AGENDA

1. Reconvene the FY 2015-2016 Tax Grievance Hearing 6:30 p.m.
2. Changes to the Agenda
3. Board Members were reminded they are still under oath and are being audio taped.
4. Role Call
5. Hear the Inspection Committee Report on Novus Barre Town Solar LLC
6. Decision for Novus Barre Town Solar LLC
7. Other Business:
   A) Next Meeting - Regular Abatement Meeting January 13, 2016
   B) Any other business which may come before the Board

TOWN OF BARRE - TAX GRIEVANCE HEARING
October 28, 2015

CALL TO ORDER - Chair Paul Malone reconvened the Tax Grievance Hearing meeting to
order on this 28th day of October 2015 at 6:30 p.m.

ROLE CALL - The following members were present: Chair Paul Malone, Vice Chair J. Guy
Isabelle (arrived at 6:38 p.m.), Town Clerk-Treasurer Donna J. Kelty, Jeff Blow, Gordon
Booth, Pearl Bugbee, William Bugbee, J.P. Isabelle, Philip Kolling, Robert LaClair, Jay
Perkins, Virginia Poplawski, Rolland Tessier, R. Lee Walther, Sheila Walther, and Tom
White. Those absent were Charles Castle, Tracy Delude, W. John "Jack" Mitchell, Edward
Paquin, Tom White, and Christopher Violette.

Others present included Assessor Joseph Levesque.

AMEND THE AGENDA - None

BCA OATH

The BCA members were reminded they are still under oath. All present were
advised the tax grievance hearings are being audio taped. Please speak clearly and identify
yourself prior to speaking.

NOVUS BARRE TOWN SOLAR LLC INSPECTION REPORT

Chair Paul Malone noted that all individuals present are not eligible to vote. Voting
members are: Jeff Blow, William Bugbee, Pearl Bugbee, J.P. Isabelle, J. Guy Isabelle, Town
Clerk-Treasurer Donna Kelty, Philip Kolling, Robert LaClair, Jay Perkins, Virginia Poplawski,
Rolland Tessier, R. Lee Walther, and Sheila Walther. Town Clerk Donna Kelty will be
abstaining from the vote due to the ongoing contact with Novus staff and attorneys.

Chair Malone gave a brief synopsis of what had transpired to date.

Inspection Committee Chair JP Isabelle was asked to give his report. For the
record Mr. Isabelle informed the BCA that he misread Attorney Monte’s letter dated
October 21, 2015 (see Attachment #2). He had contacted the Assessor regarding the
Committee being able to review the PVvalue software. The conversation ended with the
agreement this was not advisable due to ex-parte communication.
The Inspection Committee of Three visited the site on Tuesday, October 27, 2015. Report details described the site and use.

On a motion by William Bugbee, seconded by Rolland Tessier, the Board voted to accept the Inspection Committee Site Visit Report, dated October 28, 2015 regarding the property known as 229 Websterville Road, Tax Map 904 Lot 365-00. Kelty abstained from the vote.

Original motion: A motion was made by JP Isabelle, seconded by Phil Kolling, to accept the Assessor’s valuation of $582,200 for the Novus Barre Town Solar Farm LLC, known as Tax Map 904 Lot 365-00, 229 Websterville Road citing state law mandates the use of the PVvalue, discounts cash flow method of valuing the property for Grand List purposes.

During the motion discussion Lee Walther stated he is struggling with what needs to be considered and the law. To clarify his understanding he read a statement into the record. (See Attachment #3.)

Jeff Blow distributed a spreadsheet showing that based on the BCA evidence submitted, that using the PVvalue method of Grand List valuation the Town would be losing $14,908.72 per year over 20 years. His concern is that Novus knew in 2013 that the Solar Farm would be receiving some kind of tax reduction but did not share that it would be around 70%. So why are solar farms receiving such special treatment. JP Isabelle stated he felt the presentation of the spreadsheet is new evidence and is not comfortable with it. However, the consensus of the Board is that the valuation issue is with Legislature.

JP Isabelle moved to call the question. Chair Malone stated he was postponing that option until all members had an opportunity to speak to the issue, given its complexity; further noting several individuals had their hands up wanting to speak.

