

Exhibit D

*United States Investment & Development Corp.
v. The Platting Board of Review of the City of
Cranston, et al.*

(Appeal of the Platting Board's decision to uphold the Plan
Commission's decision to approve the Hope Farm 10 MW Solar
Array)

STATE OF RHODE ISLAND

CITY OF CRANSTON

IN RE: APPEAL OF THE CITY OF	:	
CRANSTON CITY PLAN	:	
COMMISSION'S DECISION DATED	:	ZONING BOARD OF REVIEW,
JANUARY 14, 2015 GRANTING	:	<i>sitting as the</i>
MASTER / PRELIMINARY PLAN	:	PLATTING BOARD OF
APPROVAL FOR HOPE FARM 10 MW	:	REVIEW
SOLAR ARRAY	:	

MEMORANDUM IN SUPPORT OF APPEAL

Hope Farm 10MW Solar Array
Assessor's Plat 23, Lot 12 & Assessor's Plat 24, Lot 66
840 Hope Farm Road

I. Introduction.

United States Investment & Development Corporation (hereinafter, the "Appellant") has appealed to the City of Cranston Zoning Board of Review in its capacity as the Platting Board of Review (hereinafter, the "Board of Appeals"), pursuant to Section XI of the City of Cranston's Subdivision and Land Development Regulations and Rhode Island General Laws § 45-23-66, from the decision of the City of Cranston Plan Commission (hereinafter, the "Plan Commission"), which approved the Master/Preliminary Plan Application submitted by Daniel Pagliarini and RES America Development, Inc. (hereinafter, "RES America") for the Major Land Development Project entitled "Hope Farm 10 MW Solar Array" (hereinafter, the "Project") to be located at 840 Hope Farm Road in the City of Cranston, which is more particularly identified as Assessor's Plat 23, Lot 12, and Assessor's Plat 24, Lot 66 (hereinafter, the "Property"). Said Decision was executed and recorded on January 14, 2016 (hereinafter, the "Decision"). A copy of the Decision dated January 14, 2016 is attached hereto as Exhibit A.

II. Facts and Travel.

The Appellant is the record owner of the property located off of Burlingame Road, in the City of Cranston (hereinafter, the "City"), which is more particularly identified as Assessor's Plat 23, Lot 11 (hereinafter, "Appellant's Property"). The Appellant is an aggrieved party whose property is within the required notice area for the Project. RES America's Project proposes to construct a ten (10) megawatt solar array which will consist of ground-mounted solar panel arrays, a security fence, stormwater management areas and associated gravel driveways on the Property, which is located in the A-80 Residential Zoning District and is immediately adjacent to the Appellant's Property. The majority of the Property has been operated as commercial nursery and is annually planted with corn. There are also nine (9) wetlands on the site that covers approximately 13.8 acres. The Project will be developed and constructed in a single phase.

Importantly, Cranston's Zoning Code defines the A-80 zoning district as **intended for the use of single-family dwellings on lots of minimum areas of eighty thousand (80,000) square feet.** Further, The Future Land Use Map, incorporated in the City's Comprehensive Plan, designates the Property, along with several adjacent properties, as intended for "Single Family Residential Less Than 1 Unit per Acre" in the future.

On November 23, 2015, the City Council passed an amendment to the Zoning Ordinance, which negatively impacted the Property (the "Amendment"). Prior to the Amendment, the Zoning Ordinance was in conformance with the Comprehensive Plan, as required by R.I. Gen. Laws § 45-24-50. With the passage of the Amendment by the City Council, the City's Zoning Ordinance is no longer in conformance with the Comprehensive Plan. A provision of the Amendment added "Solar Power", which is an industrial use, as a new land use item permissible

by-right in the A-80 zoning district. The Amendment permits the ability to use property with the A-80 zoning designation industrially, which is in contravention to provisions of the Zoning Ordinance and the Comprehensive Plan. Prior to the Amendment's enactment, industrial uses were not permitted on properties with the A-80 zoning designation.

