Exhibit G

Superior Court's Decision rendered on *United States Investment & Development Corp. v. The Platting Board of Review of the City of Cranston, et al*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: December 27, 2017)

UNITED STATES INVESTMENT & DEVELOPMENT CORPORATION	:	
v.	:	**C.A. No. PC-2016-5739**
THE PLATTING BOARD OF REVIEW OF THE CITY OF CRANSTON; MICHAEL SMITH, JAMES MORAN, KEN MASON, P.E., MARK MOTTE, GENE NADEAU, ROBERT STROM, FREDERICK VINCENT, LYNNE HARRINGTON, KIMBERLY BITTNER, in their capacities as Members of the City Plan Commission of the City of Cranston; DAVID CAPUANO, in his capacity as Treasurer for the City of Cranston; DANIEL PAGLIARINI, Trustee; and RES AMERICA DEVELOPMENT, INC.	:	

DECISION

LICHT, J. United States Investment & Development Corporation (hereinafter, the Appellant) appealed from a decision of the City of Cranston Zoning Board, sitting as the Platting Board of Review of the City of Cranston (hereinafter, the Platting Board). The Platting Board's Decision (hereinafter, the Decision) unanimously upheld the January 14, 2016 decision of the City Plan Commission of the City of Cranston (hereinafter, the Plan Commission) granting combined Master/Preliminary approval to an application for approval of a proposed solar energy array, named Hope Farm 10 MW Solar Array (hereinafter, the Solar Array), to Daniel Pagliarini (hereinafter, Mr. Pagliarini) and RES

America Development, Inc. (hereinafter, RES). The Appellant timely appealed the Platting Board's Decision to this Court pursuant to G.L. 1956 § 45-23-71.

I

Facts and Travel

Mr. Pagliarini is the owner of the subject property located at 840 Hope Farm Road, Cranston, Rhode Island, and otherwise known as Lot 12 on Assessor's Plat 23 and Lot 66 on Assessor's Plat 24. (Compl. ¶ 5.) Collectively, the combined parcels contain approximately seventy-five acres. (Certified R., Item J, at 5.) The property is zoned A-80 and solar farm arrays are a permitted use in the A-80 zone. (Certified R., Item A, at 21.) The majority of the property has operated as a commercial nursery and is partially planted with corn. (Certified R., Item D, at 1.) An electric transmission line runs through the eastern portion of the property in a right-of-way of National Grid. *Id.*

On November 16, 2015, Mr. Pagliarini and RES submitted a Master/Preliminary Plan application to the Plan Commission seeking approval of the Solar Array. (Certified R., Item A, at 10.) The proposal is for a 10-megawatt solar array consisting of 938 ground-mounted solar panels, a gravel driveway providing access to the equipment, a security fence, and stormwater management areas. *Id.* Each panel is 11' x 63', for a total surface area of 650,034 square feet or 14.9 acres. *Id.*

On December 1, 2015, the Plan Commission held a hearing on both the Master Plan application and the Preliminary Plan application. (Certified R., Item H.) The documents before the Plan Commission included a project narrative prepared by the project engineers, a Stormwater Management Report, a Long Term Stormwater Management System Operation and Maintenance Plan and Source Control and Pollution

Prevention Plan, and a Soil and Erosion and Sediment Control Plan. (Certified R., Items A, E, F, and G.)

John Starbuck (hereinafter, Mr. Starbuck), an engineer with VHB, was the project manager on the project and testified, among other things, that all of the construction proposed is "within existing disturbed farm areas, agricultural areas" and outside of the wetlands. (Certified R., Item H, at 9-10.) Further, Mr. Starbuck confirmed that "[t]he entire area that we're working is currently agricultural farmland." *Id.* at 34-35. Mr. Starbuck's testimony also affirmed that a "drainage analysis consistent with the Rhode Island DEM ground storm water design and installation standards manual" was completed and that the analysis "complies with all the requirements of that manual." *Id.* at 35. In regard to footings for the project, Mr. Starbuck testified that years from now, the footings could be pulled up and nothing would be left in the ground, other than underground conduit for the electrical services, which could also be removed. *Id.* at 44.

