

State of Vermont
County of Addison

Diana Bigelow, Mary Adams-Smith, Linda Andrews,)
Jessica Berry, Suzanne Boyle, Lynn H. Brown III,)
Sally Burrell, Gail Butz, Richard Butz, Rick Ceballos,)
Jonathan Chapin, Margaret Chatelin, Bunny Daubner,)
Valerie Dearing, Mollie German, David Gusakov,)
Patricia Heather-Lea, Melissa Hernandez, Patricia Hunt,)
Peg Kamens, Rebecca Kodis, Allison Lea, Alice Leeds,)
Daniel Lyons, Marcy Mayforth, James Mendell,)
Barbara Miles, Thomas Pollak, Debbie Ramsdell,)
Krista Siringo, Gary Smith, James Stapleton,)
Jennifer Vyhnak, James Vyhnak, Lauren Waite,)
Peter Waite, and Wendy Wilson)
)
)
v.)
)
The Town of Bristol, the Selectboard of the Town of) Docket No.143-8-18 Ancv
Bristol, and Vermont Gas Systems, Inc.)

**COMPLAINT FOR DECLARATORY RELIEF PURSUANT TO VERMONT RULE OF
CIVIL PROCEDURE 75**

Now come Diana Bigelow, Mary Adams-Smith, Linda Andrews, Jessica Berry, Suzanne Boyle, Lynn H. Brown III, Sally Burrell, Gail Butz, Richard Butz, Rick Ceballos, Jonathan Chapin, Margaret Chatelin, Bunny Daubner, Valerie Dearing, Mollie German, David Gusakov, Patricia Heather-Lea, Melissa Hernandez, Patricia Hunt, Peg Kamens, Rebecca Kodis, Allison Lea, Alice Leeds, Daniel Lyons, Marcy Mayforth, James Mendell, Barbara Miles, Thomas Pollak, Debbie Ramsdell, Krista Siringo, Gary Smith, James Stapleton, Jennifer Vyhnak, James Vyhnak, Lauren Waite, Peter Waite, and Wendy Wilson, by and through the Law Office of James A. Dumont, Esq., PC, and they allege as follows:

INTRODUCTION

1. Plaintiffs seek an order from this Honorable Court declaring that their rights under 24 V.S.A. § 1061(a) have been violated, and declaring void the easement described below until the statute has been complied with.

JURISDICTION

2. This Court has jurisdiction pursuant to V.R.C.P. 75, V.R.C.P. 57, 12 V.S.A. §§ 4711-

4715 and the court's common law and equitable powers, including but not limited to the Court's authority under the former writs of certiorari, prohibition or mandamus.

THE PARTIES

3. Diana Bigelow, Mary Adams-Smith, Linda Andrews, Jessica Berry, Suzanne Boyle, Lynn H. Brown III, Sally Burrell, Gail Butz, Richard Butz, Rick Ceballos, Jonathan Chapin, Margaret Chatelin, Bunny Daubner, Valerie Dearing, Mollie German, David Gusakov, Patricia Heather-Lea, Melissa Hernandez, Patricia Hunt, Peg Kamens, Rebecca Kodis, Allison Lea, Alice Leeds, Daniel Lyons, Marcy Mayforth, James Mendell, Barbara Miles, Thomas Pollak, Debbie Ramsdell, Krista Siringo, Gary Smith, James Stapleton, Jennifer Vyhnaak, James Vyhnaak, Lauren Waite, Peter Waite, and Wendy Wilson reside in Bristol, in Addison County, Vermont.
4. Some plaintiffs own residential property in Bristol; those who do not own property are tenants living in Bristol.
5. The Town of Bristol is a Vermont municipality.
6. Vermont Gas Systems, Inc., is a Vermont corporation in the business of providing natural gas to customers in Vermont. Its office is in South Burlington, Vermont.
7. Vermont Gas Systems, Inc., is joined as a necessary party pursuant to V.R.C.P. 19.