Mr. Walther stated his belief is that for sales purposes the value of the property is $2,229,900 and understand the State has discounted that value for Grand List purposes, or in essence gave the solar farm exemptions. Based on that information, Page 15, Second paragraph of the Tax Grievance Handbook (2009 edition) it states “A question of whether a property is tax exempt is a question of law. BCA assessment appeals are fundamentally concerned with determining the value NOT taxability of the property. BCAs do not have the jurisdiction to rule on the exemption issue and cites the Supreme Court Case (Subud of Woodstock, Inc. versus Town of Barnard).

He noted that during testimony the Attorney for Novus continually spoke to the taxability issue. Therefore, consistent with VT case law and the Tax handbook, the BCA should decline to rule in this case for lack of subject matter jurisdiction.

Jay Perkins called for a point of order and noted JP Isabelle had called the question and vote should be taken. A vote was taken and the motion passed with 6 voting yes and 5 voting no. Chair Malone raised his concern that he felt the motion was prematurely in that not everyone had an opportunity to speak on this complex issue.

A vote was taken on the original motion which was to reduce the value of Novus Barre Town Solar LLC to $552,200 as recommended by the Assessor. The original motion failed with 4 voting yes (J. Guy Isabelle, JP Isabelle, Jay Perkins, and Virginia Paplawski), 8 voting not (Jeff Blow, Pearl Bugbee, William Bugbee, Philip Kolling, Robert LaClair, Rolland Tessier, R. Lee Walther, and Sheila Walther), and 1 abstaining (Donna Kelty).

A motion was made by Sheila Walther, seconded by Jeff Blow to state that based on the Supreme Court ruling (Subud of Woodstock, Inc. versus Town of Barnard), this Board does not have the administrative authority to rule on the appeal of Novus Barre Town Solar LLC.
Discussion: BCA member Philip Kolling expressed his confusion over this issue - is discounted cash flow method a tax exemption and what is tax valuation versus taxability.

J. Guy Isabelle stated his concern is what the cost will be to the taxpayer to be a "poster child" for this law.

JP Isabelle stated he was not trying to shut down discussion on this issue earlier. He recognizes this is a big discussion which he does not think this Board can solve - it is issue is bigger than us. The BCA has an attorney opinion, which we pay, to look out for our best interest.

Lee Walther stated the opinion we received from the Town Attorney, in his opinion, "is categorically wrong. It is mistaken, erroneous, and it borders on legal malpractice. For him to advise this Town that the BCA must grant, another words he is telling the BCA what it must do, and how it must do it, even to the degree of suggesting to the Inspection Committee that they sit down with Mr. Levesque and go through confidential information. Mr. Levesque is not permitted under the law to share that information with anyone. Let alone an inspection committee. So our attorney, again, is wrong in his advice to the Town and further asked that it be stated for the record. Case law states this Board has no authority to rule on issues of "taxability."

Perhaps the Selectboard needs to reconsider their vote of the Error's & Omissions.

The motion passed with 10 voting yes (Jeff Blow, Pearl Bugbee, William Bugbee, J. Guy Isabelle, Philip Kolling, Robert LaClair, Virginia Poplawski, Rolland Tessier, R. Lee Walther, and Sheila Walther), 2 voting no (JP Isabelle and Jay Perkins), and 1 voting to abstain (Donna Kelty).

OTHER BUSINESS

The next meeting of the Board of Civil Authority is January 13, 2016, 6:30 p.m., in the Municipal Building, Selectboard meeting room to hear abatement requests.

Ask Clerk if any mailing sent out for this mailing. There was a mailing sent out through the USPS on October 8 for the meeting of October 14th. The packets never arrived so the Clerk had a trace placed on the mail bucket. Within 3 days of the request to the USPS the packets began arriving at BCA members doorstep/boxes with a postmark of October 8th.

Malone inquired about inability to access the Town email. The Walthers also had issues regarding certificate errors.

An inquiry was made as to whether or not we can have more than one phone call during a meeting. The Clerk stated the Town does have a polycom and would check into this and how to use it.