Cranston Principal Planner Jason Pezzullo (hereinafter, Mr. Pezzullo) presented the findings of a detailed City Planning Department Staff Report, which recommended that the Plan Commission approve the Master/Preliminary Plan. (Certified R., Item A, at 21; Item H, at 87-89.) The City Planning Department Staff Report noted that "[a] meadow will be established under the solar array that can better support meadow wildlife." (Certified R., Item A, at 14.) The Staff Report further opined that "[t]he majority of the existing agricultural areas onsite have been tilled and predominately do not have existing vegetation", but that these areas of erosion will be "restored with permanent vegetation that will remain for the life of the project," thereby improving the habitability of the area for meadowland wildlife. *Id.* at 13-14.

Peter Lapolla (hereinafter, Mr. Lapolla), the City's Planning Director, testified extensively about the solar farm's consistency with the Comprehensive Plan. His testimony will be discussed in greater detail below. The Plan Commission had no testimony before it that the proposed Master/Preliminary Plan or its resulting land use was inconsistent with the City's Comprehensive Plan. Appellant did not attend any of the hearings before the Plan Commission on this matter or present any testimony for the record in opposition to the application. (Certified R., Item L, at 4.)

The Plan Commission voted to approve the applications on a 6-1 vote and its decision was recorded on January 14, 2016. (Certified R., Item I.) Specifically, the Plan Commission found that

> "[t]he 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." *Id.* at 2.

Appellant, a Rhode Island corporation and owner of Lot 11 on Assessor's Plat 23, which abuts the subject property owned by Mr. Pagliarini (Compl. ¶ 1), filed a timely appeal of the Plan Commission's decision to the Platting Board. (Compl. ¶ 10.)

The Platting Board held hearings related to this appeal on May 11, 2016 and November 9, 2016. (Certified R., Items J and K.) Counsel for the Appellant argued as follows:

> "And that's the essence of the appellant's position, that there's a clear error here because the proposal to do an industrial use doesn't comport with the zoning ordinance, which dictates what can happen on that property, and it

> doesn't comport with the Comprehensive Plan, multiple goals and land use policies . . ." (Certified R., Item J, at 17.)

Conversely, counsel for the Plan Commission argued that a Comprehensive Plan does not dictate every single permitted use that can be allowed in a zoning ordinance, but instead states broader aspirations. *Id.* at 31. Counsel further argued that the Comprehensive Plan has an overarching aspiration of trying to "preserve as much as possible agriculture land and the soil in agriculture land for future agriculture use." *Id.* Testimony was presented to the Plan Commission that a solar farm was a less disruptive and less intense use than subdividing the land for a residential neighborhood. *Id.*

On November 9, 2016, the Platting Board held a vote on the matter voting 4-0 to unanimously uphold the previous Plan Commission decision. (Certified R., Item K.) On November 28, 2016, the Platting Board recorded its Decision affirming the Plan Commission's decision. (Certified R., Item L.) Among numerous other findings, the Decision concluded that

> "the weight of the evidence in the record clearly supported the decision of the Plan Commission to grant Master/Preliminary Plan approval of the Application and was not clear error . . . the decision of the Plan Commission, that the use of the Parcel for Solar Power was consistent with the comprehensive plan, was also not clear error and was supported by the weight of the evidence in the record. At the hearing and in its decision, the Planning staff took great lengths in enumerating its reasoning for its finding that the use is consistent with the comprehensive plan . . . the use as a Solar Farm is allowed and is less intense and more passive than the previously approved 31 lot residential subdivision . . . the Plan Commission had no other contrary evidence before it that would allow this [Platting Board] to conclude that the decision of the Plan Commission was clear error." *Id.* at 4-5.

The Appellant timely appealed the Platting Board's Decision to this Court pursuant to § 45-23-71. Appellant argues that the Plan Commission erred in finding, based on the record before them, that the proposed solar energy array is consistent with the Comprehensive Plan. Thus, Appellant avers that the Platting Board erred in upholding the decision of the Plan Commission.

II

Standard of Review

Under the Development Review Act, review of a planning board's decision is limited. A zoning board reviewing the decision of a planning board may reverse the lower body only if the zoning board finds that there was "prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record." Sec. 45-23-70(a). Appeals to the Superior Court for review of a decision of a zoning board, sitting as a board of appeal, are brought under § 45-23-71. The statute provides as follows:

> "The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:
> "(1) In violation of constitutional, statutory, ordinance or planning board regulations provisions;
> "(2) In excess of the authority granted to the planning board by statute or ordinance;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 45-23-71(c).

