hooper asked me: [exhibit MB-15 at 0:53:37]

“Does the letter being rescinded affect your response?”

I replied:

"We probably won't need to respond if the letter is rescinded because I think that'll force them to come back for, you know, with a new project or new reconfiguration and then come back to you to get another approval. So yes it does, I don't think we would bother asking for an evidentiary hearing if you rescind the letter."

Q11. Did Chair Holt try to wrap things up?

A11. He suggested: [exhibit MB-15 at 54:49]

“we request an immediate response from solar technologies to say words to the effect that unless you can show us that you have not violated the town plan steep slope requirement then the letter that supported this project will be rescinded. Is that agreeable to everybody?”

I heard Planning Commission member Armstrong agree with an “Uh huh”

But the discussion continued and Attendee Brooke Dingledine spoke prophetically: [exhibit MB-15 at 0:55:16]

“I would either do it [rescind] or not. **I wouldn’t open up some kind of process that doesn’t exist**”

Planning Commission member Hooper said [exhibit MB-15 at 56:16]

“**Obviously this** [slopes] **was not a factor that was ever discussed** [at the June PC meeting] that’s probably partially our fault for not knowing the text better and asking them questions, so we can take some responsibility for that. You Know Norwich wasn’t forthcoming with that. I do believe that we, I think that the issue of being sued is very real, anybody can sue anybody for any reason, so going through the process of getting some counsel on that would be, I think is necessary”

The discussion continued for another 5 minutes and Chair Holt asked Trevor Lashua to compose an email to NST and then said: [exhibit MB-15 at 1:02:13]

“Right now what would you envision being in that email?”

Planning Commission member Armstrong replied: [exhibit MB-15 at 1:02:20]

“Right now Trevor is going to check with Mike about what the legal situation is for us to rescind the letter. OK? **Once he gets the information then he can share that with us and we can figure out what we need to do.**”

Very near the end of the meeting Attendee Dingledine spoke: [exhibit MB-15 at 1:02:38]

“**One last comment, I would be cautious about getting involved in further conversations with the solar developer**” [interrupted and inaudible]

Planning Commission member Armstrong: [interrupting]

“**I agree**”

Attendee Dingledine continuing:

[inaudible] “you know, give us this information, or you know [pause] **It really needs to be a little more formal now because you’re contemplating taking an official action of**” [interrupted and inaudible]

Planning Commission member Armstrong: [interrupting] “Correct”

Q12. At the December 7, 2021 Planning Commission meeting, you became aware that Chair Holt had communicated with the developer about your October 21, 2021 Letter to the Planning Commission *vide supra* Q4. When did Chair Holt contact the developer about the slopes issue?

A12. On October 21, Chair Holt asked Joshua Jerome to: [exhibit MB-6 page 20]

“contact Norwich Technologies to determine how far along they are in site development, to make them aware of this letter and then have them overlay the actual location of the

Solar Panels on the property. There are areas on that property that are less than a 25% grade.”

The next day, Joshua Jerome wrote to Brendan Malley: [exhibit MB-6 page 25]

“I received a letter from an abutter of the Davis Road project who is questioning the decision of the Planning Commission and Selectboard to approve of a preferred siting letter for the Davis Road project due to the site containing slopes of 25% or greater. Can you please provide me with **an overlay site plan that includes slopes of 25% or more?**”

A mere one hour and 34 minutes later, Martha Staskus wrote back to Josh Jerome with a slopes layer added to the site plan: [exhibit MB-6 page 24]

“Thank you for your email. The illustration below shows the yellow areas are slopes >25% . This is based upon the State's statewide LIDAR program elevation data”

Also in the email she wrote: (Bold is my emphasis, italics are in the original email)

“Then, as stated on Page 29 of the Town Plan, electric generation projects, renewable in this case, are regulated at the state level and are exempt from local permitting. **It does not actually have to be owned by the utility**, but rather it interconnects to the utilities' distribution system. See Pg 29 of the Town Plan, and a portion copied below:

*Distributed power generation facilities, such as hydropower dams, fossil fuel plants as well as wind power or solar systems **owned by utilities, are exempt from local permitting** and Act 250 but subject to review and approval by the Vermont Public Utility Commission (30 VSA §248).*”

Q13. Did you know, at the December 7, 2021 Planning Commission meeting about the slope overlay map that Martha Staskus emailed to Joshua Jerome on October 22, 2021? [exhibit MB-6 page 24]

A13. No. We learned about it in March 2022 from a Public Records Request that Zoe Newmarco, a reporter for the Herald of Randolph, shared with us.

Q14. While you struggled on December 7, 2021 to convince the Planning Commission that the site was too steep for Energy Facility Development, did any members of the Planning Commission or any representatives of Norwich Solar Technologies reveal the Site Plan with Slope Overlay [exhibit MB-6 page 24] that Martha Staskus sent to the town on October 22, 2021?

A14. No. It would have saved a lot of time if they had.