On December 1, 2015, the Plan Commission found that the Property and Project met various requirements contained in the City's Subdivision and Land Development Regulations and the Cranston Zoning Code and granted Master/Preliminary Plan Approval, which was memorialized through the execution of the Decision on January 14, 2016.

III. Standard of Review.

In reviewing an appeal from the Plan Commission, the Zoning Board of Review, sitting as the Platting Board of Review is mandated to apply the standard of review prescribed by R.I. Gen. Laws § 45-23-70, which provides that a board of appeal may not substitute its judgment for that of the Plan Commission but must consider the issue based upon the findings and record of said Board. *See* R.I. Gen. Laws § 45-23-70; *See also* Section XI, Article B of Cranston's Subdivision and Land Development Regulations, at page 73. A decision of the Planning Board must be reversed if it is determined that the Planning Board committed (1) Prejudicial Procedural Error; and/or (2) Clear Error and/or (3) the Planning Board's Decision lacked support based upon the weight of the evidence in the record. *See id.*

IV. Grounds for Appeal.

The Appellant requests that the Zoning Board of Review in its capacity as the Platting Board of Review reverse the Plan Commission's Decision granting Master/Preliminary Plan approval for the Project as it does not comport with the City's Comprehensive Plan. In its Decision, the Plan Commission voted to approve the combined Master/Preliminary Pan

application for the Project with certain waivers and conditions. The Plan Commission's positive findings in its Decision include:

2. The proposed Master/Preliminary Plan and its resulting land use is consistent with the City of Cranston Comprehensive Plan's Future Land Use Map which designates the subject parcel as Residential—Less than one unit per acre. The City Council specifically authorized Solar Power as a use allowed by-right in land zoned A-80. The use is therefore consistent with the Comprehensive Plan.
3. The proposal will not alter the general character of the surrounding area or impair the intent or purpose of the Cranston Zoning Code. The Cranston Zoning Code specifically authorizes solar farm arrays as a use allowed by-right in the A-80 zone.
5. The proposed Master/Preliminary Plan promotes high quality appropriate design and construction, will be well integrated with the surrounding neighborhoods and will reflect its existing characteristics.

Prior to the Amendment that added "Solar Power", which is an industrial use, as a new land use item permissible by-right in the A-80 zoning district, industrial uses were not permitted on properties with the A-80 zoning designation. Therefore, prior to the Amendment, the Project would not have been allowed on the Property. The Amendment permits the ability to use property with the A-80 zoning designation industrially, which is in contravention to provisions of the Zoning Ordinance and the Comprehensive Plan. The Plan Commission's positive findings in the Decision are inaccurate and flawed.

Appellant argues that the Project *will* alter the general character of the surrounding area and *will not* reflect the surrounding neighborhoods' existing characteristics. Properties adjacent to the Property are zoned residentially as A-80 or A-20, which are both intended for single-family dwellings and did not permit any business or industrial uses by-right prior to the Amendment.

The City Council's decision to approve the Amendment does not protect the health, safety, morals and welfare of the general public of Cranston, and, in fact, harms the general

public in a variety of ways. The City Council's decision to approve the Amendment is not in conformance with the Zoning Ordinance, Comprehensive Plan, the Rhode Island General Laws or the Rhode Island State Constitution. Permitting any industrial uses in the A-80 zoning district is contrary to the intended use of properties in the district and, further, will conflict with the existing character of the areas adjacent to the Property. The Project will be detrimental to the value of adjacent properties as well as the well-being of the City's residents that reside near the Property. For all of these reasons, this Board of Appeals must reverse the Plan Commission's Decision.

Additionally, the proceedings before the Planning Commission did not comply with notice requirements of R.I. Gen. Laws §45-23-42 and the City of Cranston Land Development and Subdivision Regulations at §§s V.

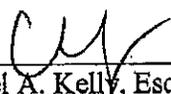
V. Relief Requested.