Judicial review of a board's decision is not *de novo*, and thus, this Court does not consider the credibility of the witnesses, weigh the evidence or make its own findings of fact. *Munroe v. Town of E. Greenwich*, 733 A.2d 703, 705 (R.I. 1999) (citing *Kirby v. Planning Bd. of Review of Middletown*, 634 A.2d 285, 290 (R.I. 1993)). Rather, the Court's review is "confined to a search of the record to ascertain whether the board's decision rests upon 'competent evidence' or is affected by an error of law." *Kirby*, 634 A.2d at 290. If there is any competent evidence upon which the agency's decision rests, then the decision will stand. *Restivo v. Lynch*, 707 A.2d 663, 665-66 (R.I. 1998).

III

The Platting Board Decision

Prior to granting approval for the proposed solar energy array at issue in this case, the Plan Commission was required to comply with the following statutory requirement:

> "All local regulations shall require that for all administrative, minor, and major development applications the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in § 45-23-30 and make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:
> "(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies[.]" Sec. 45-23-60(a).

In seeking to make this required finding, the Plan Commission found that

> "[t]he 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." (Certified R., Item I, at 2.)

Appellant's core argument is that the Plan Commission erred in finding, based on the record before them, that the proposed solar energy array is consistent with the Comprehensive Plan. Appellant argues that this finding by the Plan Commission was arbitrary and capricious and clearly erroneous in light of the evidence, most notably, the Comprehensive Plan that was in effect at the time of approval. Correspondingly, Appellant contends that the Platting Board also erred in upholding the Plan Commission decision.

On November 23, 2015, prior to the Plan Commission hearing at issue herein, the Cranston City Council passed an amendment to the Zoning Ordinance. (Appellant's Mem. of Law, Ex. B.) Pursuant to this Amendment, solar power was added as a new land use item permissible by right in the A-80 zoning district. *Id.* Appellant maintains that the Comprehensive Plan should have first been amended to encourage the development of solar power on properties and then the zoning ordinance should have been brought into compliance with the Comprehensive Plan at a later time. Appellant suggests that the opposite was done in this case. However, this argument fails. No change to the Comprehensive Plan was required in this particular case because the Comprehensive Plan was already consistent with the zoning ordinance. Counsel for the Plan Commission testified before the Platting Board as follows:

> "There are times where a proposed use has no seed, no aspect of the Comprehensive Plan to support it, and it's usually those cases that we go and get a specific Comprehensive Plan amendment. But in this case, the very reason the Planning Commission and the council found this consistent with the Comp. Plan is found in the Comp. Plan itself." (Certified R., Item J, at 36.)

Furthermore, as a general rule, "local zoning ordinances acquire a presumption of legality." *D'Angelo v. Knights of Columbus Bldg. Ass'n of Bristol R.I., Inc.*, 89 R.I. 76, 83, 151 A.2d 495, 498 (1959). Further, "[t]his presumption of validity includes the presumption that the zoning enactments were 'in accordance with a comprehensive plan.'" *Id.* at 83, 151 A.2d at 498-99. As such, this Court presumes that the November 23, 2015 amendment to the Zoning Ordinance, whereby solar power was added as a new land use item permissible by right in an A-80 zoning district, was enacted in accordance with the Comprehensive Plan.

However, Appellant contends that the Plan Commission's findings were arbitrary and capricious because, although the proposed Master/Preliminary Plan was consistent with the zoning ordinance in effect at the time, it was not also consistent with the Comprehensive Plan. In support of this position, Appellant points to *West v. McDonald*, 18 A.3d 526 (R.I. 2011). In *West*, the Rhode Island Supreme Court rejected the argument that a comprehensive plan does not carry the same weight of a statute, ordinance, or regulation. *Id.* at 539. Further, the Court upheld the trial justice's determination that the board of appeals did not err in denying a proposal that failed to comply with the comprehensive plan, even if it did comply with the zoning requirements. *Id.* at 536. In essence, *West* stands for the proposition that the developer bears the burden to comply with both the municipality's comprehensive plan and its zoning code, not one or the other. *Id.* at 539-40.

