May 30, 2023

VIA EMAIL ONLY

Jason Pezzullo
Planning Director
Cranston Planning Department
869 Park Avenue
Cranston, RI 02910
jpezzullo@cranstonri.org

Re: Natick Ave. Solar Master Plan Application

Dear Mr. Pezzullo:

I write with regards to the above-referenced master plan application dated November 9, 2018 and for the purpose of responding to the legal and other concerns raised through public comment during the April 19, 2023 Plan Commission meeting. During that meeting, Attorney Dougherty lamented that his clients' lives, homes and futures "are going to be completely destroyed as a result of this project" and Natick Solar understands that the Commission will want additional information to be assured that this solar project will not *destroy* the lives, homes and futures of the abutters and their families. Unfortunately, it seems that Attorney Dougherty and his clients are unlikely to find value in these responses as Attorney Dougherty has already insisted that Natick Solar and its representatives (including, presumably, the undersigned) are "not to be trusted" and that there is "a special place in hell for this project."[1] However, to the extent that the Commission is interested in additional information, I wanted to comprehensively address many of the concerns that were raised by the public during the April 19, 2023 meeting. I will also provide some closing remarks during the next Plan Commission meeting on June 6, 2023 and make myself available to answer any questions that the Plan Commission may have. I would respectfully request that this correspondence be added to the record and be forwarded to the members of the Plan Commission.

1. The Application is entirely consistent with the City's Comprehensive Plan.

Obviously, one critical finding that the Plan Commission must make under R.I. Gen. Laws § 45-23-60 is that "[t]he proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies." Pursuant to the applicable zoning ordinance under which this application is vested, solar is a by-right, permitted use in the A-80 zone. In 2017, the City completed a Comprehensive Plan amendment

[1] 4/19/2023 TR at 147:10-11; 149:9-10.

117 Metro Center Blvd., Ste 1007
Warwick, RI 02886

revityenergy.com

Nicholas L. Nybo
Senior Legal Counsel
C: 508-269-6433
E: nick@revityenergy.com

(Ordinance 01-17-11 "Solar Performance Standards") to expressly provide for the liberal siting of renewable energy.

> Specifically, the Amendment provides as follows:
>
> Under *Key Strategies*, add:
>
> *Renewable Energy Production and Consumption*
>
> Cranston should actively encourage the availability of and implementation of energy infrastructure throughout the City. For example, **the Zoning Ordinance should permit the development of renewable energy production facilities in appropriate areas, including, without limitation, in the A-80, M-1, M-2 and S-1 zoning districts**, and should promote the development of multiple renewable energy production facilities within the City. Development of such renewable energy production facilities can advance the City's goals of developing the City's economic resources while limiting the impact of development on surrounding areas and on municipal services. Such developments also further the City's low-impact and green development objectives by improving air quality and reducing reliance on traditional energy sources.[2]

(Emphasis supplied). It can hardly be denied that siting a renewable energy system in the A-80 zone is consistent with that bolded language and so, instead of advancing such a denial, Attorney Dougherty argues that the 2017 Amendments are legally ineffective because Cranston's Comprehensive Plan is expired and those Amendments were not accepted by the Division of Statewide Planning. More specifically, Paige Bronk, Attorney Dougherty's planning expert, contends, in his January 26, 2023 Report, that "[t]he passage of the 2017 Amendment does not supersede the legal precedence held by the full 2010 Comprehensive Plan document. In actuality,

[2] Attorney Dougherty's planning expert, Paige Bronk claims confusion with respect to the emphasized language insofar as it says that renewable energy facilities should be permitted in appropriate areas "including, without limitation, in the A-80, M-1, M-2, and S-1 zoning districts." Mr. Bronk says that "[i]f the term 'without limitation' was intended to offer an outright approval, then this proposed project would not be expected to submit any plans for City Plan Commission review and approval." Bronk Report at p. 11. Mr. Bronk continues that "[t]he term 'without limitation' is not commonly found in planning or land development documents" and "is vague and offers no clarity as to context or meaning" because "it is unclear as to whether the legislative intent was to supersede all other zoning and land development requirements or to be applied merely to certain standards." Bronk Report at p. 11. "Including, without limitation" is a fairly common phrase intended to indicate that a non-exhaustive list will follow. *See Antonin Scalia & Bryan Garner*, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 199, 203-2015 (2012). Accordingly, the intent of the language is not to remove any planning review over these projects but merely to indicate that there may be other zones, beyond those expressly enumerated, where solar would be appropriate. Stated differently, solar in the A-80, M-1, M-2 and S-1 districts is definitely appropriate, but there may be other districts in which it is also appropriate.

the 2010 Plan holds more weight than the 2017 Amendment especially due to the issues raised by RI Statewide Planning specific to the Solar Amendment." Bronk Report at p. 6.

First, Mr. Bronk's opinion regarding the effect of Statewide Planning Division's rejection of the 2017 Amendment is incorrect as a matter of state law. R.I. Gen. Laws § 45-22.2-8(b)(2) states that "[a] comprehensive plan is adopted, **for the purpose of conforming municipal land use decisions** and for the purpose of being transmitted to the chief for state review, when it has been incorporated by reference into the municipal code of ordinances by the legislative body of the municipality" but that "[t]he comprehensive plan of a municipality shall not take effect for purposes of guiding state agency actions until approved by the chief or the Rhode Island superior court."[3] Statewide Planning's rejection of the 2017 Comprehensive Plan Amendments simply means that the Amendments have no effect for the purposes of state agency actions but they remain fully effective for the purposes of municipal planning. Rhode Island law could not be clearer on this point.

Second, even if Mr. Bronk's opinion was not directly contradicted by state law, it would still lack any internal consistency. If the 2010 Comprehensive Plan is expired and the 2017 Amendments are legally ineffective, how can the Plan Commission review any project for consistency with the comprehensive plan? Commissioner Coupe asked Mr. Bronk this very question during the March 20, 2023 meeting and Mr. Bronk's explanation was even more convoluted than his original opinion:

> MR. COUPE: Okay. And I -- not that it matters for this question, but the commission and the planning staff are working on a new Comp. Plan; but in the meantime, it's your professional opinion that we cannot make any amendments to our Comp. Plan?
>
> MR. BRONK: It's my position that the State likely will not approve them.
>
> MR. COUPE: And without State approval, we cannot act, is that your opinion?
>
> MR. BRONK: No, it's not my opinion.
>
> MR. COUPE: Okay. So your opinion is we can act without State approval?
>
> MR. BRONK: I can't govern this commission. So --
>
> MR. COUPE: On planning -- but you're an expert on Rhode Island planning; and as an expert on Rhode Island planning, if this commission wanted to make an amendment to our Comp. Plan, are we entitled to do that?

