

**CENTRAL VERMONT REGIONAL PLANNING COMMISSION
BOARD OF COMMISSIONERS
Draft MINUTES
July 18, 2024 SPECIAL MEETING**

Commissioners:

- | | | | |
|--|--------------------------|--|--------------------------|
| <input type="checkbox"/> Barre City | Janet Shatney, Sec/Treas | <input checked="" type="checkbox"/> Moretown | David Stapleton |
| <input type="checkbox"/> | Vacant | <input type="checkbox"/> | Joyce Manchester, Alt |
| <input type="checkbox"/> Barre Town | Alice Farrell** | <input checked="" type="checkbox"/> Northfield | Royal DeLegge |
| <input type="checkbox"/> | Vacant | <input type="checkbox"/> | Jeff Schulz, Alt |
| <input type="checkbox"/> Berlin | Robert Wernecke | <input checked="" type="checkbox"/> Orange | Lee Cattaneo |
| <input checked="" type="checkbox"/> | Karla Nuissl, Alt. | <input type="checkbox"/> Plainfield | Paula Emery |
| <input type="checkbox"/> Cabot | Brittany Butler | <input type="checkbox"/> | Bob Atchinson, Alt. |
| <input checked="" type="checkbox"/> Calais | John Brabant | <input checked="" type="checkbox"/> Roxbury | Jerry D'Amico, Chair |
| <input checked="" type="checkbox"/> | Melanie Kehne, Alt. | <input checked="" type="checkbox"/> Waitsfield | Don La Haye |
| <input type="checkbox"/> Duxbury | David Wendt | <input checked="" type="checkbox"/> | Alice Peal, Alt. |
| <input type="checkbox"/> | Vacant | <input checked="" type="checkbox"/> Warren | Alexis Leacock |
| <input type="checkbox"/> E. Montpelier | Vacant | <input type="checkbox"/> | Jenny Faillace, Alt. |
| <input checked="" type="checkbox"/> | Clarice Cutler, Alt. | <input checked="" type="checkbox"/> Washington | Peter Carbee, Vice Chair |
| <input type="checkbox"/> Fayston | Andrew McNealus | <input type="checkbox"/> Waterbury | Doug Greason |
| <input type="checkbox"/> Marshfield | Vacant | <input type="checkbox"/> Williamstown | Richard Turner |
| <input checked="" type="checkbox"/> Middlesex | Ron Krauth | <input type="checkbox"/> | Jacqueline Higgins, Alt. |
| <input checked="" type="checkbox"/> | Mitch Osiecki, Alt. | <input checked="" type="checkbox"/> Woodbury | Michael Gray |
| <input checked="" type="checkbox"/> Montpelier | Mike Miller, Alt. | <input checked="" type="checkbox"/> Worcester | Bill Arrand |
| <input type="checkbox"/> | Vacant | | |

Staff: Christian Meyer, Nancy Chartrand, Will Pitkin

Call to Order: Chair D'Amico called the meeting to order at 6:33 pm, a roll call was completed and a quorum was present. Mike Miller, Don LaHaye and Peter Carbee joined the meeting following the official roll call. **Emails were sent to Nancy Chartrand during the meeting (however, not seen until after the meeting) from Board member Alice Farrell of Barre Town advising that she was online for part of the meeting and what her votes were when she was online. Commissioner Farrell's votes were not included in the documented roll calls below.

Adjustments to the Agenda: None

Public Comments: None

Public Response to Open Meeting Law Allegation: Chair D'Amico and Christian Meyer provided a brief overview of the memorandum outlined in the packet as it related to the alleged violation of Open Meeting Law (OML). It was confirmed that CVRPC consulted with the law firm Dinse out of Burlington with whom we have worked with in the past. John Brabant requested the allegation be read into the record. Christian read the email from Zoe Christiansen into the record. Christian then read the statute that governs addressing an OML allegation. Peter Carbee stated he saw two complaints in Zoe's email; one related to open meeting law and one related to action passing the adoption of the plan. He further stated he believed the agenda was warned properly and recommended that we deny the violation of the open meeting law using appropriate statutory language and

1 noted he would like to make that motion. John Brabant inquired if Christian had direct language from legal
2 counsel for this motion; and Christian advised he did not and he further reviewed details from his discussion
3 with counsel as related to OML. Peter reiterated there are two separate issues and we can respond to the
4 adoption of the plan later in the meeting, however, the priority was to address the allegation of the violation of
5 the OML, which he stated was not violated. Chair D’Amico also stated he believed there was no violation of
6 OML.