Appellant's reliance on *West* is misplaced. In *West*, there was an inconsistency between the comprehensive plan and the zoning ordinance. The density limitations in the comprehensive plan were more restrictive than the lot-size requirements in the zoning

ordinances. The petitioner's application complied with the zoning code but not the comprehensive plan. The petitioner contended the zoning code should control. No such conflict exists in this case. Here, the Plan Commission found the proposed development to be consistent with the Comprehensive Plan, because the proposed development comports with the Comprehensive Plan's goal of preserving agricultural lands and soil in Western Cranston. The issue for this Court is whether there was evidence to support that conclusion.

To begin that analysis, the Court starts with the Comprehensive Plan which calls for the City of Cranston to consider "stronger zoning tools that would require preservation of land in the future to actively preserve the area's agricultural history." (Appellant's Mem. of Law, Ex. I, at 155.) The Comprehensive Plan also postulates that "[l]and that is used for agricultural purposes contributes substantially to the overall quality of life for the residents of Cranston, protects natural resources, and prevents land development." *Id.* at 102.

At the December 1, 2015 hearing, Mr. Lapolla testified extensively as to the proposed solar energy array's consistency with the Comprehensive Plan's objective of protecting agricultural lands. Specifically, Mr. Lapolla discussed the issue of development encroaching onto agricultural lands in Western Cranston. Further, Mr. Lapolla's testimony referred to the Comprehensive Plan's goal of preserving agricultural lands through the conservation of prime agricultural soil, which protects the land best suited for farming. Mr. Lapolla testified that

> "[t]he elements generally acknowledge -- all the elements generally acknowledge that there is an issue with development encroaching into what has been historically farm and agricultural in Western Cranston, and in particular

> the historic farmland. We all recognize the importance of preserving and protecting the remaining agricultural land. I stress agricultural land. It does not talk about farms, oddly enough. The elements [go into recommending] a range of [mitigation] measure[s] that the city could implement. These measures are as follows: And I'm just going to quickly go to the Comprehensive Plan. They're there, and I'll just -- just basically I'll start off with the city should continue to preserve and protect the remaining agricultural needs. The following strategies can be utilized to further this goal. Conserve the basic resources. The preservation of agricultural land can be accommodated through conservation of prime agricultural soil which protect the land best suited for farming." (Certified R., Item H, at 58-59.)

Mr. Lapolla also testified at length regarding the nonpermanent nature of the proposal. The purpose of this testimony was to illustrate the fact that the proposed installation of solar arrays would help to conserve the agricultural land on the site and not degrade the land in the same manner that other forms of permanent development might. As such, Mr. Lapolla argues that the installation of solar arrays was consistent with the Comprehensive Plan's objective to conserve agricultural lands. Mr. Lapolla explained:

> "Solar power consists of the installation of nonpermanent structures. It's tough to say they're nonpermanent because they're going to be there for 25 years; but they're nonpermanent. You can pull them out. You can take them away. After installation, the use of the land is largely passive. Bear in mind, all land is used somehow. We're not saying the land isn't going to be used, but you need to make the argument, forest land is used for forest. All land is used. It is how that land is used. ... [T]he solar arrays can be seen as a form of land management, which would conserve, after the installation of the arrays, it would conserve the site's agricultural land for the next 25 years. This is then wholly consistent with the Comprehensive Plan. We're preserving the land use in the comprehensive plan and that while we're not acquiring it, not required, not doing a conservation subdivision, we are taking steps to conserve the agricultural lands that are on the site. They will not be used. They will not be degraded." *Id.* at 61.

Essentially, Mr. Lapolla explained to the Plan Commission that the proposed solar energy array would be a more effective method of preserving Western Cranston's remaining agricultural land than other uses allowed in the A-80 zoning district, such as the previously approved thirty-one lot residential subdivision. Mr. Lapolla's position was that, "our choice right now is either houses or vegetables. Better off [preserving] the farmland." *Id.* at 63. Further, Mr. Lapolla testified that

> "[i]n terms of the ordinance -- the Comprehensive Plan talks of preserving the land and the agricultural nature of the land. It does not talk in terms of farming. It does talk about protecting the scenic views . . . I suggest that what you're looking at is you're trying to protect the rural nature, and we will do that, at least from the scenic road perspective by maintaining the 75-foot buffer and landscape in between that buffer. So you don't see development. So you can see the rural area. So it is -- to the extent that we're preserving the farmland and we're preventing the development of this land, the encroachment of this land for permanent -- referring the goals -- we're referring some of the goals of the comprehensive plan, not all of them. No project, no zoning ordinance will meet all the goals of the plan . . . I fully agree . . . [That's] my opinion . . . [which] I humbly suggest that the commission . . . consider." *Id.* at 63-64.