For the reasons set forth above, which will be further presented at the Appellant's appeal hearing, the Appellant respectfully requests that this Platting Board reverse the Plan Commission's Decision and reverse the Plan Commission's decision approving the Master/Preliminary Plan Application as submitted by RES America.

Respectfully submitted,

APPELLANT,

By and through its attorneys,



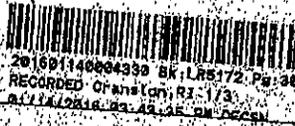
Michael A. Kelly, Esq. (#2116)
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Dated: February 1, 2016

Exhibit A

Allan W. Fung,
Mayor

Peter S. Lapolla,
Planning Director



File copy

Michael Smith
Chairman

James Moran
Vice Chairman

Ken Mason, P.E.
Mark Motte
Gene Nadeau
Robert Strom
Frederick Vincent
Lynne Harrington
Kimberly Bittner

CITY PLAN COMMISSION
Cranston City Hall
869 Park Avenue, Cranston, RI 02910

January 14, 2016

Daniel Paglanni, Trustee (owner/applicant)
700 Bishop Street, Suite 2100
Honolulu, HI 96813

Res America Development, Inc. (applicant)
1101 West Rothe Avenue
Broomfield, CO 80021

DECISION

Hope Farm 10 MW Solar Array
Master/Preliminary Plan
840 Hope Farm Road
AP 23, Lot 12, AP 24, Lot 66

Dear Applicant/s:

On December 1, 2015, the City Plan Commission reviewed the combined Master/Preliminary Plan application entitled "Hope Farm 10 MW Solar Array" for conformance with required standards set forth in RIGL Section 45-23 as well as the City of Cranston's Subdivision and Land Development Regulations as amended, and the Cranston Zoning Code. Commissioner Lynne Harrington recused herself from the proceedings and remained outside the chambers for the entirety of the public hearing. Commissioner Nadeau was absent.

Upon motion made by Commissioner Motte and seconded by Commissioner Strom, the City Plan Commission voted 6-1 (Commissioners Motte, Strom, Moran, Smith, Mason, Vincent - AYE, Commissioner Bittner - NAY) to grant the waivers detailed in Section VI, Waivers of the Final Draft version of the staff memorandum dated 12/1/15 (Waivers of Subdivision and Land Development Regulations, as amended Section(s) III.J.2.c, III.J.2.d, III.J.3.c. 2-7, III.J.3.c.11, III.J.3.d.1-5). The granting of these waivers to accept an incomplete application was necessary in order for the public hearing to proceed to the consideration of the combined Master/Preliminary Plan application.

Upon motion made by Commissioner Motte and seconded by Commissioner Vincent, the City Plan Commission voted unanimously (7-0) to combine the Master and Preliminary Plan stages of approval.

Upon motion made by Commissioner Motte and seconded by Commissioner Mason, the Commission voted (6-1) to support staff recommendation and adopt the Findings of Fact documented below and approve the combined Master/Preliminary Plan with the waivers detailed in Section VI, Waiver in the Final Draft version of the staff memorandum dated 12/1/15 (Waivers of Subdivision and Land Development Regulations, as amended Section(s) III.J.2.c, III.J.2.d, III.J.3.c. 2-7, III.J.3.c.11, III.J.3.d.1-5.) and conditions documented below.

