



**BOARD OF COMMISSIONERS
& EXECUTIVE COMMITTEE
Special Meeting**

July 18, 2024 at 6:30 pm

CVRPC Conference Room, 29 Main Street, Suite 4, Montpelier, VT 05602

Hybrid Meeting with Remote Participation via Zoom¹

<https://us02web.zoom.us/j/81136818419?pwd=dDFDbDhrTm56TUNQUlp3WEorYzRZZz09>

One tap mobile: +19294362866,,81136818419#,,,,*722490# US (New York)

Dial in via phone: 1-929-436-2866 • Meeting ID: 811 3681 8419 • Passcode: 722490

Or find your local number: <https://us02web.zoom.us/u/kcjBhj3bIX>

Download the app at least 5 minutes before the meeting starts: <https://zoom.us/download>

Page **AGENDA**

6:30² Introductions

Adjustments to the Agenda

Public Comments

6:35 Public Response to Open Meeting Law Allegation (Action - enclosed)³

6:50 Consideration of the Notice of Hearing for the July 9, 2024 Readoption of the Regional Plan – Christian Meyer (Action - enclosed)

7:20 Next Steps – Christian Meyer (Action - enclosed)

7:30 Adjourn

¹ Persons with disabilities who require assistance or alternate arrangements to participate in programs or activities are encouraged to contact Nancy Chartrand at 802-229-0389 or chartrand@cvregion.com at least 3 business days prior to the meeting for which services are requested.

² Times are approximate unless otherwise advertised.

³ Anticipated action item.



MEMO

Date: July 16, 2024
To: Board of Commissioner
From: Christian Meyer, Executive Director
Re: Public response to alleged violation of open meeting law

☒ ACTION REQUESTED: Respond to the notice of alleged violation of Open Meeting Law by acknowledging the violation of open meeting law and state our intent to cure the violation **or** determine no violation has occurred.

The following memo outlines the alleged violation of open meeting law received by CVRPC, the required actions triggered by said allegation, the statutory requirements under open meeting law and how CVRPC has acted to meet these requirements, and additional requirements for public notice stipulated under the process for readoption of a regional plan and how CVRPC has met these requirements

Allegation

On Thursday, July 11, 2024, CVRPC received the attached notice of alleged violation of open meeting law from Zoe Christiansen, a resident of East Montpelier, a member of the East Montpelier Selectboard and a member of the East Montpelier Planning Commission.

Public response

Per 1 V.S.A. § 314 (b)(2), upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within 10 calendar days by:

- (A) acknowledging the violation and stating an intent to cure the violation within 14 calendar days;
or
- (B) stating that the public body has determined that no violation has occurred and that no cure is necessary.

Open Meeting Law

The requirements of 1 V.S.A. § 312 state:

1. The agenda must be posted 48 hours before the meeting to the website maintained by CVRPC.
 - a. July 3, 2024, the agenda was posted to the CVRPC website and emailed to commissioners, alternates, planning commission chairs, select board chairs, town clerks, members of the media, and interested parties.
2. The agenda must be posted at the CVRPC office and no less than two other locations throughout the region.

- a. July 3, 2024 the agenda was posted to a cork board at the door to our office suite, and on the front exterior door of the building in which CVRPC offices are located (29 Main Street, Montpelier), and at the town offices in Waitsfield and Cabot.
3. The agenda must be made available prior to the meeting to any member of the public upon request.
 - a. The CVRPC maintains a list of interested parties that were included in the electronic distribution of the agenda on July 3, 2024. No additional requests were made via email, via phone, or in person.

Particularities of public notice for a regional plan readoption (24 V.S.A. § 4348)

1. April 12, 2024: 1st Public Hearing notification ran in the Times Argus.
2. April 10, 2024 a copy of the proposed plan with request for comments was distributed physically through certified mail and electronically (April 11, 2024) to the chair of the legislative body of each municipality within the region, the executive director of each abutting regional planning commission, the Department of Housing and Community Development, and the Agency of Natural Resources and the Agency of Food and Markets. No interest groups or organizations requested notice.
3. June 5, 2024: A 2nd Public hearing notification ran online in the Times Argus and June 6, 2024 in the printed edition.

Further responses from the alleged violation

Christiansen cites 1 V.S.A. § 312(a)(2)(D), which states:

“If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.

CVRPC response: A physical location was provided and staffed at the Central Vermont Chamber of Commerce at 33 Stewart Rd Berlin, VT.

Christiansen further provides the following quotation:

“In keeping with the law’s intent, an agenda should allow interested members of the public to be reasonably informed about what specific topics will be discussed, and what actions may be taken, at the meeting.”

The origin of this quotation is not attributed, but appears to be taken from A Guide to Open Meetings, 2019, published by the Secretary of state’s office. The full paragraph reads:

The open meeting law does not define “agenda” or specify the information an agenda must contain, except to require that the agenda designate a physical location where a member of the public can attend and participate in a meeting if a quorum or more members of a public body are attending remotely. 1 V.S.A. § 312(a)(2)(D). In keeping with the law’s intent, an agenda should allow interested members of the public to be reasonably informed about what specific topics will be discussed, and what actions may be taken, at the meeting.

CVRPC response: As demonstrated above, the agenda CVRPC warned for the meeting appears to meet the requirements of 1 V.S.A. § 312. When taken in context, an agenda may, but need not, provide additional information regarding the topics and actions under consideration.