The opinion that Mr. Lapolla expressed to the Plan Commission—namely, that the proposed solar arrays were consistent with the Comprehensive Plan's goal of preserving the agricultural nature of the land—was further reinforced by Mr. Pezzullo, who also testified in favor of the proposition that the proposed solar arrays would comport with the Comprehensive Plan. Mr. Pezzullo's testimony before the Plan Commission was as follows:

> "One thing I just wanted to add, there's talk about preserving farmland and that is a goal of the Comprehensive Plan, for sure. The idea that this would be developed as a housing development is not an attraction

> . . . And I feel this is better land management. It's better than 27 houses because that's permanent forever." *Id.* at 85-86.

One aspiration of the Comprehensive Plan is to try to preserve as much agricultural land as possible in Western Cranston. The Comprehensive Plan states that:

> "Western Cranston has seen significant residential development activity on formerly agricultural land, resulting primarily in single-family homes on ½ to 2-acre parcels. . . . 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." (Appellant's Mem. of Law, Ex. I, at 64.)

The evidence proffered to the Plan Commission by Mr. Lapolla and Mr. Pezzullo urged that the development of housing lots was inapposite to the Comprehensive Plan's goal of preserving agricultural lands. In their view, the non-permanent nature of the proposed solar farm was less intrusive and less harmful to wildlife than a residential development would have been.

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.

IV

Conclusion

In sum, after a thorough review of the entire record, this Court finds that the Decision of the Platting Board is not clearly erroneous, is not made upon improper procedure, is not in violation of ordinance provisions or planning board regulations, is within the Platting Board's authority, is not arbitrary or capricious or characterized by abuse of discretion, and is not affected by clear error of law. Substantial rights of the Appellant have not been prejudiced. As such, the Decision of the Platting Board, upholding the decision of the Plan Commission, granting Master/Preliminary Plan approval to the Solar Array is hereby affirmed. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**United States Investment & Development Corp. v. The Platting Board of Review of the City of Cranston, et al.**
CASE NO:	**PC-2016-5739**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**December 27, 2017**
JUSTICE/MAGISTRATE:	**Licht, J.**
ATTORNEYS:	
For Plaintiff:	**Joelle C. Rocha, Esq.**
For Defendant:	**William Landry, Esq.** **Andrew Tugan, Esq.**

Exhibit H

Superior Court's Decision rendered on *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.

C.A. No. PC-2015-5506

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

and

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 Cranston City Council,
Defendants

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter came before the Court (M. Keough, J,) on March 12, 2018, on Plaintiff's and Defendants' Cross-Motions for Summary Judgment. After consideration of the briefs of the parties and oral argument on March 12, 2018, and in accordance with a Bench Decision rendered by the Court on March 12, 2018, it is hereby

ORDERED, ADJUDGED, and DECREED,

as follows:

1. Defendants' Motion for Summary Judgment is hereby granted.

2. Plaintiff's Motion for Summary Judgment is hereby denied.

3. Based on the pleadings, affidavits, exhibits, admissions, and memoranda, there is no genuine issue as to any material fact. Neither party has contended that there is a material issue of fact. Defendants are entitled to Judgment as a matter of law, and Judgment should enter

in their favor declaring and confirming that, based on the totality of circumstances, the challenged amendments to the City of Cranston Zoning Ordinance, more particularly described in City of Cranston Ordinances # 7-15-04 and # 7-15-05 (the "Amendments") are not procedurally defective or inconsistent with the City of Cranston Comprehensive Plan.

4. The Amendments, which constitute legislative action by the Defendant City of Cranston City Council, are not defective or invalidated by reason of, (a) an alleged failure of the City of Cranston City Plan Commission to adequately include a demonstration of recognition and consideration of the purposes of zoning pursuant to R.I. Gen. Laws § 45-24-52 in its findings and recommendations to the City Council on the Amendments; or (b) the Amendments allegedly being inconsistent with the City of Cranston's Comprehensive Plan.