[3] (Emphasis supplied); *See also Siciliano v. Exeter Bd. of Review*, 2006 WL 557148, *3 (R.I. Super. Ct. Mar. 2, 2006) (Rubine, J.) ("The Town adopted the Comprehensive Plan in 1994, with regard to municipal land use decisions; however, such plan did not 'take effect for purposes of guiding state agency actions until approved by the director,' in 2004. Therefore, at the time the Planning Board denied the appellant's application, **an adopted comprehensive plan was in effect for purpose of guiding the actions of the Planning Board, even if not effective for the purpose of guiding state agency actions.**") (emphasis supplied).

> MR. BRONK: I think that the commission can study, analyze, develop plans, make amendment at their will. Really, the question comes down to the legality of it.[4]

Mr. Bronk has not been bashful on opining on issues of legality: "The passage of the 2017 Amendment does not supersede the legal precedence held by the full 2010 Comprehensive Plan document. In actuality, the 2010 Plan holds more weight than the 2017 Amendment especially due to the issues raised by RI Statewide Planning specific to the Solar Amendment." Bronk Report at p. 6. Twelve municipalities in Rhode Island currently have expired or denied comprehensive plans, some of which have been expired for decades.[5] Mr. Bronk's opinion is that nearly one-third of the communities in this State cannot conduct their respective municipal planning procedures. It is an illogical opinion and is, as a matter of law, wrong.

Third, even if the 2017 Comprehensive Plan Amendments were not effective (which they are), Justice Richard Licht issued a Decision in December of 2017 upholding the Plan Commission's approval of a solar facility on Hope Road (in the A-80 zone) under the 2010 Comprehensive Plan (docketed as *United States Investment & Development Corporation v. Platting Board of Review of Cranston,* PC-2016-5739) concluding as follows:

> As such, the decision of the Plan Commission that the proposed use of the parcel for solar power was consistent with the Comprehensive Plan was not clear error. Instead, the Plan Commission's decision was supported by the great weight of the competent evidence in the record. *See Kirby*, 634 A.2d at 290. **The testimony of Mr. Lapolla before the Plan Commission demonstrated that the solar farm was consistent with the comprehensive plan; namely, that the use as a solar farm is allowed in Zone A-80 and is less intense and more passive than the previously approved thirty-one lot residential subdivision.** The Plan Commission was presented with no evidence to the contrary. *See Lett v. Caromile*, 510 A.2d 958, 959 (R.I. 1986). Therefore, the Platting Board properly found that the decision of the Plan Commission was not clear error.

Exhibit G to Planning Director's February 3, 2023 Memo (emphasis supplied). Attorney Dougherty argued, during the April 19 meeting, that "it's intellectually dishonest, if not completely dishonest to hold this decision out in supporting the fact that this project is consistent with the Comprehensive Plan and that the ordinance -- the solar ordinance is consistent with the comprehensive plan. * * * I don't think you should sit there and be spoon fed this garbage because that's all this case is worth."[6]

---

[4] 3/20/2023 TR at 131:21-132:19.

[5] https://planning.ri.gov/planning-areas/local-comprehensive-planning/comprehensive-plans-and-state-approval-status

[6] TR at 141:12-17; 142:5-7.

Natick Solar does not agree with Attorney Dougherty that Justice Licht's legal decision is "garbage"; the Decision was based, in part, on the October 16, 2017 Affidavit of Peter Lapolla in which Mr. Lapolla stated, under oath, as follows:

> 6. Neither the future land-use map nor the various elements of the Comprehensive Plan specify what specific uses will be appropriate within any given area. For example, nowhere in the Comprehensive Plan does it say that uses such as residential homes are the exclusive use intended for the A-80 area. Such a schedule of uses is a function of the zoning ordinance, and not the Comprehensive Plan. In fact, there are a number of other uses permitted in the A-80 zone other than single-family residential, such as a family day care, bed and breakfasts, cemeteries, schools, cultural centers, hospitals, public safety facilities, religious worship centers, golf courses, open space areas, membership clubs, agricultural operations, animal grooming services, kennels, landscaping and tree services, veterinarian hospitals and clinics, and telecommunications towers and facilities.
>
> * * *
>
> 11. Solar power consists of the installation of nonpermanent structures which are removable. Upon installation, the use of the land is largely passive and unobtrusive. Solar power installations may be viewed as a form of land management or preservation which may assist in preserving a particular site's agricultural or historic features. Contrarily, large scale residential subdivisions (which are permitted in the A-80 zone) are sprawling in nature; intrusive; permanent and create negative effects to local agricultural; historic, scenic, wildlife, and environmental features. Solar power is removable, passive, less sprawling, environmentally safe and non-intrusive to sensitive areas.

Exhibit F to Planning Director's February 3, 2023 Memo. Attorney Dougherty claims that Mr. LaPolla's sworn testimony was "fraught with error."[7] However, it is Mr. Bronk's current analysis that is fraught with error and his thoughts do not meaningfully rebut the conclusions of the current planning director, the former planning director, a Superior Court Justice and this very Plan Commission that solar in the A-80 zone is consistent with the Comprehensive Plan.

This Plan Commission has found, on two occasions (February 5, 2019 master plan approval and the April 13, 2021 preliminary plan approval), that the solar development proposed through this application is consistent with the Comprehensive Plan. In the original Master Plan Approval, the Plan Commission found as follows: "Land Use, Economic Development and Natural Resources Elements were all amended to include encouragement of renewable energy facilities" and "[t]he project is consistent with the City's long-term land banking strategy which is intended to preserve the rural character of western Cranston." In the Preliminary Plan approval, the Plan

[7] 4/19/2023 TR at 142:19-23.

Commission again found that "the proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies." Attorney Dougherty contends that the Plan Commission cannot consider its previous determinations in Natick Solar's prior approvals:

> I think this whole proceeding is tainted, prejudicial, and improper because we were on a remand order, okay. What you have seen staff do here is flood the proceedings before you with things that happened well after the master plan. You've been faced with decisions on the preliminary and also the final plan approvals. Those are totally impermissible to be brought before you and it tainted these proceedings by looking at this as if it's a fait accompli and that you don't have any choice other than to go forward and adopt this thing and get it through because this is the last one.[8]

This Plan Commission's prior legal determinations (determinations that were affirmed by the Platting Board and were left untouched by the Superior Court) are certainly relevant in these remand proceedings. Both the Applicant and the Objectors have hired experts who have opined differently about consistency with the comprehensive plan—but every person who is not compensated by one of the interested parties and has looked at solar use in the A-80 zone (from the current town planner, to the former town planner, to Justice Licht, to this Plan Commission) have all determined that such use is consistent with the Comprehensive Plan. Those past determinations are relevant to the Commission's analysis. Natick Solar has never claimed that this review is a *fait accompli* but certainly, if the Plan Commission is going to reverse its past legal conclusions, there must be some material change in circumstances that justifies reversal.

