

STATE OF VERMONT
PUBLIC SERVICE BOARD

VERMONT PUBLIC
SERVICE BOARD

2016 JUL 29 PM 4 11

Docket No. 8585

Investigation into Meteorological Tower at 700 Kidder)
Hill Road in Irasburg, Vermont)

AFFIDAVIT OF COUNSEL PURSUANT TO V.R.C.P. 56(d)

I, Leslie A. Cadwell, counsel for Respondent David Blittersdorf in the above-captioned action, being duly sworn, over 18 years of age, and competent to testify on these matters say:

1. The facts and information about which I testify in this affidavit are based on my personal knowledge and first-hand experience.
2. On June 16, 2016, the Hearing Officer in the above-referenced matter granted the Respondent's request for a 30-day discovery period commencing June 29, 2016, without limitation as to methods or subject matters relevant to the pending litigation before the Board.
3. On June 29, 2016, in accordance with V.R.C.P. 30(a), (b)(1) and (b)(6) and the Hearing Officer's June 16, 2016 scheduling order, I served notices of deposition on behalf of Respondent to the Department of Public Service, Agency of Natural Resources, and Town of Irasburg. The notices seek depositions of certain individuals, Andrew Perchlik and Ron Holland, who I reasonably believe possess information relevant to one or more issues encompassed in this proceeding, as well as individuals unknown to me, but known to the opposing parties, who are authorized to speak on the parties' behalf about information that I also reasonably believe to be relevant to one or more issues in this proceeding, including the issue of whether the meteorological tower on Respondent's

property at 700 Kidder Hill Road required a Certificate of Public Good (CPG) from the Board pursuant to 30 V.S.A. § 246 and/or § 248 for its installation.

4. The notices of deposition were served on the parties at least ten days before their scheduled dates as required by V.R.C.P. 30(b)(1). The Department's 30(b)(6) deposition(s) were scheduled for July 27, 2016, and the Town of Irasburg's for July 15, 2016. The deposition of Andrew Perchlik was scheduled for July 15, 2016, and the deposition of Ron Holland was scheduled for July 26, 2016.
5. The Department subsequently filed a partial summary judgment motion dated July 1, 2016, seeking summary judgment with respect to the issue of whether Respondent committed a violation of Sections 246 and/or 248 by installing and operating a meteorological station on his property at 700 Kidder Hill Road without first obtaining a CPG.
6. On July 11, 2016, the Department sent a letter on which the Clerk of the Board was copied indicating that no Department witnesses would be made available for deposition, and no documents listed in the notices of deposition would be made available for review, before August 5, 2015, which the Department understood to be the end of the discovery period.
7. On July 12, the Department agreed to reschedule the deposition of Andrew Perchlik to August 5, 2016.
8. On July 15, 2016, the Department, along with the Town of Irasburg, filed a motion to quash Respondent's notices of deposition and for protective order.¹

¹ The Agency of Natural Resources also joined the motion, but has since reached an Agreement with the Respondent and therefore its participation in the motion is moot.

9. On July 21, the Department a filed motion for expedited review of its motion to quash, and alternatively request an order staying Andrew Perchlik's deposition until after the Hearing officer has ruled on the motion to quash.
10. Respondent's counsel filed an initial response to the motion to quash dated July 21, 2016, and a supplemental memorandum responding to the motion and the request for expedited review on July 28, 2016.
11. The Department has to-date not only refused to present witnesses for deposition, but has also declined to identify witnesses to Respondent or schedule alternative dates for the duly noticed V.R.C.P. 30(b)(6) depositions.
12. The Town of Irasburg was willing to reschedule the deposition of Ron Holland for August 5, and to reschedule the Town's 30(b)(6) depositions subject to a ruling on the motion to quash.
13. However, although all of the depositions were originally set for dates prior to the Respondent's July 29, 2016 deadline to respond to the Department's summary judgment motion, none of the rescheduled depositions will take place until after this deadline.
14. The refusal of the Department to present witnesses for duly noticed depositions during the scheduled discovery period, and the unwillingness or inability of the Department or the Town of Irasburg to reschedule depositions to dates prior to the Respondent's deadline for responding to the Department's summary judgment motion, have effectively denied Respondent his opportunity to-date to discover what information these governmental parties possess that is relevant to the issue of liability in this matter.