5. There was considerable back and forth between the City Plan Commission and the City Council on the Zoning Amendments that did not touch upon every single purpose of zoning reflected in R.I. Gen. Laws § 45-24-30, but that demonstrated a rational relation between the City Plan Commission's input, and the Amendments themselves, and important applicable purposes of zoning, within the tolerances of the applicable case law on this issue, which generally describes § 45-24-52 as "directory only".

6. The Minutes of the August 4, 2015 meeting of the City Plan Commission at which the Commission first made a recommendation that the City Council adopt the Amendment described the Amendment as an "update" to Zoning Ordinance revisions that had been accomplished in 2012 based on a commitment at the time to "revisit" the table of uses generally, and that the proposed changes involving Alternative Electric Generation and Solar Power "reflect changes to technology". (Plaintiff's Exhibit C). A letter to the same effect was directed to the City Plan Commission the same day. (Plaintiff's Exhibit B).

7. Then, on November 3, 2015, the City Plan Commission met again to consider a series of written questions from a member of the City Council on the Amendments and a further advisory to the City Council. The Minutes of the Meeting reflect thoughtful consideration of the Amendments by the City Plan Commission as relating to important purposes of zoning. The purposes of zoning, as set forth in R.I. Gen. Laws § 45-24-30, include such broad concepts, without limitation, as promoting the public health, safety and general welfare; providing for a range of uses and intensities of use appropriate to the character of the city or town and reflecting current and expected future needs; providing for orderly growth and development that recognizes … the goals and patterns of land use contained in the comprehensive plan of the city or town adopted pursuant to chapter 22.2 …; the nature characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution …; the value of unique or valuable resources and features …; the need to shape and balance urban and rural development …; providing for the protection of the nature, historic, cultural, and scenic character of the city or town or areas of the municipality; providing for the preservation and promotion of agricultural production, forest, silviculture … aquaculture, timber resources, and open space …; promoting a balance of housing choices …[etc.].

8. The further City Plan Commission advisory to the City Council discussed and developed at the Commission's November 3, 2015 meeting speaks to many of the above purposes of zoning (many of which are overlapping), particularly the Commission's emphasis on protecting agricultural land (particularly in western Cranston) from more dramatic, permanent development than solar power would, and locating solar installations where they are most appropriate. The Commission's further advisory to the Council included the following:

> "As has been noted at all the public meetings/hearings on this matter, the decision to allow solar power as a use by right in A-80 zones was informed by the range of impacts that would be

generated by such a project [virtually none]. A project proposing solar power would be subject to Development Plan Review ... at a public hearing. During their reviews, the Development Plan Review Committee and the City Plan Commission would identify impacts that may be created by a specific project on a specific site and would require mitigative measures to address those impacts. As part of the review ... the Plan Commission informs all appropriate state agencies such as the Department of Environmental Management and seek[s] their comments/input. ... [id. p. 3, Para 8].

* * *

The proposed change authorizes solar power in A-80, S-1, GI, M-1 and M-2 zoning districts. This use designation is not mutually exclusive. If the City is going to help meet the future need/demand for renewable energy, it will require the use of land in all these districts. It is in these zoning districts that there are parcels of land that can accommodate sizable solar farms.

For example, regarding the availability of industrially zoned land for the current proposal, an alternative analysis would indicate the following: The current proposal is for a 10 mg facility on 78 acres of land with 50 acres usable and that has proximity to electric. Based on a review of the City's GIS, there is no comparable vacant industrially zone[d] land both in terms of size and location.

It is important to note that no protection is currently provided for Cranston's agricultural land. Except [for] S-1 land, other zoning districts allow more intense development than solar power. Unless the City is willing to buy land in western Cranston that is being used for farms either outright or through easement or create protections through zoning, the question is not if agricultural land will be lost but under what circumstances ... [id. p. 3, Para 9].

* * *

It is important to note that the zoning amendment proposes a use change to A-80 and S-1 zoning districts. While within these districts there may be agricultural activities, agricultural uses are not protected by zoning. For an A-80 zone, the principal use authorized is single family residence with a minimum lot size of 80,000 s.f. To the extent that zoning is a predictor of future land use, the A-80 land in western Cranston will eventually be developed as house lots. Again, it is not a question of prohibiting the development of said land for solar power but a question as to

> how the land will be developed. The Plan Commission would suggest that the conversion of A-80 land to residential development will be more intensive, have a greater impact, and be permanent." [id. p. 4, Para 10].