7
8 Christian Meyer shared a possible motion that he had provided to counsel for review and which they advised
9 was sufficient - *“move that no violation occurred and no cure is necessary”*. *The motion was moved by Peter*
10 *Carbee and seconded by Lee Cattaneo*. Melanie Kehne noted that the spirit of the open meeting law is
11 important to keep in mind, stating there was confusion at the last meeting related to the action for the Regional
12 Plan. She suggested we re-notice and hold another public hearing and move forward. Christian agreed, and
13 noted we were planning on treating the issues under two separate actions one being the OML and the second
14 being the question of properly noticing a hearing under a different subsection of the law.

15
16 John Brabant concurred with Melanie’s statement and stated he did not believe all Commissioners have read
17 the plan due to its size. He went on to share his concerns related to the action and being respectful of the public
18 we serve and represent. He noted he will abstain from this vote because he believes it is too curt and we
19 should acknowledge the concerns outlined by member of the public who is also a representative of East
20 Montpelier. He also noted he felt the attorney should have been available to speak with the entire Board.

21
22 Alice Peal reiterated that the point of the OML is transparency, and the allegation may be saying there might
23 have been notices posted, but the notices may not have been correct. She noted that an OML tour presented
24 by Jim Condos suggested that in gray areas to go by the guidance of transparency and make sure you are
25 accurate in what you are saying to the public and what you are posting to the public. She believes a further
26 discussion could be had to address by the process and where things went wrong. It was reiterated that we are
27 dealing with a two-pronged argument - an alleged violation of OML which we must respond to under statute,
28 and we are responding by saying it was legally warned and therefore there is no violation and no cure is
29 necessary, which is what we will be voting on. The discussion of the readoption of the Regional Plan is a
30 separate issue where there may have been lack of clarity and confusion. Christian Meyer noted the statute that
31 the OML falls under and the question of the hearing and discrepancy of amendment vs. readoption comes under
32 a different statute; and we wanted to address each element.

33
34 John Brabant reiterated that transparency is important and requested that we soften our response, and there
35 was further discussion as to whether or not there should be an amendment to the motion. Lee Cattaneo
36 reiterated there are two separate actions.

37
38 *David Stapleton made a request to call the question, seconded by Royal DeLegge*. Christian was asked to read
39 the motion on the floor- *“Peter Carbee moves no violation of Vermont OML has occurred and no cure is*
40 *necessary.”* A roll call vote requested and completed: *Barre City – not present, Barre Town - not present, Berlin*
41 *- Yes, Cabot - not present, Calais - Abstain, Duxbury - not present, East Montpelier - Yes, Fayston - not present,*
42 *[Marshfield – seat vacant], Middlesex - Yes, Montpelier - Yes, Moretown - Yes, Northfield - Yes, Orange - Yes*
43 *Plainfield – not present, Roxbury – Yes, Waitsfield - Yes, Warren – Yes, Washington - Yes, Waterbury - not*
44 *present, Williamstown - not present, Woodbury - Yes, Worcester – Yes. The motion passed with 13 ayes and 1*
45 *abstention.*

1
2 **Consideration of the Notice of Hearing for the July 9, 2024 Readoption of the Regional Plan:** Christian Meyer
3 provided a brief overview of the memorandum outlined in the packet and stated our attorney notes there is a
4 material difference in Vermont statute between an amendment and a readoption. Also, under subsection 4444,
5 an action can be invalidated if a hearing notice is materially misleading. Therefore, the question on the floor
6 would be was the notice to readopt our plan at the July meeting misleading as opposed to an amendment or the
7 adoption of a new plan. The actions at hand could be 1) proceed with the readopted plan as voted on; or 2)
8 move that the notice was for readoption and therefore invalid, invalidating the action on July 9th, staff would
9 notice a new public hearing for the readoption of the regional plan as it was last approved in 2020 with all the
10 appendices removed (energy element and housing targets) and minor changes to text such as updating
11 Commissioner names and some dates, but no material changes to the text, goals, or actions outlined in the
12 plan. The assessment report would still be provided. The consequences of invalidating the action were
13 reviewed (noting that we would be without a Regional Plan for several weeks): Limit our ability to comment on
14 Act 250 applications; limit our ability to approve Municipal Plans (none are forthcoming at this time); and limit
15 our ability to approved Municipal Enhanced Energy Plans which would mean towns that are currently updating
16 their energy plans would have to wait longer for compliance.