Telephone: (401) 461-1000 ext 3136

Fax: (401) 780-3171

Positive Findings

1. An orderly, thorough and expeditious technical review of this Master/Preliminary Plan has been conducted. Property owners within a 100' radius have been notified via Certified and Return Receipt Requested mail on 1/20/16 and the meeting agenda was properly posted. Advertisement for the combined Master/Preliminary Plan was published in the 1/16/16 edition of the Cranston Herald.
2. The proposed Master/Preliminary Plan and its resulting land use is consistent with the City of Cranston Comprehensive Plan's Future Land Use Map which designates the subject parcel as Residential - Less than one unit per acre. The City Council specifically authorized Solar Power as a use allowed by-right in land zoned A-80. The use is therefore consistent with the Comprehensive Plan.
3. The proposal will not alter the general character of the surrounding area or impair the intent or purpose of the Cranston Zoning Code. The Cranston Zoning Code specifically authorizes solar farm arrays as a use allowed by-right in the A-80 zone.
4. There will be no significant negative environmental impacts from the proposal as shown on the Master/Preliminary Plan. The RIDEM wetlands permit will determine how the wetlands and stormwater management will function. This final determination will be required at the Final Plan submission.
5. The proposed Master/Preliminary Plan promotes high quality appropriate design and construction, will be well integrated with the surrounding neighborhoods and will reflect its existing characteristics.
6. The proposed Master/Preliminary Plan will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable.
7. The property in question has adequate permanent physical access on Hope Road, an improved public roadway located within the City of Cranston.
8. The proposed Master/Preliminary Plan provides for safe and adequate local circulation of pedestrian and vehicular through traffic, for adequate surface water run-off and for suitable building sites.
9. Significant cultural, historic or natural features that contribute to the attractiveness of the community have not been identified on site.
10. The design and location of streets, building lots, utilities, drainage and other improvements conform to local regulations for mitigation of flooding and soil erosion.

Conditions of approval

The following conditions shall be met by the applicant prior to filing a Final Plan application with the Planning Department:

1. Obtain the final RIDEM Wetlands Permits. The Final Major Development Plan set shall be consistent with this State approval;
2. Verification from the Cranston Fire Department that the proposed maintenance access ways are accessible for public safety vehicles;
3. Obtain Final approval from the Development Plan Review Committee;
4. Final Plan application shall appear before the City Plan Commission to verify that all (City Council Ordinance 11-15-03, as introduced) performance standards including noise, visual impacts / vegetative landscape buffers, stormwater runoff, lighting, long-term maintenance, decommissioning, and environmental requirements have been met prior to recording the Record.



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Hope Farm 10 MW Solar Array
Master/Preliminary Plan Decision

January 14, 2016
Page 3

5. Plan in land evidence.
6. Submission of a performance bond for the Building Inspections Department for decommissioning in accordance with proposed standards found in City Council Ordinance 11-16-03, as introduced.

If you have any questions or require further assistance, please do not hesitate to contact me.

Sincerely,

Jason M. Pezzullo, MCP, MPA, AICP
Principal Planner/Administrative Officer

CC: Attorney John Bolton - Representing Res America

Exhibit E

Planning Department Statement on Consistency with the Comprehensive Plan

(Read into the record during the Public Meeting for Hope Farm 10
MW Solar Array)

As part of its review of a Major Land Development, the City Plan Commission needs to find that a proposed project is consistent with the City's Comprehensive Plan. For most projects, that determination is arrived at during the Commission's general review. However, for this particular project, staff believes that the findings of consistency with the Comprehensive Plan deserve a more detailed analysis and presentation. That being said staff would make the following comments:

Generally, an analysis of consistency with a comprehensive plan is conducted at two levels. First and foremost, a determination is made as to if a project's [zone change] is consistent with the Future Land Use Plan of the Comprehensive Land. Secondly a determination is made as to if a project's [zone change] is consistent with other Comprehensive Plan Elements of the Plan where and if there is applicable language.

With regards to the Future Land Use Plan, said plan identifies a land use classification for each parcel of land. That LUC serves and indicator/guide as to how a parcel [area] should be used/developed and it serves as a guide as to how a specific parcel should be zoned. For the Hope Farms site, the Future Land Use Map has assigned a LUC of Single Family Residential- Less Than 1 Unit per Acre and the Land Use Element states that the appropriate zoning for this LUC is Residential A-80. It is important note that neither the Future Land Use Map nor any text of the Comprehensive Plan specifies what uses would be appropriate for or either a specific land use classification or Zoning Classification. For example Garden City. If the zoning for a parcel of land consistent with the LUC then what determines if a particular use is appropriate the Schedule of Uses within the zoning ordinance. Quite simply if a particular use is authorized for a particular zoning classification and the zoning classification is consistent with the LUC then a use is consistent with the Future Land Use Plan. In the matter before the Commission, the City Council after three months of public hearing on the solar power use voted to make said use a use by right in an A-80 zone. A solar power use would therefore be consistent with the future land use map.