9. The City Plan Commission captured the above-referenced further advisory recommendation to the City Council (as reflected in the Minutes of the November 3, 2015 Commission meeting), and transmitted it to the City Council in a Memorandum dated November 3, 2015. (Plaintiff's Exhibit E). Based in part on this input, the City Council approved the Amendments at its meeting on November 23, 2015. (See Minutes, Plaintiff's Exhibit F).

10. The Rhode Island Supreme Court has held that the amendment of a zoning ordinance is an exercise of a legislative function by a town council and it enjoys "a presumption of legality which can be overcome only by competent evidence." Verdecchia v. Johnston Town Council, 589 A.2d 830 (R.I. 1991). Furthermore, the presumption of validity includes the presumption that the zoning enactments were "in accordance with the comprehensive plan." D'Angelo v. Knights of Columbus Building Association, 151 A.2d 495 (R.I. 1959). The Plaintiff must meet the burden of showing the area or areas in which the enactment or amendment does not conform with the comprehensive plan ...

11. The City of Cranston City Plan Commission's approval of the underlying solar project in western Cranston that was an impetus for the challenged Amendments here was also challenged on appeal by the same Plaintiff here, United States Investment & Development Corporation, in Providence County Superior Court C.A. No. 2016-5739. There, as here, the Plaintiff contended that allowing a solar power installation on the subject property was inconsistent with the Comprehensive Plan as in effect as of the date of the Amendments.

Although not binding on the Court, it bears noting that, in a Decision in that case dated December 27, 2017, Justice Licht rejected Plaintiff's appeal and determined that the subject solar

project is indeed consistent with the Cranston Comprehensive Plan, as in effect as of the date of the Amendments, and that no Comprehensive Plan change was necessary.

12. As Judge Licht noted, and as Defendants point out again here, the Cranston Comprehensive Plan already expressed an aspiration to protect agricultural land in Cranston from being lost to more intense – more permanent – development, and that solar installations are consistent with that aspiration, all as described above.

ENTERED as an Order of the Court effective this ____ day of May, 2018.

By Order:

/s/ Demonica C. Lynch
, Clerk

Enter:

/s/ Maureen B. Keough
Maureen B. Keough, Associate Justice

Dated: May 8, 2018

Submitted by:

s/ William R. Landry
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, the within document was electronically filed through the Rhode Island Superior Court Case Management System by means of the EFS and is available for viewing and/or downloading by counsel of record, as follows:

Joelle C. Rocha, Esq.
Kelly, Souza, Rocha & Parmenter, PC
128 Dorrance Street, Ste 300
Providence, RI 02903

s/ William R. Landry

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

SUPERIOR COURT

UNITED STATES INVESTMENT & DEVELOPMENT CORPORATION, Plaintiff	)	
v.	)	C.A. No. PC-2015-5506
ROBERT STROM, in his capacity as Finance Director for the City of Cranston;	)	
and	)	
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 Cranston City Council, Defendants	)	

JUDGMENT

This matter came before the Court (M. Keough, J.) on March 12, 2018, on Plaintiff's and Defendants' Cross Motions for Summary Judgment. After consideration of the briefs and argument of the parties and oral argument and in accordance with a Bench Decision rendered by the Court on March 12, 2018, and an Order of the Court of even date herewith granted a Motion for Summary Judgment by Defendants and denying a Motion for Summary Judgment by Plaintiff, it is hereby

ORDERED, ADJUDGED, and DECREED,

as follows:

1. Judgment hereby enters in favor of the Defendants, and against the Plaintiff, declaring and confirming that City of Cranston Ordinance Nos. 7-15-04 and 7-15-05 are not

procedurally defective, and are not inconsistent with the City of Providence Comprehensive Plan, and denying and dismissing the claims set forth in Plaintiffs' Complaint

ENTERED as a Judgment of the Court effective this ____ day of May, 2018.

By Order:

/s/ Demonica C. Lynch
, Clerk

Enter:

/s/ Maureen B. Keough
Maureen B. Keough, Associate Justice

Dated: May 9, 2018

Submitted by:

s/ William R. Landry
William R. Landry (#2494)
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Attorneys for Defendants

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