FACTUAL AND LEGAL ALLEGATIONS

8. Many Vermont Town Charters explicitly grant that town's Selectboard the authority to "convey real estate."
9. These Town charters generally do not separately list various types of interest in real estate, such as fee interest, easements, licenses or leases, that the Selectboard may convey.
10. However, the intent of these charters is clear – by granting the power to "convey real estate," the legislature has authorized each of these town Selectboards to convey any and all interests in real estate.
11. The Town of Bristol's Charter does not explicitly authorize the Selectboard to convey real estate.
12. The Town of Bristol's Charter does not explicitly authorize the Bristol Selectboard to convey licenses to use town real estate, or easements to use town real estate.

13. The Town of Bristol's Charter grants the Selectboard the powers of Selectboards under general law of Vermont.
14. Prior to 1994, 24 V.S.A. § 1061 authorized a Town's elected agent to "convey real estate."
15. The statute did not differentiate among fee interests, licenses, easements, leases or other forms of real estate interests. An elected agent had the authority to convey fee interests, licenses, easements or other real estate interests because the statute authorized town agents to "convey real estate."
16. Section 1061 was amended in 1994.
17. Section 1061, in subdivisions (a) and (b), now grants the Bristol Selectboard the authority to convey real estate -- but only on specified conditions. These subsections state:

“(a)(1) If the legislative body of a town or village desires to convey municipal real estate, the legislative body shall give notice of the terms of the proposed conveyance by posting a notice in at least three public places within the municipality, one of which shall be in or near the municipal clerk's office. Notice shall also be published in a newspaper of general circulation within the municipality. The posting and publication required by this subsection shall occur at least 30 days prior to the date of the proposed conveyance. Unless a petition is filed in accordance with subdivision (2) of this subsection, the legislative body may authorize the conveyance.

“(a)(2) If a petition signed by five percent of the legal voters of the municipality objecting to the proposed conveyance is presented to the municipal clerk within 30 days of the date of posting and publication of the notice required by subdivision (1) of this subsection, the legislative body shall cause the question of whether the municipality shall convey the real estate to be considered at a special or annual meeting called for that purpose. After the meeting, the real estate may be conveyed unless a majority of the voters of the municipality present and voting vote to disapprove of the conveyance.

“(b) As an alternative to the procedures set forth in subsection (a) of this section, the legislative body may elect to have the voters decide, at an annual or special meeting warned for that purpose, whether the real estate should be conveyed. If a majority of the voters of the municipality present and voting vote to approve the proposed conveyance, the real estate may be conveyed.”
18. If § 1061 does not apply to licenses and easements, there is no authority under the general law of Vermont for the Town of Bristol and its Selectboard to execute licenses and easements.
19. Vermont Gas Systems, Inc., has proposed to construct a gas distribution pipeline in highway

rights-of-way owned by the Town of Bristol.

20. Vermont Gas Systems, Inc., has proposed to do so pursuant to an agreement with the Town and its Selectboard. The agreement and its attached Exhibit are attached to this Complaint and incorporated herein. The agreement and Exhibit contemplate construction of the natural gas pipeline on every town road within the village of Bristol.
21. The agreement grants Vermont Gas Systems, Inc., the right to install its pipeline within Town-owned rights-of-way in perpetuity, together with the rights to excavate the rights of way, replace and repair the pipeline in the future, and related rights to use the rights of way, in perpetuity.
22. The Agreement is titled a "License Agreement."
23. The difference between a license to use land and an easement to use that land is that licenses are terminable, at any time, by either party.
24. The agreement between Vermont Gas Systems, Inc., and the Town of Bristol is not terminable by the Town.
25. The License Agreement is not a license.
26. The License Agreement is an easement.
27. Regardless of whether the License Agreement is a license or an easement, the Selectboard's authority to enter into the License Agreement is governed by 24 V.S.A. § 1061. Section 1061 provides the sole lawful procedure for entering into the License Agreement.
28. Natural gas distribution lines, if damaged by forces of nature, digging, or aging, can produce explosions with catastrophic effects on people and property.
29. Over 90 percent of fatal distribution line accidents, and over 70 percent of non-fatal accidents, are caused by third parties (such as contractors excavating other underground utilities), not because of errors by gas distribution companies.
30. Strict regulation of, and safe practices by, the gas company, therefore, cannot prevent these accidents.
31. Such accidents are common. The average number of gas distribution pipeline incidents per year (including both property damage incidents and death/injury incidents) varies from 170 to 124. This data pertains only to distribution lines, such as the proposed distribution line to Bristol. (Accidents involving transmission lines are calculated separately.)