ADJOURN

On a motion by Rob LaClair, seconded by William Bugbee, the Tax Grievance Hearing was recessed at 7:34 p.m. to adjourn the Tax Grievance Hearings for Fiscal Year 2015-2016.

Donna J. Kelty, Town Clerk-Treasurer

B.C.A. Chair
BARRE TOWN BOARD OF CIVIL AUTHORITY REPRESENTATIVES

Attachment #1 - Oaths are on the next page.
I do solemnly swear (or affirm) that I will well and truly hear and determine all matters at issue between taxpayers and Assessor submitted for my decision. So help me God (or under the pains and penalties of Perjury).

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See next page for Attachment 2 – Attorney letter dated October 21, 2015
October 21, 2015

Barre Town Board of Civil Authority
c/o Donna Kelty, Town Clerk
dkelty@barretown.org

Re: Novus Solar

Dear Board Members:

I understand from Donna’s email of October 19, 2015, that the Board of Civil Authority (BCA) has several questions regarding the appeal of Novus Barre Town Solar, LLC. Following that email, here are my answers:

1. Please confirm whether or not the BCA has the legal authority to determine a property value on anything other than the fair market value approach?

   The BCA must determine the assessed value of the property. In most cases, that is the fair market value (FMV), and there are a number of approaches to determining FMV. The most common approach is the market data approach based on recent sales. For commercial property, the capitalization approach is often used because there may not be many comparable sales.

   There are several exceptions to the idea that the assessed value is equal to the fair market value, the most common of which is property enrolled in the “current use” program, which assesses property at its agricultural use value.

   In the case of solar arrays, the State has essentially enacted tax stabilization for solar arrays, by requiring that the assessed value be calculated using the “discounted cash flow” approach. Therefore, the BCA must determine the value of the Novus property using the discounted cash flow.

2. If we can value on other approaches, what is the correct procedure/report for the Inspection Committee to follow with regards to a solar farm (keeping in mind the BCA does not have access to the “tool/program” which can assist us with determining a value)?

   The BCA cannot use any approach other than discounted cash flow. I would suggest that the inspection team also meet with the Assessor to compare the data sheet provided by Novus with the data input to the pvvalue.com calculator, thereby “inspecting” the quality of the data and the resulting valuation.

3. In your letter dated October 13, 2015, it is stated that “the Town of Barre is required to set the assessment of the Novus solar system in accordance with the pvvalue.com numbers.” What
are the consequences to the Town of Barre if the BCA denies this request?

If the BCA sets the value using any system other than the pvalue.com calculations, I
would expect Novus to appeal the BCA decision to either the State Appraiser or Superior Court.
I would not be optimistic about the Town’s chances of success in defending that appeal.

4. Can the Selectboard reconsider their decision to deny the Assessor’s Error & Omission?

Under Robert’s Rules of Order, a Selectboard member who voted on the prevailing side
could move to reconsider. The Selectboard could then take up the matter again. As an
alternative, the Assessor could propose another Errors & Omissions change.

However, I would not recommend that the BCA “punt” this back to the Selectboard. To
do so cause the Town further expense in fighting an appeal to Superior Court. It also could
arguably be contrary to the BCA oath to “well and truly hear and determine all matters at issue
between taxpayers and listers submitted for my decision” 32 VSA §4405.

If you have any further questions, please feel free to give me a call.

Very truly yours,

Michael Monte
Barre Town Attorney

cc: Carl Rogers

SEE NEXT PAGE for Attachment #3 -
Lee Walther’s Testimony of October 28, 2015 regarding Novus Barre Town Solar LLC
BCA Hearing 10-28-15

RE: Novus/AES Appeal to Barre Town BCA dated 7/15/15

Reasons to Decline to Rule on Appeal / by BCA member R. Lee Walther

1. On 10-14-15, Town Assessor Joe Levesque testified before the BCA explaining his appearance during Open Meeting before the Barre Town Selectboard on 10-6-15. At that meeting he confirmed his change of appraisal of the subject “solar farm” from $4,250,000 to $2,220,900. That action occurred in “late June” 2015 as the result of Novus/AES’ timely filed Grievance. A notice of that decision was mailed to Novus/AES on 7-6-15 following which the Grand List was lodged with the town. In his written materials submitted to the Selectboard, Mr. Levesque confirmed that Novus/AES had “submitted their own value with supporting data which I accepted as a reasonable value for their personal property.” Thus, it is clear that both Novus/AES and Mr. Levesque were in full agreement with the currently assessed value of the subject property at: $2,220,900. Mr. Levesque punctuated his testimony by saying “that’s as fair as it can be.”

