

Testimony of John D. Echeverria
Before the
Committee on Natural Resources, Fish & Wildlife
Vermont House of Representatives

March 28, 2018

Thank you for the opportunity to appear before the Committee today. I am a resident of Strafford, and a professor at Vermont Law School. I also am a member of the board of directors of the Alliance for Vermont Communities, a Vermont nonprofit organization strongly opposed to the proposed NewVistas project.

I understand other witnesses will address how the NewVistas project would conflict with Vermont land use law and policy and the serious threat the project poses to the historic character and sustainable resources of the towns of Royalton, Sharon, Strafford, and Tunbridge. I will focus on a separate issue – how the New Vistas Foundation and Mr. David Hall have apparently violated the laws of Vermont and Utah governing non-profit charitable organizations.

In brief, research conducted by two law firms representing the Alliance for Vermont Communities, one in Vermont and another in Utah, reveal that Mr. Hall caused the NewVistas Foundation, a nonprofit charitable organization created under Utah law, to transfer millions of dollars' worth of land in Vermont and Utah to two for-profit limited liability companies owned by Mr. Hall. Based on what we know, we believe these transactions violate the cardinal principle of public charity law that assets donated to a charity “are impressed with a public trust,” and must be “preserved for their proper charitable purpose.” Vt.Stat. Ann., tit. 18, § 9420(a).

A brief summary of the relevant facts will explain the basis for this claim. The NewVistas Foundation was formed as a Utah nonprofit corporation in March 2015. In 2016 and 2017, the foundation was registered to do business in the State of Vermont, meaning that the NewVistas Foundation was subject both to Utah and Vermont law. David Hall together with his wife and son are the directors of the

foundation. The foundation's Articles of Incorporation impose numerous restrictions on the foundation, perhaps the most important being that it was "organized exclusively for charitable, religious, educational, and scientific purposes."

In 2015, Mr. Hall donated approximately \$14,000,000 to the NewVistas Foundation. Because there is no evidence that this gift was conditional or otherwise restricted, this donation represented an irrevocable commitment of these assets to public charitable purposes. In 2015 and 2016, the NewVistas Foundation acquired over 20 parcels of land in Royalton, Sharon, Strafford, and Tunbridge at a price in excess of \$6,000,000. In 2016, the NewVistas Foundation purchased at least twelve properties in Provo, Utah. Both of these sets of purchases were reportedly made for the purpose of assembling sites for the construction of NewVistas communities.

In late 2016, the NewVistas Foundation transferred ownership of the Utah properties to DRH Holdings, a limited liability company owned by David Hall, and the foundation transferred ownership of the Vermont properties to Windsorage, another limited liability company owned by Mr. Hall. Vermont transfer tax returns indicate Mr. Hall paid the foundation no consideration for the Vermont properties, and we think it is fair to presume that he paid no consideration for the Utah properties as well. The foundation made the Vermont property transfer without, so far as we know, providing any notice to the Vermont Attorney General's Office,

These property transfers appear to violate the foundation's Articles of Incorporation and the laws governing nonprofit organizations in both Vermont and Utah. Most importantly, once a person makes a donation of money or other assets to a charity, these assets are permanently dedicated to charitable purposes. It is wrong for a person to use his power over a nonprofit organization to benefit himself personally. It is against the law (in both Utah and Vermont) for a nonprofit foundation to simply give away its charitable assets to one of its board members or any other private individual.

For example, the Vermont Community Foundation could not hand over any portion of the charitable assets it holds to some past donor to VCF because, say, the donor has decided to start a private business and she wants her money back.

Likewise, Middlebury College could not refund a donor's contribution because the donor's child has decided to go to a different college. A contribution to a charitable foundation is not like depositing money in your personal bank account. You can't use an ATM card to make withdrawals.

Why, one might ask, would Mr. Hall and the NewVistas Foundation make these property transfers? We think this is what happened: After the formation of the foundation, after the multi-million donations, and after the extensive land purchases, Mr. Hall was apparently told by the Internal Revenue Service that the foundation would not receive tax exempt status under federal law if the plan was for the foundation to use its lands to pursue commercial real estate development. After being told he could not pursue his development plans under a non-profit charitable flag, Mr. Hall apparently decided to transfer the real property to for-profit companies so he could proceed with his development scheme unimpeded by the rules and regulations governing a public charity.

Mr. Hall was recently quoted in a Valley News article as saying that these property transfers represent "a normal property transfer from one entity to another." The fundamental flaw in this viewpoint is that once the financial assets were donated to the foundation, they were no longer in any of Hall's personal pockets – they became public assets dedicated to charitable purposes. Once the foundation used the funds to buy real estate, the real estate (and any gain subsequently derived from the sale of the real estate) had to continue to serve legitimate charitable purposes. The law bars David Hall from picking the pocket of a charitable foundation, especially one he originally helped create, to pursue his own personal commercial business venture.

Why should Vermonters care about all this? They should care first of all because the NewVistas-Foundation-to-Hall transfers effectively represent a looting of valuable public assets from the public. Creators of charities often retain a considerable degree of control over how funds they devote to charity are spent, but ultimately the assets have to be used for public, charitable purposes. Mr. Hall can maintain control of a charitable foundation he helped to create, but he is not allowed to use the foundation's assets for his own personal profit.

Second, if these illegal property transfers were allowed to stay in place, it would set a destructive precedent for Vermont. It would signal to nonprofit organizations, private foundations and other charities that they could with impunity divert to private individuals and private firms money and other assets that are, by law, dedicated exclusively to charitable purposes.

Third, Vermonters have a deep and abiding interest in ensuring that the rule of law is upheld, in the non-profit sector as well as in the for-profit entities. This interest deserves particular respect when the law is flouted by the most wealthy and powerful in our society.

The attorneys for the Alliance for Vermont Communities have communicated the products of their research to the offices of the Attorney General in both Vermont and Utah. We understand those offices are looking into the matter. We encourage those offices to continue to pursue the matter and to take appropriate enforcement action. We also urge the Committee to consider whether it may be appropriate to amend the proposed resolution to address the apparent violations of Vermont law by Mr. Hall and the NewVistas Foundation.

Thank you again for the opportunity to testify.