2. The Application is vested under the prior Solar Zoning Ordinance.

The Applicant's master plan application was filed on November 13, 2018 and the City Planning Department issued a certificate of completeness on December 5, 2018. R.I. Gen. Laws § 45-24-44 and Section 17.04.050 of the Cranston Zoning Ordinances provides for legal vesting under existing zoning ordinances at the moment a certificate of completion is issued.[9] "[I]n the

[8] 4/19/2023 TR at 143:3-15.

[9] R.I. Gen. Laws § 45-24-44 provides as follows:

> (a) A zoning ordinance provides protection for the consideration of applications for development that are substantially complete and have been submitted for approval to the appropriate review agency in the city or town prior to enactment of the new zoning ordinance or amendment.
> (b) Zoning ordinances or other land development ordinances or regulations specify the minimum requirements for a development application to be substantially complete for the purposes if this section.

zoning context, it is well-settled that a substantially complete application is reviewed under the law at the time of filing." *Riesman v. CRMC*, 2005 WL 3074143, *11 (R.I. Super. Ct. Nov. 16, 2005). "[T]he Legislature designed the statute to shield an applicant from changes to a regulation that would result in detrimental treatment of the application." *Wasserman v. Town of Glocester*, 2002 WL 32334823, *6 (R.I. Super. Ct. Dec. 17, 2002). "This statute creates vested rights in an applicant to have its zoning application considered under the ordinance in effect at the time of submission of the application, as long as the application is substantially complete before any change in the ordinance." *R.V.S. Associates, Inc. v. City of Providence Zoning Board of Review*, 2001 WL 1643801, *4 (R.I. Super. Ct. Dec. 13, 2001).

Attorney Dougherty has repeatedly and uniformly stated throughout this permitting process that Natick Solar's application is vested under the erstwhile solar ordinance. During the December 4, 2018 master plan meeting, Attorney Dougherty stated that "[i]f you look at what they're doing here, and as you well know, I mean, you've had countless numbers of applications that you've taken under consideration in your years of service to the city here, once a master plan approval is granted, the applicant has a vested right * * *."[10] During the January 8, 2019 master plan meeting, Attorney Dougherty reiterated that "[t]his application is vested -- has vested rights to be reviewed in the absence of a moratorium * * *."[11] During the May 8, 2019 master plan meeting, Attorney

---

> (c) Any application considered by a city or town under the protection of this section shall be reviewed according to the regulations applicable in the zoning ordinance in force at the time the application was submitted.
> (d) If an application for development under the provisions of this section is approved, reasonable time limits shall be set within which development of the property must begin and within which development must be substantially completed.

Section 17.04.050 of the Cranston Zoning Ordinances provides as follows:

> An applicant shall be vested and an application shall be deemed substantially complete for the purposes of this chapter, subject to the following:
>
> > A. Development Note Requiring Zoning Board Approval. Where no zoning board approval is required, an applicant is vested when the building inspector certifies that the application (for a building permit) is complete. The applicant is vested under the zoning ordinance and regulations in effect at the time of the certification, not on the date of the application.
> > B. Development Requiring Zoning Board Approval. Where zoning board approval is required, an applicant is vested when the building inspector certifies that the application is complete.
>
> The applicant is vested under the zoning ordinance and regulations in effect at the time of the certification, not on the date of application.

[10] 12/4/2018 TR at 78:7-13.
[11] 1/8/2019 TR at 78:23-25.

Dougherty said yet again that "an approval of a master plan gives that applicant a vested right to develop that -- that concept."[12]

During the January 5, 2021 preliminary plan meeting, Attorney Dougherty said "[r]emember, they're going to get vested rights in the preliminary plan."[13] During the March 2, 2021 preliminary plan meeting, Attorney Dougherty reiterated that "they are entitled to their vested rights under their old application at this time, and we're stuck with that."[14] During the August 11, 2021 preliminary plan hearing, Attorney Dougherty expounded as follows:

> But what the important thing is here is if you are to reverse and deny the preliminary plan approval, **that's not going to kill this project. It's not. They still have a vested master plan.** They still have the ability to go back and seek to re-file applications under their own ordinance in order to fully comply. * * * And, again, I thank the city council for finally seeing their way through to getting rid of that ordinance and not – and tightening up the standards. **Unfortunately, we're dealing with his one development now that's left for review with vested rights.**[15]

After the Plan Commission approved Natick Solar's preliminary plan (and the Platting Board affirmed that approval), the Objectors took an appeal to the Rhode Island Superior Court, docketed as *Daniel Zevon, et al. v. Carl Swanson, et al.*, PC-2021-06995. In that litigation, Attorney Dougherty filed a Memorandum on July 6, 2022 representing to the Court that "[t]he developer unwisely choose to proceed forward with seeking preliminary plan and final plan approval, despite the fact that its rights under the master plan were vested and then extended yet again, upon their own request for such extension." Attorney Dougherty's position throughout this planning process has been that the Applicant has vested rights under the predecessor solar ordinance. *Until now*.

Now, Attorney Dougherty argues that this Application is not vested:

> I don't think they have vested rights anymore and I'm really looking forward to – well, actually, what I'd like to do is put a stake through the heart of this project and deny it right now because it doesn't belong there. But if not, I'm looking forward to bringing these issues up before the Superior Court because I think there's been prejudicial error. I think the application is significantly and materially changed in all respects, and I think that this is -- this is one that's for the books on how not to do things.[16]

[12] 5/8/2019 TR at 21:1-3.
[13] 1/5/2021 TR at 118:2-3.
[14] 3/2/2021 TR at 108:16-29.
[15] 8/11/2021 TR at 11:23-12:4, 17:16-21 (emphases supplied).
[16] 4/19/2023 TR at 145:23-146:9.

Attorney Dougherty contends that there have been changes made to the project since the Master Plan Application in 2018. He is correct. Attorney Dougherty contends that, because of those changes, Natick Solar's application is no longer vested. He is incorrect. The whole purpose of the tripartite planning process is to allow the applicant to make changes to its original proposal to satisfy concerns of the public and/or the planning commission. Indeed, the substantial majority of the changes were made to address the concerns of the Objectors and/or the Plan Commission. The Plan Commission ordered Natick Solar to participate in an ad hoc committee process (with the abutters) for the express purpose of making changes in hopes of resolving the abutters' concerns. But, if an applicant loses its vested rights upon adopting any changes (regardless of how minor) during the planning process, there will be a strong legal incentive for applicants to stubbornly refuse to make any changes from the original proposal. Applicants should be encouraged to listen to the public and the planning commission and adopt reasonable revisions proposed to allay concerns raised during the process. Attorney Dougherty's new position on vesting would have the opposite effect.