17
18 *Lee Cattaneo moved to notice the plan as written and go ahead and have a hearing that the appendices will be*
19 *removed from the plan and that the plan will be available to anyone who wants it. Seconded by John Brabant*
20 *with the confirmation that the motion includes rescinding the vote on the last plan. Christian requested a*
21 *change in wording of 'rescind' to 'invalidate' the action of readoption of the 2016 Regional Plan and Appendices*
22 *in addition to the notice to advertise. . . ." Significant discussion continued on the final text for the motion.*
23 *Christian provided potential text for a detailed resolution. He shared his screen with the text and read it to all*
24 *present.*

25
26 *"Whereas, Subchapter 3 of Chapter 117 of Title 24 of the Vermont State Statutes suggests that there is a*
27 *material difference between the amendment and readoption of a regional plan;*

28 *Whereas, §4444 of Vermont State Statute outlines the process of public hearing notice for adoption,*
29 *amendment, or readoption of regional plans;*

30 *Whereas, §4444 states an action shall be invalidated if the notice is materially misleading;*

31 *Whereas, the CVRPC Board of Commissioners finds the notice of hearing dated June 5, 2024 to readopt the 2016*
32 *Regional Plan as amended was misleading;*

33 *Now therefore be it resolved that the CVRPC Board of Commissioners moves to invalidate the action to readopt*
34 *the 2016 Regional Plan and appendices."*

35 He noted this would be treated as one motion and a second directive can be given by the Board of
36 Commissioners for staff to begin the process of readoption. This resolution would clear the action from July 9th.

37 Chair D'Amico asked if Lee was willing to revise his motion. *Lee Cattaneo and John Brabant agreed to the*
38 *revision.*

39
40 Mike Miller stated he would oppose this motion because he felt the adoption we went through on July 9th was
41 fine. He believes we do not have an option to amend, because an amendment does not extend the 8-year
42 expiration. He noted in state law readoption assumes there are amendments. He doesn't believe the warning

1 was incorrect. He further noted we are also meeting as a regional plan subcommittee to go through the process
2 with full opportunity to participate. He believes in the technical sense we did it correct. He will oppose
3 invalidating the plan.

4
5 Further discussion ensued related to process as it relates to statute. Concern was shared how not readopting
6 may impact towns. Christian confirmed that previously the approved Regional Plan had an Energy Element and
7 Enhanced Energy Plan appended to the back of it. It was noted a lapse of only several weeks would not have a
8 significant impact on towns, however a longer lapse may. It was confirmed that amendments must go through
9 the same public notice process as a full new adoption, but they don't open up areas outside the amendments to
10 debate and they don't reset the clock eight years.

11
12 David Stapleton stated that he felt the costs of rescinding the plan far outweigh the benefits, and noted he
13 would be voting no against the motion.

14
15 John Brabant asked for support of the motion. He noted he is also on the Regional Plan Committee and while he
16 missed the April meetings of the Committee and the Board when the Energy Element was discussed he has
17 reviewed minutes as well as the video of the Board meeting. He noted that it was stated that there were data
18 changes and not policy changes, but he believes there were substantial policy changes including siting criteria
19 language being removed. He stated invalidating the plan was not going to cost the RPC more money, nor cause
20 Municipal Plans to not be approved, and noted municipal energy plans could be approved by the Department of
21 Public Service (DPS) instead of the Regional Planning Commissions. Christian advised that DPS no longer
22 approves municipal enhanced energy plans, that their approval was temporary while Regional Planning
23 Commissions were getting their initial plans drafted.

24
25 Peter Carbee reminded the Board that the clock did not reset with amendments that were made previously and
26 that the purpose of the re adoption was to reset the clock and that he believes process was followed. He noted
27 he will vote against the resolution.

28
29 Royal DeLegge stated he believes we were conformant with the provisions OML with the entire process and just
30 voted that we were in conformance. He noted the process which included public hearings, made all material
31 available to interested parties, therefore he doesn't believe we have a problem moving forward with the action
32 that was taken at last month's meeting, and restarting the whole process is unnecessary. Suggests we move
33 forward with the actions already taken and confirm them and perhaps this is a lesson learned on clarity for
34 future issues. He noted he will be voting against it.

35
36 David Stapleton called the question, seconded by Peter Carbee. A roll call was requested. Christian re-read the
37 amended motion:

38 *"Whereas, Subchapter 3 of Chapter 117 of Title 24 of the Vermont State Statutes suggests that there is a*
39 *material difference between the amendment and re adoption of a regional plan;*

40 *Whereas, §4444 of Vermont State Statute outlines the process of public hearing notice for adoption,*
41 *amendment, or re adoption of regional plans;*

42 *Whereas, §4444 states an action shall be invalidated if the notice is materially misleading;*

1 *Whereas, the CVRPC Board of Commissioners finds the notice of hearing dated June 5, 2024 to readopt the 2016*
2 *Regional Plan as amended was misleading;*

3 *Now therefore be it resolved that the CVRPC Board of Commissioners moves to invalidate the action to readopt*
4 *the 2016 Regional Plan and appendices."*

5 It was confirmed that Christian Meyer drafted the resolution based on conversations he had with the attorney,
6 but the attorney did not draft the resolution.

