

MEMORANDUM

TO: Vermont Public Utility Commission

FROM: DRM PLLC: Environment, Energy and Telecommunications Group

DATE: April 16, 2020

RE: **Case No.: 20-0789-INV RE: Access to Grand Lists for Identifying Adjoining Property Owners**

Downs Rachlin Martin PLLC (“DRM”) appreciates the opportunity to respond to the Commission’s April 10, 2020 memorandum on obtaining adjoining property owner information from certified grand lists during the COVID-19 pandemic. DRM has experience in collecting this information for a variety of critical infrastructure, energy and telecommunications siting projects. The statements below reflect our collective experience since the COVID-19 pandemic began in mid-March 2020.

1. *In your experience, what percentage of town clerks’ offices are open for land records research? Is this by appointment or otherwise?*

RESPONSE: Most municipal clerks’ offices indicate that they are open by appointment only for land records research, but the number of actual open offices appears to be dwindling each day. We expect to see more close down entirely in the coming weeks. Certain other departments within municipal offices, such as assessors and zoning offices, have less availability. We have arranged one appointment for land records research since the Stay Home / Stay Safe Order took effect was put in place, at the City of South Burlington municipal offices.

2. *If you have visited a town clerk’s office by appointment, what was your experience with close personal contact? Was social distancing properly maintained?*

RESPONSE: Social distancing was maintained at all times in the South Burlington land records. South Burlington also had multiple hand sanitizer dispensers available within the office.

3. *If you have visited a town clerk’s office recently, what specific concerns did you have?*

RESPONSE: Without access to other departments (e.g. Assessor’s office / Zoning office), it was not possible to complete a full real estate title search; however, this did not affect efforts to compile adjoining property information as outlined below.

4. *Have you contacted any town clerks either online or by telephone to request the names and addresses of any owners of property adjoining either your or a client’s project site? If yes, how did the clerk respond to your request?*

RESPONSE: To date, online resources and telephone-based contact with Town Clerks has proven sufficient to obtain adjoining property owner information from certified grand lists. Several municipalities have adopted on-line GIS programs that help identify adjoining landowners, for example:

Barre Town https://www.axisgis.com/barre_townVT/Default.aspx

Dover <https://www.axisgis.com/doverVT/Default.aspx>

Mendon <https://www.axisgis.com/mendonvt/>

The Vermont Center for Geographic Information (“VCGI”) has made available an on-line Parcel Viewer (<https://maps.vcgi.vermont.gov/ParcelViewer/>) created from municipal-parcel information provided by assessors’ offices. The volume of information on the VCGI Parcel Viewer is somewhat uneven from town to town—as examples, Chelsea and Woodford provide only SPAN information for each parcel on the map. Overall, however, the VCGI Parcel Viewer is a critically important and effective resource for compiling adjoining property owner lists.

Our experience to date has been that any deficiency in online information used to prepare a list of adjoining property owners can be overcome by contacting the municipal clerks to verify that the information on the VCGI Parcel Viewer or other online resource is current and correct. Since mid-March, municipal clerks, listers and/or assessors have either reviewed lists created by DRM using online resources (via phone or email), or have provided DRM with electronic copies of the most current grand list to ensure the information is current. We estimate this has happened with approximately 12 separate projects since March 13 (acknowledging that some of the validated information was gathered prior to the pandemic but was verified by the lister or clerk since Governor Scott’s Executive Order was issued).

5. *Have you attempted to use online municipal records to identify adjoining landowners? If yes, how successful were you in your efforts?*

RESPONSE: Yes—see the response to Question 4, above.

6. *If you have attempted to use online municipal records to identify adjoining landowners, did you find it complex or relatively easy? Compare the amount of time it took you to perform the task using online records versus traveling to a clerk’s office in person.*

RESPONSE: Overall, preparing adjoining property owner lists is no more difficult with online resources than visiting the municipal offices, especially with the VCGI Parcel Viewer as a stand-alone resource to complement / supplement the information. [CAI Technologies](#) creates many of the on-line GIS programs adopted by Vermont municipalities, as well as for municipalities across the United States. The CAI Technologies application is relatively easy to use and is in many respects more convenient than visiting a clerk’s office; the same is true of the VCGI Parcel Viewer created by [ArcGIS](#). Again, DRM has not had a single instance to date where a list of adjoiners prepared by DRM could not be verified as correct and current by a municipal representative via phone or email. (Specific examples are discussed in Response 8, below.)