Lastly, one member of the public cited a 2018 decision issued by Judge Van Couyghen overturning an approval of a solar development in Portsmouth:

> And in Portsmouth, the two abutters appealed -- sorry, I'm getting carried away -- abutters appealed to Superior Court after the city went forward with a 2.9 megawatt solar project in a residential area. The court concluded that the zoning board exceeded its statutory authority when it declared that a solar facility was permissible in a residential area. The judge ruled that the solar array is most similar to a manufacturing facility because it transforms sunlight into electricity. Manufacturing is expressly prohibited in residential areas.[17]

Judge Van Couyghen's decision in *Fontaine v. Edwards,* NC-2017-0261 (R.I. Super. Ct. July 27, 2018) overturning the approval of the solar installation was based on the fact that "[i]t is undisputed that the Ordinance at issue in this case does not provide for photovoltaic systems in its Table of Use Regulations" and that the zoning board erred in analogizing a solar facility to a public utility (which was permitted in the residential zone) when the more appropriate analogy was to a manufacturing facility (which was not permitted in a residential zone). This matter is much different (and much easier) because, unlike the Portsmouth ordinance, Cranston's applicable zoning ordinance expressly provides that solar is a by-right permitted use in the A-80 zone. There is no need for analogy to other uses or surmise about what the City Council intended—the intent of the applicable ordinance is clear.

[17] 4/19/2023 TR 91:22-92:9.

3. The Applicant has complied with the Development Plan Review standards and received approval from the Development Plan Review Committee.

Attorney Dougherty next suggests that Natick Solar has failed to comply with various Development Plan Review ("DPR") standards. The Applicant received unanimous approval for this project from the Development Plan Review Committee on November 19, 2020. Even if the Applicant had not yet received DPRC approval, under Section 17.84.010 of the Cranston Zoning Ordinances, the DPR standards "shall not be used to deny any use allowed by right as established by zoning." Nevertheless, the Applicant has complied with the cited standards of the DPR provisions. Attorney Dougherty contends that the Applicant has not complied with Section 17.84.140 of the Cranston Zoning Ordinances which requires that "[a] minimum of fifteen (15) percent of a development's parcel shall be landscaped." The City's Subdivision Regulations state that "[l]andscaping may include plant materials such as trees, ground covers, grass, flowers, etc., but may also include other materials such as rocks, wetlands, stone walls, pacing materials, planters, signage and street furniture." With the exception of the roadway being built on the site, the entire parcel will remain landscaped per the City's definition under the Subdivision Regulations.

Attorney Dougherty also claims that Natick Solar's "own landscape expert admitting that they can't buffer to the south or to the west because it would limit the production of the solar field by covering it with shade."[18] Natick Solar's plans provide buffers along the entire project—the plans do not provide *vegetated* buffers along the entire project; however, the City's zoning ordinances do not require vegetated buffers along the entire project. Section 17.84.140(C)(6)(a) only requires vegetated buffers where necessary to "[s]hield abutting properties from negative impacts from a development"; to "[s]hield a development from negative impacts from abutting properties"; or to "[m]iminize the impacts from storm water runoff and flooding." Natick Solar's landscaping plans provide for tree-line buffers to shield the view corridors of abutting neighbors within seven hundred feet (700 ft.) of the project. The buffers meet the development plan standards.

4. The Master Plan Application does not violate the City's Zoning Ordinances or Subdivision Regulations by combining the two lots for the project site.

Attorney Dougherty next argues that Natick Solar and Planning Department are improperly considering the leased area as one parcel and ignoring the entirety of the parcels.[19] The Planning Department's February 3, 2023 Memo (at page 5) describes the site as follows:

> The site is zoned A-80 (single family dwellings on lots of minimum areas of 80,000 ft2). The two lots that comprise the total site (AP 22-3, Lots 108 & 119) are combined for zoning purposes per City Code Section 17.88.010. The majority of the parcels surrounding the property are also zoned A-80, though there are abutting

[18] 4/19/2023 TR at 146:23-147:3.
[19] 4/19/2023 TR at 134:18-135:5.

> A-20 lots off of Ridgewood Road to the north of the site towards its northwestern corner.

Section 17.88.010(B)(1) of the Cranston Zoning Ordinances states that "[i]f one or more contiguous substandard lots of record are owned by the same person or entity as of January 1, 1966 * * * such lots shall be considered to be combined to form conforming lots * * *." Plat 22-3, Lots 108 and 119 have been jointly owned since, at least, May 7, 1962. Section 17.88.010(A) defines a "substandard lot of record" as "a lot which does not satisfy one or more dimensional requirements set forth in Section 17.20.120, but which was shown on a plat or deed recorded prior to January 1, 1966 or an approved plat recorded after January 1, 1966 which has otherwise been legally created and which has not been altered to become more nonconforming since its creation, except by approval of the city plan commission." Lot 119 is a substandard lot because it has no frontage.

Notably, this is the same argument that the Objectors made during their appeals of the Preliminary Plan and Final Plan Approvals to the City's Zoning Board. In his August 10, 2021 Appeal Memorandum in Opposition to Preliminary Plan Approval, Attorney Dougherty argued that "[t]he review and approval improperly did not consider the lots involved on the whole and instead treated the project area as if it were a separate distinct parcel or lot of land." On October 26, 2021, the Cranston Zoning Board of Review sitting as the Platting Board of Review, denied the Objectors' Preliminary Plan appeal and rejected the Objectors' argument regarding improper consideration of lots. In his February 2, 2022 Appeal of the January 14, 2022 Final Decision Letter, Attorney Dougherty again argued that "[t]he review and approval improperly did not consider the lots involved on the whole and instead treated the project area as if it were a separate distinct parcel or lot of land." On May 16, 2022, the Cranston Zoning Board of Review sitting as the Platting Board of Review, denied the Objectors' Final Plan appeal and again rejected the Objectors' argument regarding improper consideration of lots.[20]