With regard to the text within the Comprehensive Plan, the Land Use, Natural Resources and Open Space and Recreation Elements all address the issue of future development wester Cranston. The elements generally acknowledge that there is an issue with the development encroaching into what has be historically farm lands and unparticular the historic farm loop. The elements all recognize the importance of preserving protecting the remaining agricultural lands. The elements go onto recommend range of mitigative measure that the City implement to achieve this goal. These measures are as follows:

Preserve the agricultural lands along the Historic Farm Loop.

The City should continue its efforts to preserve and protect its remaining agricultural lands. The following strategies can be utilized in the furtherance of this goal:

- Conserve the basic resource - The preservation of productive agricultural land can be accommodated through conservation of prime agricultural soils, which protects the land best suited for farming.
- Concentrate development - Concentrating development in higher densities on smaller footprints promotes development that provides the same square footage or number of units, without displacing areas that could be preserved for open space and agricultural uses. This would include the use of the CSD technique to preserve the farms but allow adjacent development. An incentive to use this technique could be to allow a greater density of development with increasing percentages of area dedicated as open land.
- Transfer of development rights – A transfer of development rights (TDR) ordinance removes development potential from farmlands and concentrates that development in another location.
- Purchase of development rights - Another approach to limit further development is the purchase of development rights, which can be used as a bonus for other development sites without the direct transfer of development potential by zoning.
- Establish a “farm-based retail” overlay district based on the model proposed in South County whereby farm goods and related activities are allowed by right to permit farms to supplement income.

- Purchase the properties in fee simple, or purchase development rights to continue the properties as agricultural operations.

It should be noted the Plan Elements does not indicate that measures are mutually exclusive or that one measure should take precedence over the others. The elements just recognize them as tools to apply when and we appropriate to preserve a parcel. To that end the Commission has already employed some the suggested tools it has acquired development rights to the Moreau Farm and is in the process of drafting Cranston's version of a conservation subdivision ordinance.

It should also be noted that the Comprehensive Plan does not identify specific parcels of land to be acquired and it does not seek to protect farming as an activity by suggesting the adoption of an agricultural zoning district.

In the current instance, the use of A-80 land for solar power, that would suggest that it is whole consistent with the first tool articulated preserving agricultural lands. Solar power consists of the installing of non-permanent structures on a site. After installation, the use of the land is largely passive. In effect, staff would suggest that it can be seen as a form of land banking which will conserve a site's agricultural land for next 25 year. This is wholly consistent with the Comprehensive Plan.

Exhibit F

Affidavit of Peter Lapolla

(Testimony that Ordinances 7-15-04 & 7-15-15 are consistent with the Comprehensive Plan for *United States Investment & Development Corporation v. Robert Strom, et al*)

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

UNITED STATES INVESTMENT &
DEVELOPMENT CORPORATION,
Plaintiff

v.

ROBERT STROM, in his capacity as the
Finance Director for the City of Cranston,

and

C.A. No. 2015-5506

MARIO ACETO, PAUL ARCHETTO,
DONALD BOTTS, JR., MICHAEL J.
FARINA, MICHAEL FAVICCHIO,
JOHN E. LANNI, JR., CHRISTOPHER
PAPLAUSKAS, RICHARD D.
SANTAMARIA, JR., and STEVEN
STYCOS, in their capacities as members of
the Cranston City Council

AFFIDAVIT OF PETER LAPOLLA

I, Peter Lapolla being first duly sworn, depose and state as follows:

1. I have been Planning Director for the City of Cranston for 10 years [March, 2007].
2. I have 37 years experience with City Planning and Comprehensive Plans.
3. My duties as Planning Director include, preparing and/or updating the Cranston's Comprehensive Plan, reviewing and making recommendations on amendments to the Comprehensive Plan proposed by others and reviewing and making recommendations on proposed amendments to the City's Zoning Ordinance [in particular if said amendments are consistent with the Cranston's Comprehensive Plan]. With regards to Cranston's current Comprehensive Plan, I would further note that I and my staff were responsible for

preparing the final draft of the Comprehensive Plan and having that plan approved by both the City Council and the State Planning Commission.