7. *In your experience, are online databases that allow you to search for the names and addresses of adjoining landowners widely available in Vermont municipalities, or is the availability limited? Please estimate how widely available these resources are.*

RESPONSE: DRM estimates that the number of stand-alone municipal online databases (or posting of current grand lists online) is roughly one-third of the total. There has been an increase over the past several years in allowing the public to use on-line GIS programs that used to be reserved for “single computer terminal” use in a clerk’s office. However, when the amount of available parcel information contained in the VCGI Parcel Viewer is considered alongside the municipal resources, the amount of information is essentially at 100% (subject to the verification process described above and below).

8. *Given any difficulties you have experienced in identifying adjoining landowners as a result of town clerks’ offices either being closed or operating by appointment only, what recommendations do you have for ensuring that adjoining landowners receive proper notifications, either in advance of a petition being filed or at the time a petition is filed as currently required under statute or Commission rule?*

RESPONSE: Our experience to date since municipal offices began to close as a result of the pandemic has been that adjoining owner lists can be compiled using online resources to ensure that property owners are receiving advance notices or notices of petition filings via mail. Yet it is critical (as discussed above) that any online resources used by a petitioner to collect parcel information and mailing addresses is verified by a municipal official against the most current grand list as part of the compilation process.

The standard for compiling adjoining property owner lists for Section 248 projects is set forth in PUC Rule 5.402(B)(3), as follows:

Petitioner must use good faith efforts to notify adjoining property owners. Unless otherwise shown, good faith efforts shall mean utilizing the certified grand list as it existed no more than 60 days prior to the date notice is provided to identify adjoining property owners. Petitioner shall include a statement with the petition that it has complied with this provision and include in the statement the date the grand list was certified. No defect in the provision of notice to adjoining property owners under this rule shall invalidate an action by the Commission on a petition for a certificate of public good under 30 V.S.A. § 248.

Though no similar standard exists in the Section 248a Procedures Order or in Rule 5.100, DRM has followed this standard for telecommunications and net-metered projects during the COVID-19 crisis by verifying any and all online information obtained from municipalities with a grand list certification from a municipal official via phone or email.

To illustrate with two concrete examples, DRM used the VCGI Parcel Viewer to collect SPAN information earlier this week for upcoming projects in Woodford and Chelsea. To verify that the data was correct for Chelsea, a DRM paralegal left a voice message and a detailed email with the Town Clerk, Karen J. Lathrop (per instructions she had left on the answering service at the municipal offices). Two days later, when Ms. Lathrop came into the office to check voice messages and emails, she contacted DRM, sent an older Grand List in an Excel Spreadsheet via email, and communicated that she would gladly check the list against the current Grand List being compiled.

Similarly, for Woodford, a DRM paralegal sent an email to Town Clerk Susan Wright identifying the SPANs and requesting a copy of the current Grand List. Within less than an hour, DRM had received owner information for the adjoining landowners, all based on the current grand list.¹

In short, the PUC should allow petitioners to compile information using online databases and/or electronic grand lists, provided the information is verified with municipal officials against the most current grand list prior to sending out advance notices or notices of CPG petitions. If there are instances in which no municipal official can be reached, that problem can be referenced in the advance notice certification (alongside a description sufficient to demonstrate “reasonable efforts” consistent with Rule 5.402(B)(3)). We stress that DRM has had no such experience to date since mid-March, encompassing approximately 12 projects.²

With the additional instructions contained in the PUC’s Amended Order of 03/27/2020 (i.e., providing a means for mail recipients of advance notices / notices of CPG petitions to obtain information via mail requests to the applicant, or through electronic means, rather than having to view information at municipal offices), we believe the intent of the siting statutes administered by the PUC can continue to be met.

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- ¹ While true that some grand lists may not reflect all recent immediately pre-COVID transactions (or those occurring since the pandemic began), this is not a substantially different risk when relying on a certified grand list during normal, non-pandemic periods.
 - ² This underscores the dedication, courage, and effectiveness of those municipal officials who continue to check mail, answer voicemails and emails, and manage municipal affairs on behalf of their residents and businesses during the pandemic. We are deeply grateful for their spirit and resilience.