Attorney Dougherty also made an argument during the April 19 meeting that Natick Solar has been shielding the Plan Commission from the other uses that Mr. Rossi has been making of portions of his property pre-dating this application. Attorney Dougherty claimed that "[t]here's all sorts of different activities that are going on that you haven't even heard of and you need to in order to review this development plan" and that "this is evidence that you're not being told the whole story, and you're not being given the true picture of what the development plan is for this property, this parcel."[21] It is entirely unclear why Mr. Rossi's other uses of his land would be relevant to the merits of Natick Solar's application. Nevertheless, there has been no secret made regarding Mr. Rossi's pre-existing land uses. The February 3, 2023 Planning Department Memo

[20] The Objectors filed appeals of both decisions of Cranston Zoning Board of Review sitting as the Platting Board of Review rejecting the Preliminary Plan and Final Plan appeals to the Rhode Island Superior Court (docketed as *Daniel Zevon, et al. v. Ronald Rossi, et al.*, PC-2021-06995 (preliminary plan appeal) and *Daniel Zevon, et al. v. Ronald Rossi, et al.*, PC-2022-03502 (final plan appeal)). In light of Judge Vogel's decision in *Daniel Zevon, et al. v. Ronald Rossi, et al.*, PC-2019-6129, the preliminary plan and final plan appeals have not proceeded to decisions.

[21] 4/19/2023 TR at 136:10-18.

states that the "site has existing structures as part of the **existing** agricultural activity (Christmas tree farm/hayfield/woodland) which is proposed to remain separate from the proposed solar project." (Emphasis supplied) The original February 11, 2019 Master Plan Approval recognized the same: "The proposed solar and **existing** agricultural uses are permitted uses by-right in the A-80 zone." (Emphasis supplied). The April 13, 2021 Preliminary Plan Approvals reiterated that "[t]he application is vested to the City Code in effect at the time the Master Plan application was certified complete" and that "[t]he proposed solar and **existing** agricultural uses were permitted uses by-right in the A-80 zone at the time the Master Plan was certified complete." (Emphasis supplied). Accordingly, even if Mr. Rossi's other by-right uses of the property were relevant, the Plan Commission has been expressly advised of these uses.

5. Blasting does not pose a threat to wells near the Site.

During the April 19, 2023 meeting, there were some concerns raised by members of the public regarding the impact of blasting on wells. Research shows that septic systems and wells can withstand greater blasting vibrations than residential foundations and utility lines and, accordingly, the standards required to protect homes and utility lines protect (*a fortiori*) septic systems and wells. The Tennessee Gas Pipeline limits blasting vibrations to 4 inches per second (in/s) (to protect the pipeline) and the generally applicable regulations limit blasting vibrations to 2 in/s (to protect foundations). The studies conducted of blasting near residential wells have revealed no evidence of structural damage to residential wells at blasting levels up to 25 in/s.[22] "Based on the studies * * *, it is difficult to conceive of a situation where 2 in/s would not be a conservative safe-level criteria for water wells, utilities, and similar structures."[23] Furthermore, Maine Blasting does not use explosives containing perchlorates and so there are no concerns regarding chemical leaching in wells.

Lastly, Natick Solar has been informed that, following the April 19 meeting, certain members of the public contacted federal authorities and Kinder Morgan to raise their concerns with the proposed blasting at the site. The federal authorities deferred to Kinder Morgan and Kinder Morgan contacted Mr. Rossi to inform him that Kinder Morgan would stake the pipeline but that, provided its guidelines and notice provisions were properly observed, Kinder Morgan had no concerns with the blasting. Indeed, Kinder Morgan stated that it preferred solar development over residential development in terms of burdens on the pipeline. While the concerns raised by the public regarding blasting near the pipeline are understandable, all of the expert evidence presented shows that there are no science-based reasons to reject the Applicant's proposed blasting work.

[22] David E. Siskind, Ph.D, VIBRATIONS FROM BLASTING at 68 (2000) ("Maximum vibrations ranged from 0.84 to 5.44 in/s, and four of the five sites exceeded 2 in/s. There were no physical vibration effects on the wells even as close as 300 ft. * * * Vibration measurements for wells close to but not within the pattern were up to 8.7 in/s at a distance of 31 ft. No damages were noted.").
[23] VIBRATIONS FROM BLASTING at 68.

6. The Applicant received an Insignificant Alteration Permit from the Rhode Island Department of Environmental Management.

During the April 19 meeting, one member of the public raised concerns that "DEM's guidelines tell us clearly that this project is not a good fit for the environment or the people in this area and my hope is that we listen."[24] Other members of the public raised concerns about RIDEM permitting for this project. On December 6, 2019, RIDEM issued the Applicant an Insignificant Alteration Permit which stated that the project may be permitted as an insignificant alteration to freshwater wetlands under the RIDEM's Rules and Regulations Governing Administration and Enforcement of the Fresh Water Wetlands Act. The Permit is in the record. The Permit requires the Applicant to install temporary erosion and sediment controls which "shall be properly maintained, replaced, supplemented, or modified as necessary throughout the life of this project to minimize soil erosion and to prevent sediment from being deposited in any wetlands not subject to disturbance under this permit." To support the Permit, the Applicant filed with the RIDEM the April 30, 2019 "Stormwater System Operation and Maintenance Plan, Natick Avenue Solar, Cranston, RI, Applicant: Ronald Rossi" with which the RIDEM ordered compliance. The Applicant has complied with the applicable RIDEM wetlands standards.

7. Environmental and Health Concerns of PSES Facilities.

During the April 19 meeting, there were myriad environmental and health concerns raised regarding utility scale solar facilities. First, there were concerns raised about electromagnetic hypersensitivity as a result of living near a solar facility.[25] The International Commission on Non-Ionizing Radiation Protection has issued an electric field level exposure limit of 4,200 Volts/meter (V/m) for the general public. At utility scale solar sites, the Massachusetts Clean Energy Center has reported that the electric field levels near panel arrays and inverters do not exceed 5 V/m.[26] The International Commission on Non-Ionizing Radiation Protection has issued a magnetic field level exposure limit of 833 milli-Gauss (mG) for the general public. At utility scale solar sites, the Massachusetts Clean Energy Center has reported that the magnetic field levels near panel arrays and inverters do not exceed .5 mG.[27] These amounts are far exceeded by exposure from a microwave (indeed, electromagnetic hypersensitivity is commonly referred to as "microwave syndrome").[28] There have been no credible reports of electromagnetic hypersensitivity exposure linked to utility scale solar developments.