15. Accordingly, Respondent has been unable to discover and present facts essential to justify his opposition to the Department's partial summary judgment motion.

Depositions Noticed to Department of Public Service

16. Respondent seeks inter alia information from the Department that will establish that Respondent's meteorological tower is not subject to 30 V.S.A. § 246 and/or 248.
17. I reasonably believe that Andrew Perchlik or another person authorized to speak on behalf of the Department is likely to have information that will help Respondent's counsel to establish that the Public Service Board did not have jurisdiction over the installation of Respondent's tower under Section 248 because the tower is not a necessary component of an electric generating facility, just as the Respondent's log cabin and access road are not necessary components of an electric generating facility, although they are used in connection with two residential wind turbines.
18. The notice for the Department's VRCP 30(b)(6) deposition included several items in the List of Topics (see Items #1-3) and the List of Documents (see Items #5-7) with respect to the Anemometer Loan Program (ALP). I expect that these items will lead to the discovery of relevant evidence that will establish that the Respondent's installation, like others installed with funding administered by the Department in connection with the ALP, was not subject to the Board's Section 246 or 248 authority.
19. Because Respondent's counsel has been unable to depose a witness for the Department who is knowledgeable on these topics or to review any responsive documents, Respondent has been unable to discover and present any facts in the

Department's possession that justify Respondent's opposition to the Department's partial summary judgment motion.

Depositions Noticed to the Town of Irasburg

20. In order to establish that the meteorological tower is a permanent structure and therefore not subject to the Board's jurisdiction under 30 V.S.A. § 246, Respondent seeks facts from the Town of Irasburg that establish that the met tower is considered permanent and taxable real property.
21. Item #1 on the List of Topics included with the VRCP 30(b)(6) deposition served on the Town of Irasburg dealt with the inclusion on the Irasburg 2016 Grand List, effective April 1, 2016, of the meteorological tower installed at 750 Kidder Hill Road in the valuation of real estate having the SPAN number 312-099-10626, including the basis for the property value attributed to the meteorological tower installation.
22. Item #1 on the List of Documents included with the VRCP 30(b)(6) deposition served on the Town of Irasburg seeks "All public records, including e-mails and text messages, that contain communications between one or members of the Irasburg Select Board and one or more of Irasburg Listers concerning the met tower installed at 750 Kidder Hill Road with the SPAN number 312-099-10626." Moreover, Item #2 on the List of Topics seeks to identify one or more witness(es) who is (are) knowledgeable about the content of these documents.
23. Item #2 on the List of Documents included with the VRCP 30(b)(6) deposition served on the Town of Irasburg seeks Minutes of Irasburg Select Board meetings from January 1, 2012 through July 30, 2016 at which the met tower installed at 750 Kidder Hill Road with the SPAN number 312-099-10626 was discussed.

24. Because Respondent has been unable to depose a witness for the Town of Irasburg who is knowledgeable on these topics or to review any responsive documents, Respondent has been unable to discover and present any facts in the Town of Irasburg's possession that justify Respondent's opposition to the Department's partial summary judgment motion.


Leslie A. Cadwell, Esq.

STATE OF VERMONT
COUNTY OF Chittenden, SS.

On this 28th day of July, 2016, personally appeared Leslie A. Cadwell, and she swore to the truth of the foregoing statements.

Before me,


Notary Public

JOYCE A. DICIANNA
Notary Public
VERMONT

Printed Name:

Notary commission issued in: 2/10/19

My commission expires: 