

STATE OF RHODE ISLAND

CITY OF CRANSTON

PLAN COMMISSION

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PROCEEDING AT HEARING :
IN RE: :
NATICK AVENUE SOLAR :

DATE: June 6, 2023
TIME: 6:30 P.M.
PLACE: Cranston City Hall
Council Chambers
Cranston, RI

BEFORE:

- MICHAEL E. SMITH, CHAIRMAN
- ROBERT COUPE
- DAVID EXTER
- STEVEN FRIAS
- KATHLEEN LANPHEAR
- LISA MANCINI
- JUSTIN MATEUS
- THOMAS ZIDELIS
- JASON M. PEZZULLO

PRESENT:

- FOR THE APPLICANT ROBERT MURRAY, ESQUIRE
NICHOLAS NYBO, ESQUIRE
- FOR THE PLAN COMMISSION STEPHEN H. MARSELLA,
ESQUIRE
- FOR THE OBJECTORS PATRICK J. DOUGHERTY,
ESQUIRE

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(RECONVENED AT 7:15 P.M.)

CHAIRMAN SMITH: Okay. Next item on land development, this is a resumption of public hearing on Natick Avenue Solar; and when we adjourned at the last meeting, the applicant was about to take the floor. And so if we just follow along with that and continue, I invite the applicant to address the group.

MR. MURRAY: I'm going to speak very briefly, Mr. Chairman, members of the commission. For the record, Robert Murray. I represent the applicant and owner of the property before you for the Natick Avenue Solar project. I just want to put on the record, it was -- we were last here in April. There was a scheduled meeting in May that the commission accommodated a rescheduling. As requested by the commission and Mr. Marsella, notice was mailed to all the property owners who owned property when the initial application started in 2018. We sent notice to anybody who owned as of 2022. We sent notices to lawyers and appellants in the various applications in Superior Court, and we sent notice to anyone that I could identify, and I think I got everyone from the April 19th meeting who came and spoke, even those who would be beyond

1 the normal notice requirement. So in total I think
2 we sent out about 258 notices, but I've provide an
3 affidavit to the staff and for the record for each
4 of those categories, and they were so notified.

5 With that, Mr. Chairman, my co-counsel,
6 Mr. Nybo, with your permission, will speak at this
7 time. Be happy to answer any questions.

8 CHAIRMAN SMITH: Certainly. Thank you.

9 MR. NYBO: Good evening, Commissioners.
10 Nick Nybo, senior legal counsel for Reivity Energy
11 and its affiliates, including Natick Solar. This
12 is the fourteenth time that we've come before this
13 commission on this application. So the first thing
14 I want to say is I sincerely appreciate the
15 commission's time and the planning department's
16 time over the last five years in considering this
17 application. I will endeavor to limit my comments
18 this evening to spare the commission any prolonged
19 auditory. Most of the legal and operational
20 concerns that were raised during the last meeting
21 in April by the public I addressed, I hope, in my
22 May 30th letter to the commission. But there were
23 a few final points that I wanted to address before
24 the commission closes this matter.

25 I was reviewing the transcripts from the

1 last meeting the other day, and I was particularly
2 struck by the comments of Ms. Janet Ragno. Miss
3 Ragno spoke about the horse farm that her and her
4 family own in western Cranston, and she told the
5 commission that she's had a number of solar
6 developers come to her trying to convince her that
7 her farm would be a great place for a solar
8 installation, and she told all of you that, you
9 know, she said no, that's not happening. And she
10 said that because she wants to reserve the bucolic
11 character of her farm and the surrounding area.
12 And I think that's great. I think it's great that
13 Ms. Ragno has the right to decide how she's going
14 to use her property and just as importantly how
15 she's not going to use her property. Every land
16 owner that came up before you about this project at
17 the last meeting gets to use the land that they own
18 the way that they see fit, as long as they comply
19 with zoning ordinances and other applicable
20 regulations that this commission has passed. And,
21 you know, that is the benefit of private property
22 ownership in the United States and, again, I think
23 that's wonderful.

24 But the question that I kept being left
25 with is why does Ron Rossi not have that same

1 right. Why are Mr. Rossi's property rights subject
2 to a neighborhood vote. And the answer is that
3 they're not. And I understand that the neighbors
4 like Mr. Rossi's land the way that it currently is,
5 and they want to stay -- they want the land to stay
6 the way that it was when they moved there, but it's
7 not their land. And I understand that they're
8 worried about certain things regarding the way that
9 we're proposing to use this property. I understand
10 that they're worried about glare. The fact of the
11 matter is that there are solar panels on highways
12 and airports all across this country, and I
13 understand that they're worried about cadmium and
14 the fact is we're not using cadmium panels for this
15 project. And I understand the concern about
16 electromagnetic hypersensitivity, but there's
17 really no scientific basis for any of that concern;
18 and I say that as somebody who has two children
19 that sleep every night under solar panels on the
20 roof. So if there was a science basis for that, I
21 would certainly be equally concerned about it.