---

[24] 4/19/2023 TR at 72:18-21.
[25] 4/19/2023 TR at 94:14-95:5.
[26] Study of Acoustic and EMF Levels from Solar Photovoltaic Projects, Massachusetts Clean Energy Center, at p. iv (December 17, 2012). http://www.co.champaign.il.us/CountyBoard/ZBA/2018/180329_Meeting/180329__Massachusetts%20Acoustic%20Study%20for%20PV%20Solar%20Projects.pdf
[27] Study of Acoustic and EMF Levels from Solar Photovoltaic Projects, Massachusetts Clean Energy Center, at p. iv (December 17, 2012). http://www.co.champaign.il.us/CountyBoard/ZBA/2018/180329_Meeting/180329__Massachusetts%20Acoustic%20Study%20for%20PV%20Solar%20Projects.pdf
[28] https://www.sciencedirect.com/science/article/abs/pii/S0013935120303388

Two members of the public raised issues regarding the glare from solar panels during the April 19 meeting including a concern that "[g]lare and reflection, these shiny surfaces of solar panels can create glare and reflection, it can be annoying and potentially dangerous for drivers on Natick Avenue or pilots flying into T.F. Green Airport."[29] Any concerns about glare are widely overstated. Solar panels are designed to absorb sunlight, not refract it. "The reflection off a solar PV panel from most near normal angles is less than 3% and represents no risk to air traffic" which is "akin to the behavior of light reflecting from a still source of water such as a pond."[30] The proliferation of solar installations on the side of highways in Massachusetts and on airport property across the country should allay any concerns about glare.

Another member of the public raised concerns regarding the solar panel waste and cadmium compounds contained in solar panels.[31] Only about 5% of solar panels available on the market use cadmium whereas the other 95% of solar panels use silicon (and Natick Solar's panels will be silicon-based).[32] As to the small amount of panels that contain cadmium, those panels contain cadmium telluride which testing reflects is 10 times less toxic than aspirin.[33] As to waste materials, solar installations use 5.2 pounds of materials per megawatt hour whereas wind turbines use 25 pounds per megawatt hour and coal facilities use 6.2 pounds.[34] Furthermore, eighty-five (85%) of the components of solar panels (including the glass, aluminum and copper), can be recovered and resold through mechanical separation.[35]

Lastly, there was a concern raised about "a significant environmental impact including the loss and destruction of mature trees that play a vital role in carbon sequestration."[36] Generally accepted scientific principles dictate that a single tree, on average, can store about .6 of a metric ton of carbon dioxide equivalent (CO_2-eq) over its lifetime.[37] Conversely, each kilowatt hour (kWh) of renewable energy reduces carbon emissions by .000705556 metric tons.[38] The Natick Avenue solar facility will produce approximately 10,530,000 kilowatt hours per year and accordingly, over twenty-five (25) years, the facility will produce approximately 263,250,000 kilowatt hours of clean electricity which, based on the above metrics, will reduce carbon emissions by 185,737.617 tons. Natick Solar would need to cut down more than 111,442 trees before this

[29] 4/19/2023 TR at 39:2-6.
[30] *Anurag A, Zhang J, Gwamuri J, Pearce JM.* General Design Procedures for Airport-Based Solar Photovoltaic Systems. *Energies*. 2017; 10(8):1194. https://doi.org/10.3390/en10081194
[31] 4/19/2023 TR at 92:20-94:13.
[32] *Bill Nussey*, FREEING ENERGY: HOW INNOVATORS ARE USING LOCAL-SCALE SOLAR AND BATTERIES TO DISRUPT THE GLOBAL ENERGY INDUSTRY FROM THE OUTSIDE IN, 266 (2021).
[33] *Id.*
[34] *Id.* at 263.
[35] *Id.*
[36] 4/19/2023 TR at 37:22-25; 83:13-19; 91:14-17 ("Solar facilities do not belong in places like Rhode Island, unlike, you know, the trees that will produce and clean the air and keep the soil in place.").
[37] https://news.energysage.com/should-you-cut-down-trees-to-go-solar/
[38] *Id.*

project became carbon negative. Natick Solar's clearing requirements will be a small fraction of this figure and this project will be carbon positive.

While Natick Solar can understand the environmental and safety concerns of the members of the public, those concerns are not scientifically supported (most are based on common anti-solar mythmaking) and do not justify the denial of a by-right development.

8. This Application cannot be denied because of putative impacts on property values.

Various members of the public expressed concerns about the impact of the solar facilities on property values.[39] As to the Commission's consideration of property values, the standard cannot be property value impact of solar development compared to forest conservation. To the extent that the Commission is going to consider property value impacts, the standard must be solar development compared to other permitted types of development. Otherwise, the standard would be used to defeat all development because it is certainly safe to assume that most people would prefer to live next to the forest rather than any development (solar, residential, or otherwise). In fact, Revity's real estate appraisal expert, Tom Sweeney, testified about a recent study by Dr. Corey Lang:

> Dr. Corey Lang has produced an additional study where he went out and, again, trying to quantify the impact of solar on properties and the people's relation to it, he did a survey after his first study, and one of the things that came out of that study was, yes, everybody, if you have a choice between no development, leave it as it is, or a solar farm, you're going to choose no development, but did go a step further and said, well, what if you have a choice between a solar farm or a residential subdivision on the property. And the conclusion in his study was that people were willing to pay more to have -- not to have a residential subdivision, but would prefer a solar farm.[40]

Revity submitted to the Commission a report dated January 9, 2023 from *Elsevier's International Journal of the Political, Economic, Planning, Environmental and Social Aspects of Energy* which studied 1.8 million residential transactions in six states (California, Massachusetts, Minnesota, North Carolina, New Jersey, and Connecticut) and found a price reduction of 1.5% for homes within .5 mile of a large-scale photovoltaic project and no measurable impact on homes outside of 1 mile.[41] The Report further concluded that "[t]he impacts of local energy development are also shaped by local tax revenue and employment impacts, which have consistently been found

[39] 4/19/2023 TR at 40:2-12; 78:21-83:7; 92:9-10.
[40] 3/20/2023 TR at 58:3-18.
[41] *S. Elmallah, B. Hoen, K. Fujita, D. Robson & E. Brunner*, Shedding light on large-scale impacts: An analysis of property values and proximity to photovoltaics across six U.S. states, ELSEVIER'S INTERNATIONAL JOURNAL OF THE POLITICAL, ECONOMIC, PLANNING, ENVIRONMENTAL AND SOCIAL ASPECTS OF ENERGY at § 7 (Conclusion and policy implications) (January 9, 2023).

to result in positive benefits [citation omitted], as well as by LSVP ownership structures."[42] Mr. Sweeney continued, during his testimony, as follows:

> There were three comprehensive studies done in 2018 and '19 by real estate appraisers in the state of North Carolina, Indiana, Illinois. Those studies comprised paired sales analysis, which is essentially you take a property that has a certain characteristic, compare it to a similar property that does not have that same characteristic and determine whether there is any impact due to that characteristic. Those studies show -- what they did was attempt, and I believe accomplished, they took properties that were in close proximity to solar farms of this size, if not larger, and compared them to properties similar in those counties th[at] were not in proximity to the solar facilities and all -- I think it's four studies in total done by real estate appraisers determined that there was no measurable impact of solar facilities, taking into consideration that they are screened.[43]

The studies presented show that solar facilities have a negligible impact on the value of nearby residential homes and likely no impact when compared to the impact that other types of permitted development would have. Again, the standard *cannot* be whether the proposed development would have any impact compared to no development; otherwise all development would be rejected.