4. The facts and aspirations set forth herein are hereby made to a reasonable degree of certainty based on my extensive experience with municipal comprehensive planning in Rhode Island and with municipal regulatory provisions.
5. Generally, when determining whether a proposal is consistent with the Comprehensive Plan, a determination is made as to whether a project, or in some cases a zone change, is offensive to the future land use plan of the Comprehensive Plan. A determination is also made as to whether a project or a proposed zone change is consistent with other elements of the Comprehensive Plan, where there is relevant aspirational language, reasonably related to public health, safety and welfare which addresses the subject matter.
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.
7. The future land use classification determines what the appropriate broad zoning classification should be. The appropriate *uses* within the *zoning classification* is

determined by the schedule of uses contained in the *zoning ordinance*. They do not all have to be the same, but they should be compatible with the broad zoning classifications and the other aspirations and goals outlined in the Comprehensive Plan taken together.

8. After three months of hearings and public debate which included discussions as to whether the proposed zone change would be consistent with the City's Comprehensive Plan, the City Council voted to authorize solar power as a use authorized **by right** in A-80 zoning districts. This was consistent with – and not offensive to – the Comprehensive Plan for several reasons.
9. The Comprehensive Plan elements address an ongoing issue with development encroaching an area of western Cranston that has been historically farm and agricultural land. The Plan discusses a range of mitigating measures that the city could implement. These measures include: encouraging a more efficient form of development that is less sprawling, consumes less open land and conforms to existing topography and natural features. . . Minimizes the total amount of disturbance on a site which preserves the natural topography of the site; and preservation of existing undeveloped land, historic and cultural resources, infrastructure capacity, all of which are western Cranston's concerns.

The specific language from the Plan in this regards is as follows:

Land Use Plan, p. 7: “To encourage the use of innovative development regulations and techniques that promote the development of land suitable for development while protecting our natural, cultural, historical, and recreational resources and achieving a balanced pattern of land uses.

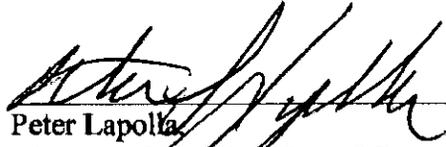
Housing Element, p. 57: “Overall growth is comparatively low, except in western Cranston, where undeveloped land is still available for new housing development. However, development of this land is constrained by environmental and other regulatory restrictions, and the public's desire for open space preservation.

This makes it even more crucial to plan how the remaining land in western Cranston is developed, preserved, or improved.”

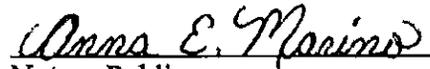
Housing Element p. 64: “Preservation of existing undeveloped land, historic and cultural resources, infrastructure capacity, and traffic are western Cranston’s largest concerns as a result of this high growth trend.”

Housing Element, p. 64: “[Goal]: Encourage a more efficient form of development that is less sprawling, consumes less open land, and conforms to existing topography and natural features . . . Minimize the total amount of disturbance on a site which preserves the natural topography of a site.”

10. The Comprehensive Plan elements do not indicate that the suggested measures are exclusive. The Plan does not favor one mitigation tool versus another. They are to be viewed equally and non-exclusively.
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.
12. The City Council properly determined solar power to be advantageous to the City and a means of protecting the interests of western Cranston in a manner consistent with the Comprehensive Plan.


Peter Lapolla
Director of Planning City of Cranston

Subscribed and sworn to before me this 16th day of October, 2017


Notary Public
ANNA E. MARINO

Comm.
expires June 8, 2021