7
8 The following roll call vote was completed: *Barre City – not present, Barre Town - not present, Berlin - Yes,*
9 *Cabot - not present, Calais - Yes, Duxbury - not present, East Montpelier - No, Fayston - not present, [Marshfield*
10 *– seat vacant], Middlesex - No, Montpelier - No, Moretown - No, Northfield - No, Orange - No, Plainfield – not*
11 *present, Roxbury – Yes, Waitsfield - Yes, Warren – Yes, Washington - No, Waterbury - not present, Williamstown*
12 *- not present, Woodbury – Abstain, Worcester – No. The motion failed with 8 nays, 5 ayes, and 1 abstention.*

13
14 **Next Steps:** Christian noted the action of July 9th is in place. Lee stated that he voted no on a motion he made
15 because he had his hand up and wasn't called upon before the question was called - his concern was if we had
16 readopted the plan as was written in 2016 and amended, why wouldn't the existing energy requirements that
17 are in the plan still be in place, because it was stated before we wouldn't be able to act upon any of the requests
18 for the solar systems going in. Peter Carbee added there are no next steps, but would suggest that we write a
19 letter to Ms. Christiansen explaining the positions taken, and why we denied violation of OML and the vote of
20 July 9th was confirmed. He requested staff write this letter.

21
22 John Brabant noted agreement that a letter is appropriate and noted by maintaining the plan we approved,
23 there is no longer siting criteria and if a project comes in and if we have an issue with it the Public Utility
24 Commission (PUC) will give it no consideration until we adopt a new plan. He is disappointed in the vote and
25 Commission. Alice Peal noted she supports Peter's suggestion to respond to the person who questioned OML
26 and the plan. She also suggests if we are more careful about our process this would all be avoided and this has
27 been a good learning experience. Bill Arrand asked if we could address coming up with an amendment to
28 address the siting criteria. Christian advised we will be working on a new plan and can absolutely start an
29 amendment process which will take a minimum of 60 days once text is finalized.

30
31 **Adjournment:** *Dave Stapleton moved to adjourn @ 7:54 pm, seconded by Don La Haye.* John Brabant noted
32 he had his hand raised and members requested to hear what John had to say.

33 A roll call vote was requested and completed: *Barre City – not present, Barre Town - not present, Berlin - No,*
34 *Cabot - not present, Calais - No, Duxbury - not present, East Montpelier - No, Fayston - not present, [Marshfield*
35 *– seat vacant], Middlesex - No, Montpelier - No, Moretown - Yes, Northfield - No, Orange - No, Plainfield – not*
36 *present, Roxbury – No, Waitsfield - Yes, Warren – No, Washington - No, Waterbury - not present, Williamstown -*
37 *not present, Woodbury – No, Worcester – No. The motion failed with 12 nays, and 2 ayes.*

38
39 John Brabant shared his concern that we are vulnerable without siting criteria. He believes we could readopt
40 the 2016 plan and put the siting criteria back in within notice requirements and change language to include
41 original siting criteria; and would request that staff consider and review the necessary process to do
42 this. Christian noted his understanding was that constraints were unchanged and he would follow-up directly
43 with John. Lee Cattaneo echoed John's concerns noting the siting criteria is used by the Project Review
44 Committee when reviewing projects, he believes we should immediately go to an amendment to put siting

1 criteria back in so the time without it would be limited. There was discussion as to whether or not there should
2 be a motion. *Lee Cattaneo moved to start the amendment process to add the siting criteria back in, seconded by*
3 *Bill Arrand.* Peter Carbee stated we should let staff review and come up with language to put the siting back in if
4 it is not in there; before we make motions to amend. John noted that if we pass the motion and the criteria
5 were maintained then the motion is moot.

6
7 As a point of order, Mike Miller noted this motion was not warned and is not recommended at this time. It was
8 noted we could put this on the agenda for an August meeting. *Lee Cattaneo rescinded his motion and Bill*
9 *Arrand rescinded his second.* It was confirmed we will plan to have a Board meeting in August to address.

10
11 Don LaHaye moved to adjourn at 8:04, seconded by Mike Miller. Motion carried unanimously.

12
13 Christian thanked everyone for coming out for the special meeting.

14
15 Respectfully submitted,
16 Nancy Chartrand, Office Manager

17
18

DRAFT