9. The Applicant's design does not violate any applicable lot coverage requirements.

Attorney Dougherty argues that the ten percent (10%) lot coverage standard generally set forth for the A-80 zone applies to the Applicant's development. Attorney Dougherty refers to Section 17.020.120 of the Cranston Zoning Ordinance which states that the "maximum lot coverage" for the A-80 zone is 10%. Neither the Cranston Zoning Ordinances, the Rhode Island General Laws nor the Cranston Subdivision Regulations define "lot coverage." However, both the Cranston Zoning Ordinances (Section 17.04.030) and Rhode Island General Laws (R.I. Gen. Laws § 45-24-31(42)) define "lot building coverage" as "that portion of the lot that is or may be covered by buildings and accessory buildings."

[42] *S. Elmallah, B. Hoen, K. Fujita, D. Robson & E. Brunner,* Shedding light on large-scale impacts: An analysis of property values and proximity to photovoltaics across six U.S. states, ELSEVIER'S INTERNATIONAL JOURNAL OF THE POLITICAL, ECONOMIC, PLANNING, ENVIRONMENTAL AND SOCIAL ASPECTS OF ENERGY at § 6 (Limitations and future work). (January 9, 2023).

[43] 3/20/2023 TR at 53:22-54:15. This project has been subject to extensive screening and buffer review by the Commission, an independent landscape architect (Sara Bradford) and the abutters.

In February of 2019, the Rhode Island Division of Statewide Planning, in conjunction with the Rhode Island Office of Energy Resources, issued a Report titled RENEWABLE ENERGY GUIDELINES: SOLAR ENERGY SYSTEMS MODEL ORDINANCE TEMPLATES & TAXATION (which Natick Solar submitted as part of the record). With respect to lot coverage standards and renewable energy systems, the Report advised as follows:

> 2. Lot Coverage – The term "lot coverage" is not described in the Zoning Enabling Act (§ 45-24-31), but the term "lot building coverage" is defined. Lot building coverage is defined as that portion of the lot that is, or may be, covered by buildings and accessory buildings; therefore, municipalities must distinguish between lot building coverage and define another lot coverage standard for SES [solar energy systems]. If communities wish to regulate how much property can be covered by a primary use SES, then, they should adopt a new definition for calculating separate lot coverage standard.[44]

RENEWABLE ENERGY GUIDELINES: SOLAR ENERGY SYSTEMS MODEL ORDINANCE TEMPLATES & TAXATION, at p. 17. Accordingly, it is clear that the general maximum lot coverage standards for the A-80 zone do not apply to solar development.

The City has never applied the general A-80 lot coverage standards to solar development. As the Commission knows, "[z]oning ordinances are in derogation of the common-law right of the owner as to the use of his property and must therefore be strictly construed." *Earle v. Zoning Board of Review of City of Warwick*, 96 R.I. 321, 324, 191 A.2d 161, 164 (1963). Zoning ordinances, being in derogation of common law, must be interpreted strictly against the municipality and

---

[44] When the City amended the Solar Zoning Ordinance in 2019, it did enact a specific solar lot coverage in Section 17.24.020(F)(4):

> 4. Solar Lot Coverage.
>
> a. Definition. The amount of upland area allowed to be occupied by ground-mounted solar panels and associated equipment, exclusive of fencing, but inclusive of inter-row and panel spacing. Solar lot coverage is calculated entirely separately from building lot coverage, as defined by the Cranston City Code, as amended.
>
> b. Applicability. Solar lot coverage applies to all major accessories and principal SESs. This section shall not apply to minor accessory SESs.
>
> c. The solar lot coverage of all ground-mounted SESs are as follows:

	M-1 and M-2	C-4 and C-5	EI and G
Major Accessory	30%	20%	20%
Principal	85%	N/A	N/A

broadly in favor of the applicant. *Marteg Corp. v. Zoning Board of City of Warwick*, 1979 WL 196170, at *2 (R.I. Super. Ct. Oct. 24, 1979 (citing *Lamothe v. Zoning Board of Review of Town of Cumberland*, 81 R.I. 97 (1953)). Rhode Island courts are "required to resolve all doubts and ambiguities contained in the zoning laws in favor of the landowner because these regulations are in derogation of the property owner's common law right to use [its] property as it wishes * * *." *Denomme v. Mowry*, 557 A.2d 1229, 1231 (R.I. 1989). The City has never applied the general maximum lot coverage standards to solar projects. The City's Zoning Ordinances cannot be applied, without clear authority, in a way that they have never been applied before, to stop a by-right use.

10. Mr. Mateus is eligible to sit as a member of the Plan Commission.

During the April 19 meeting, Attorney Dougherty challenged the eligibility of Justin Mateus to sit as a member of the Plan Commission.[45] Like many of his arguments, Attorney Dougherty did not articulate any reason why he felt Mr. Mateus was ineligible to sit; however, it is a significant accusation that must be addressed. Between the March 20 meeting and the April 19 meeting, Richard Bernardo resigned as the City's Director of Public Works and Mr. Mateus was named as the acting Director of Public Works. Section 13.01 of the City Charter states that the Director of Public Works *shall* be a member of the Plan Commission. The fact that Mr. Mateus was not seated during the first two meetings makes no difference. "Procedural due process does not require that the voting members of a governmental body actually attend a hearing held to address evidence or information on a zoning matter in order for those members to later vote thereon." 2 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 32:4 (4th ed.). The Rhode Island Supreme Court has recognized that a new member of a public agency or commission may vote on a pending application provided that the new member has reviewed the transcript(s) from previous meetings.

In *Gardner v. Cumberland Town Council*, the Town Council voted to abandon an unnamed paper street which decision was appealed by two abutters of the street. *Gardner v. Cumberland Town Council*, 826 A.2d 972 (R.I. 2003). The abutters argued that the vote was legally deficient because there were four (4) new councilmembers who participated in the vote but had not been members during the prior hearings on the petition to abandon. The Supreme Court rejected the argument, concluding as follows:

> Even though only three of the seven council members who voted to abandon the road at the council's December 1998 meeting also were present during all parts of the October and November council meetings when the council also held hearings on this subject, we hold that the council's decision was valid because we presume, as indicated in *In re Rhode Island Commission for Human Rights*, that all seven council members who voted in favor of abandonment did so after educating themselves about the evidence pertaining to the merits of the petition before voting

[45] 4/19/2023 TR at 137:16-21.