From: [Zoe Christiansen](#)
To: [Christian Meyer](#); [Nancy Chartrand](#)
Subject: Misleading Warning- Open Meeting Law
Date: Thursday, July 11, 2024 7:48:05 PM

Some people who received this message don't often get email from zhchristiansen@gmail.com. [Learn why this is important](#)

Hello,

My name is Zoe Christiansen. I am an interested member of the public from Central Vermont, as well as a Selectboard person and Planning Commissioner from the town of East Montpelier. I feel concerned that Vermont's open meeting law may have been circumvented in regards to the Public Forum meeting that was held on July 9th. I will explain below.

"1 V.S.A. § 312(a)(2)(D). In keeping with the law's intent, an agenda should allow interested members of the public to be reasonably informed about what specific topics will be discussed, and what actions may be taken, at the meeting."

I had been planning to attend the Public Forum on the Readoption of the 2016 Plan for weeks, with the understanding that "Readoption" referred to a boiler plate continuance of the plan and it's language that has been used for the past 8 years.

I ultimately decided not to attend, in order to spend time with my father after a recent heart attack, on his birthday. Again, with the understanding that no changes were to be made at this meeting.

When I had the time to read out the minutes today, to see what I missed, I was shocked to read that there was not a simple readoption of a document- but actually, the adoption of a **heavily amended document**. I have not yet had time to read all of the appendix, but I am very surprised at it's bulk. Somewhere in the ballpark of 100 pages?

I read in the minutes the following:

*"Christian further advised the process was developed in concert with DHCD and how other regions have done these readoptions, and as part of that process CVRPC needed to write the Regional Plan Assessment Report and identify areas where there need to be updates, **understanding that there will be necessary changes included while readopting.**"*
and

*"Also noted was **if the amended energy element is not included in the re-adoption, we won't be able to approve any municipal enhanced energy plans for our towns, and our determination of energy compliance for the Act 248 process will lapse unless our plan is updated to the new standards.**"*

The "**understanding**" that there will be necessary changes included while readopting is not something shared with the public, and because this was Warned as a Public Forum, I find alarming.

Whether or not these amendments are substantive or not, is besides the point.

The major concern here is breach of open meeting law.

But additionally, language is subjective, and can be substantive accidentally. For example, our Selectboard recently spent over an hour poring over language of one paragraph, in order to make sure that the non-substantive changes were presented in a language which did not insinuate actual policy change. Which was necessary and good.

I am upset that I was not properly warned to attend this meeting, a "**Public Forum**", to educate myself on the amendments.

I strongly suggest finding a way to nullify this vote, and to hold another Public Forum with a warning that encapsulates the fact that the "Readoption" of a plan is actually a vote on an *amended plan*.

Sure, this request may come across as just trying to throw a wrench in the wheels of necessary progress.

But to this concerned citizen who wants to be involved, rightfully so, in the process, this last meeting and it's warning seems dangerously close to breaking open meeting law.

I do hope you share my email with the rest of the board, who's email addresses were not shared with me when requested.

Thank you for your time,
Zoe Christiansen



MEMO

Date: July 17, 2024

To: Board of Commissioners

From: Christian Meyer, Executive Director

Re: Consideration of the Notice of Hearing for the July 9, 2024 Readoption of the Regional Plan

⊗ **ACTION REQUESTED:** Consider whether or not the notice of public hearing may not have been adequately precise and consider an action to either confirm the process or invalidate the actions to readopt the 2016 Regional Plan taken July 9, 2024. Direct staff on next steps.

The question this memo aims to address is whether or not the action to readopt the regional plan was the appropriate action. Or, if given the nature of the updates to the Enhanced Energy Plan and Energy Element and the addition of housing targets, should this action have been better characterized as an amendment or the adoption of a new plan.

Background

Statute suggests that there is a material difference between amendment and readoption. And while the processes are very similar, the action readopting a plan can be invalidated if the public hearing notice "is materially misleading in content... or if the defect was the result of a deliberate or intentional act." There may be an argument that the description of the action to be taken as "readoption" would be materially misleading if, in fact, the action planned and taken at the meeting was an amendment of the plan. In this case, the amendments adopted via the readopted plan could be subject to legal challenge and declared invalid for failure to accurately describe the action to be taken.

In reviewing the public notice process CVRPC undertook beginning at its April Commission meeting, the intent to update the contents of the Enhanced Energy Plan and append housing targets was always clearly stated. However, while this process was transparent, the notice may not have been adequately precise and could be challenged on the grounds that the notice was materially misleading.

Possible Actions

1. **Let the readopted plan stand.** In this case, the Board of Commissioners finds that the notice was not materially misleading. In this case no action would be necessary and we leave the motion from July 9, 2024 in place.

2. **Invalidate the action to readopt the regional plan with amendments.** The Board of Commissioners can find that the notice to readopt the regional plan may not have been adequately precise and move to invalidate the action to readopt the plan. In this case, staff will notice a new hearing for the readoption of the regional plan with all appendices removed. This hearing would take place in 30 days or at the September Commission meeting. CVRPC will be without an active plan between August 16, 2024 and the time of readoption. Similarly, under this scenario, the CVRPC Enhanced Energy Plan will lapse. However, upon the readoption of the 2016 Plan, CVRPC can again consider an amendment to the readopted plan to append an updated enhanced energy plan. This process would take roughly four months or longer before an updated enhanced energy plan would approved and go through DPS review. Similarly, CVRPC will need to consider amendments to add several other new statutory requirements such as the housing targets and an updated future land use map.

Next Steps

Direct staff to warn a new hearing to readopt the plan and select a date for the hearing. We must provide a minimum of 30 days notice prior to the hearing.