In further testimony, Mr. Levesque said that at some unspecified time after the Grand List was lodged, and tax bills issued, he and Novus/AES became aware of a different method for the valuation of Solar Farms as explained by the Vermont Dept. of Taxes in Technical Bulletin #TB-67, dated 6-24-13, and elsewhere. Mr. Levesque said “if I had only known that this was the manner in which the state wanted to value this kind of personal property I would have used this PVValue to value this Solar Farm.”

Admitting his ERROR, Mr. Levesque asked the Selectboard “to allow me to change the total appraised value of the Solar Farm from $2,220,900 to $582,245 for a reduction of $1,638,655 in the value of the property. This is a tremendous reduction in value but this is the way the State wants it.” Following discussion, the five member Selectboard voted 4 to 1 to DENY Mr. Levesque’s request.

Vermont law at 32 VSA §§261 states, in pertinent part, that “when personal property is omitted from the grand list by
mistake, or an obvious error is found, the listers, with the approval of the Selectboard (my emphasis), before December 31, may...correct such errors." (Also, see Sec. VIII, page 41 of the Listers Handbook.) Thus, Vermont law fully supports the authority of the Selectboard to make such determinations based on "error." Moreover, the NOVUS/AES appeal presently before the BCA, in effect, asks the BCA to overrule the decision of the Town Selectboard! There is no legal authority giving the BCA any such powers.

2. In his testimony before the BCA on 10-14-15, Mr. Levesque stated "only the Selectboard can make any changes to the Grand List after the Grievance period ends." The Grand List was lodged before NOVUS/AES wrote their appeal letter to the BCA, dated 7-15-15. We are hearing this Appeal to the BCA at this late date due to a paperwork mix-up in the assessor’s office—and on advice from the Town Attorney. However, it should not be forgotten that the basis for the Grievance filed with the Assessor in June, 2015 is different from the Appeal now pending before the BCA. The Grievance before the Assessor in June, 2015 was about valuation; the Appeal now before the BCA is about exemption and taxability.

3. In her testimony before the BCA on 10-14-15, Attorney Karen Tyler—representing Novus/AES—offered only arguments and evidence dealing with the taxability of her client’s solar farm, including multiple documents from the VT Dept. of Taxes, e.g. PV System Inventory Form that states: "...all information listed on the forms is not available to the public for inspection" (32 VSA §4009), and UCT Exemption Form (32 VSA §§8701). Clearly, these forms are only available to and intended for use by the Assessor; not the BCA! In his letter to the BCA dated 7-15-15, Novus CFO Phil Henson requested that the submitted VT Dept of Tax forms be utilized. There was no testimony, no “comparables” nor any other evidence submitted to the BCA challenging the currently agreed valuation of the subject property, namely: $2,220,900. Therefore, Novus/AES failed to meet its burden of proof, persuasion and production with regard to its property valuation.

Attachment 3 continued on next page.
4. Page 15 of the SOS Handbook for Property Assessment Appeals (2009 edition), paragraph two under “Exemptions:” reads as follows: “A question of whether a property is tax exempt is a question of law. BCA assessment appeals are fundamentally concerned with determining the value not the taxability of the property. BCAs do not have the jurisdiction to rule on the exemption issue and should – as the Barnard, VT BCA did in 1997 – decline to rule on the issue of taxability.”(see Subud, et al v. Town of Barnard, 169 Vt. 582 (1999). The Appeal presently before the BCA deals with the issue of taxability. Therefore, consistent with VT case law and SOS Handbook, the BCA should decline to rule in this case for lack of subject matter jurisdiction.

For all of these reasons, I will support a Motion that we \textit{DECLINE TO RULE} on the Appeal of Novus/AES and I urge my fellow BCA members to do likewise.

Respectfully,

R. Lee Walther, JP
Member, Barre Town BCA