> thereof. The record shows that written minutes and videotapes of the previous council hearings on the abandonment petition were available for review by the new council members before they voted to approve the petition on December 2, 1998. In these circumstances, "[t]he presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties."[46]

Mr. Mateus stated, on the record during the April 19 meeting, that he had reviewed the transcripts of the previous two meetings.[47] He is the duly-appointed acting Director of Public Works with the obligation, under the City Charter, to sit as a member of the Plan Commission.

11. Drake Patten's "Community Submission."

Finally, during the April 19 meeting, Drake Patten submitted the "Community Submission to the Cranston Planning Commission" (dated March 20, 2023) and testified about her concerns with the project. Ms. Patten stated that "[o]ur community group has been committed to collaborating with the city and the applicant from the very beginning of this project's travel in late 2018."[48] On February 7, 2023, during the first hearing on this re-application, I stated as follows:

> I would respectfully caution the commission with respect to any suggestions by the abutters that they want a better project. And the reason I say that is that we have been in fourteen, between master plan, ad hoc, preliminary plan, final plan, and the public works committee, fourteen public meetings about this project, almost all of which have had a public comment component. The advisory committee had two abutter representatives who had -- there was copious back and forth about what they were looking for in terms of setbacks and buffering and moving panels and landscaping and, you know, all of their concerns. We accommodated nearly all the concerns that financially could work and could work for the project. And even in light of those accommodations, the meetings that followed, there was the same opposition to this project. You know, we have spent hours and hours over the last four years enhancing buffers, changing landscaping, shifting panels, and so on and so forth; but, ultimately, the only thing that the abutters here are going to want is the application to be denied.[49]

---

[46] *Gardner v. Cumberland Town Council*, 826 A.2d at 979; *see also El Gabri v. Rhode Island Bd. of Medical Licensure and Discipline*, 1998 WL 961165, *10 (R.I. Super. Ct. Dec. 30, 1998) ("Having that new member read the transcript and hear the rest of the testimony was acceptable because the APA recognizes that situations will arise where hearing officers have not heard all of the evidence.").

[47] 4/19/2023 TR at 151:3-9.

[48] 4/19/2023 TR at 112:13-16.

[49] 2/7/2023 TR at 12:4-13:2.

Ms. Patten took exception with my comment which she characterized as "intimidation."[50] My comment was nothing but an honest description of the position of Ms. Patten and her community group. Ms. Patten's lawyer stated, during the April 19 meeting, that "what I'd like to do is put a stake through the heart of this project and deny it right now."[51] On April 5, 2023, Ms. Patten signed a letter to the Rhode Island General Assembly House Corporations Committee opposing solar siting legislation articulating her view of the "destructive side" of the solar industry and posing the question: "We must ask, is Rhode Island truly a good solar location, versus a wind location?"[52] For Ms. Patten to claim that she is interested in anything short of a flat denial of this project and, frankly, the elimination of the solar industry in Rhode Island, is risible.

Ms. Patten also challenged the tax benefits of this project seeking to "draw your attention to a recent 2022 Rhode Island bill that fixes the valuation and assessment of real property on which commercial solar is installed to its previous values" and "[b]ased on this, there may be no reassessment as to actual new use of the land."[53] Ms. Patten refers to H8220 which passed through the General Assembly last year and prohibits municipalities from increasing assessments on solar installations more than the general commercial assessment increases. That legislation was addressed at reforming the practice of certain municipalities levying punitive assessments at solar development which were disproportionate to the assessments being levied on other commercial uses. Ms. Patten argues that "[g]iven what we now know, does the developer's once promised tax revenue and its economic argument still hold * * *[?]"[54]

It does. In 2017, the Cranston City Council passed an ordinance to set tangible tax for solar installations at $5,000 per megawatt and the real estate tax for solar installations at $2,000 per megawatt.[55] Natick Solar will be obligated to pay approximately $1.4 million in taxes to the City over the project's lifetime irrespective of the legislation that the General Assembly enacted last year.

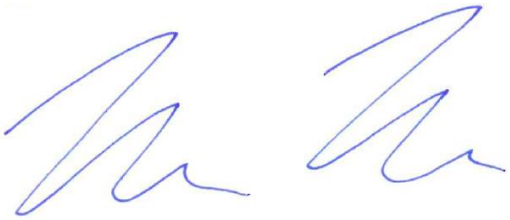
Lastly, Ms. Patten and her lawyer spent a good deal of time discussing the lease arrangement between Mr. Rossi and Natick Solar.[56] The lease is wholly irrelevant to the Plan Commission's analysis of this proposal. If the lease *was* relevant to Plan Commission decisions, the Plan Commission would require the disclosure of leases in permitting applications. The Plan Commission does not require such disclosure because the terms of a lease cannot override the conditions of the Plan Commission's approval. The lease could allow Natick Solar to build a football stadium on the property and that would give Natick Solar no legal right to build that football stadium until Plan Commission approval. What the lease does or does not allow is entirely

[50] 4/19/2023 TR at 111:15-16.
[51] 4/19/2023 TR at 145:23-146:3.
[52] https://www.rilegislature.gov/Special/comdoc/House%20Corporations%202023/04-05-2023--H5853--Hurricane%20Hill%20Farm%20-%20Drake%20Patten.pdf
[53] 4/19/2023 TR at 122:3-8.
[54] 4/19/2023 TR at 122:12-14.
[55] Cranston City Charter § 3.16.060(C).
[56] 4/19/2023 TR at 123:14-125:13; 134:18-137:5; 147:4-148:23.

irrelevant to whether Natick Solar is entitled to master plan approval. The lease is subject to the planning approval—not the other way around.

Natick Solar will present closing remarks in support of its application at the next Plan Commission meeting on June 6 and will be prepared to answer any questions that the Commission has regarding the contents of this correspondence. Natick Solar reserves the right for further testimony until public comment has been closed.

Regards.



Nicholas L. Nybo
Senior Legal Counsel
REVITY ENERGY LLC AND AFFILIATES

Copy: Stephen H. Marsella, Esq.
(via email at shmlaw@verizon.net)
Patrick J. Dougherty, Esq.
(via email at pjdoughertylaw@verizon.net)
Robert D. Murray, Esq.
(via email at rdmurray@taftmcsally.com)