32. Use of natural gas to heat homes is highly damaging to the climate.
33. The current scientific literature, by leading scientists in the world, estimates that burning natural gas to heat homes is 30 to 100 times more damaging to our atmosphere than burning oil to heat homes. This is because methane (natural gas is primarily methane) is an extremely potent greenhouse gas, and because a large amount of methane escapes into the atmosphere during extraction, processing, storage, transmission and distribution.
34. Gas distribution lines must be separated from water, sewer and other underground utilities for safety reasons. This complicates and, if not performed correctly, renders dangerous underground utility work that is otherwise routine, including connection of individual homes to water, sewer or other underground utilities, and repair of water, sewer and other underground utilities.
35. On information and belief, the proposed perpetual lease will diminish property values in Bristol.
36. On information and belief, many prospective homebuyers choose not to raise families next to natural gas lines.
37. On July 17, 2018, counsel for some of the plaintiffs submitted a letter to the Bristol Selectboard asking that the Selectboard either commence the notice process required by 24 V.S.A. § 1061(a), or set the matter for public vote under 24 V.S.A. § 1061(b), before executing the proposed “License Agreement.”
38. On July 23, 2018, the Bristol Selectboard voted to execute the License Agreement without commencing the notice process required by subsection (a), and without setting the matter for public vote under subsection (b). The License Agreement was executed after the vote.
39. Each plaintiff will be harmed if the proposed natural gas distribution line is constructed in Bristol.
40. Many of the plaintiffs reside on streets planned for construction of the pipeline.
41. All of the Plaintiffs will be exposed to increased risk of harm to themselves, their families and their properties, because of the proximity of their residence to the pipeline, because their daily activities bring them in proximity to the pipeline, and because of the risk to each of them from climate change.
42. All of the Plaintiffs also have suffered and will suffer from deprivation of the rights guaranteed to them by 24 V.S.A. § 1061 and by Vermont Constitution Chapter I, Articles 4, 6 and

20, if the License Agreement goes into effect without the opportunity to petition for a vote under subsection (a), or the opportunity to vote under subsection (b).

43. Each of the Plaintiffs has been and will be injured in fact by the actions of the Town and the Selectboard.
44. No remedy is available to Plaintiffs other than review by this Court pursuant to V.R.C.P. 75.
45. The Selectboard did not act in a quasi-judicial manner, and did not create a factual record for this Court to review.

REQUESTED RELIEF

46. Plaintiffs seek a declaratory ruling that the Selectboard's action has been in violation of 24 V.S.A. § 1061, and declaring the License Agreement void and unenforceable because of violation of 24 V.S.A. § 1061, pursuant to V.R.C.P. 75, V.R.C.P. 57, 12 V.S.A. §§ 4711-4715 and the court's common law and equitable powers, including but not limited to the Court's authority under the former writs of certiorari, prohibition or mandamus.

WHEREFORE the Plaintiffs ask that the Court declare that their rights under 24 V.S.A. § 1061 have been violated, and that the License Agreement is void and unenforceable.

Date: August 9, 2018
Amended: August 15, 2018

/s/ James A. Dumont
James A. Dumont, Esq.
Law Office of James A. Dumont, Esq., PC
PO Box 229
15 Main St.
Bristol VT 05443
dumont@gmavt.net
ecabinet registration: jdumont
(802) 453-7011