22 But ultimately my point here is that this
23 planning board process is not a democracy. There
24 are nine votes, eight here tonight, but there are
25 ultimately nine votes that count. And this is a

1 legal process. Now, democracy does occur in this
2 city council chamber but it occurs when the city
3 council convenes, and representational democracy in
4 this case when it comes to solar development in the
5 city, it's worked for the folks in this room when
6 it comes to solar because in 2015 the city council
7 decided that this city was going to participate and
8 support Rhode Island's Clean Energy initiatives,
9 and it passed the zoning ordinance that allowed
10 solar in the A80 zone. Now, many of the
11 constituents, perhaps some in this room here
12 tonight, apparently did not like that direction
13 that the city council is going in and they
14 convinced the city council to reverse in 2019, and
15 the moratorium in certain areas was passed. And
16 now we have the solar ordinance that we have in
17 this city. But in the interregnum, we filed our
18 application in 2018. And our application is vested
19 under the old ordinance and our vested rights are
20 not subjected to a neighborhood vote.

21 I've sat in on a number of the
22 commission's meetings over the last five years for
23 this project; and during that time, I've had the
24 opportunity to observe other applications that have
25 come before you, and I've noticed that there are

1 certain members of this commission who have a
2 healthy skepticism when it comes to variances or
3 special use permits. I think that skepticism was
4 mentioned a few times here tonight before this
5 matter was called. And my general understanding of
6 that skepticism is the view that when the city
7 council, as an elected body, has determined that
8 certain uses belong in certain areas and other uses
9 don't belong in certain areas, that the plan
10 commission should be exceedingly hesitant to
11 implicitly overrule those determinations by
12 allowing a variance, and that makes perfect sense
13 to me. A variance is an exception and the
14 exception can't be allowed to swallow the rule.
15 Otherwise, what the city council has done with the
16 ordinance is, you know, don't have much practical
17 effect. But there's a flip side to that coin when
18 the city council has specifically enumerated a use
19 as by-right in a particular area as permitted for
20 that area. And I would respectfully suggest that
21 the commission should be equally hesitant to reject
22 applications when the city council has designated
23 that particular use is by-right for an area like it
24 has here.

25 Now, the city council in 2015 said that we

1 can put solar in the A80 zone, and we've spent over
2 \$1.4 million to do just that and that's the type of
3 investment backed commercial reliance that has to
4 be respected by the law.

5 Now, there were variance comments during
6 the last meeting suggesting that there are no
7 benefits of this project, apart from the benefits
8 to the developer and the benefits to Mr. Rossi,
9 and, you know, I generally reject the implication
10 that Mr. Rossi needs to use his property in a way
11 that benefits anybody other than himself. With
12 that said, I do want to address the benefits of
13 this project.

14 First, this project will generate over a
15 million dollars in tax revenue for the city. This
16 is largely unencumbered tax revenue. Our solar
17 panels will not be having any children. They
18 really require little police protection, and
19 despite some rumors circulating, I think
20 historically around the Internet solar panels do
21 not just spontaneously combust, requiring fire
22 assistance. So, again, this million dollars is
23 largely unencumbered.

24 Second, this project will service a net
25 metering contract which will save the city

1 approximately \$29.3 million over the life of the
2 project in the city's electricity costs.

3 Third, this project will provide thousands
4 of hours of prevailing wage work for union
5 electricians and other local laborers. You heard,
6 I believe it was at the last meeting, from one or
7 two of those union electricians that we work with
8 at the IBEO for all of our projects.

9 Finally, when it comes to the
10 environmental impacts here. This project will
11 contribute to the state's renewable energy goals.
12 This state currently sources 87 percent of its
13 electricity from natural gas. That is the highest
14 share of any state in the country. And the
15 majority of domestic natural gas comes from
16 fracking, which some of you, I'm pretty sure,
17 perhaps all of you, know involves plunging a drill
18 thousands of feet into the earth's core and pumping
19 hundreds of thousands of gallons of water and sand
20 and chemicals in the planet to fracture shale rock
21 and release and collect natural gas.

22 Now, again, I'm sure over the last 10,
23 15 years all of you have heard something about
24 fracking. I think it's often a topic of
25 presidential or national debates. But, you know,

1 the reports are largely about how they killed farm
2 animals, they poison children, and generally cause
3 generational destruction of the farmland counties
4 throughout this country, especially the ones in New
5 York and Pennsylvania, Ohio, West Virginia. I
6 think it's safe to say that fracking is perhaps one
7 of the most environmentally destructive activities
8 that humans have figured out how to do to the
9 planet and this is how Rhode Island has sourced the
10 majority of its electricity for the last twenty
11 years.

12 Financially, this state also pays the
13 third highest electricity costs in the continental
14 United States. So here in Rhode Island, we have
15 the distinction of consuming some of the dirtiest
16 and most expensive electricity of any place in the
17 country. This would be like if McDonald's served
18 the most expensive hamburger. So while I'm
19 generally sympathetic to the public's concerns
20 about this project, about the alleged impacts on
21 property values, and the impacts on the bucolic
22 nature of western Cranston, frankly these impacts
23 are nothing compared to the preternatural
24 environmental damage that this state's electricity
25 consumption has visited on communities upon whom we

1 have, for decades outsourced the social and
2 environmental costs of our electricity consumption,
3 and I would respectfully suggest that any
4 environmentalist who objects to this project is not
5 concerned about the environment, they're concerned
6 about their environment.

7 This is a project that will contribute to
8 our turning around the environmental impacts that
9 our electricity consumption, I don't just mean
10 Rhode Island, it's the entire country, of course,
11 the entire country's electricity consumption has
12 wrought on the environments all over this country.
13 And solar installations like this one, properly
14 sited within the zoning ordinances is going to turn
15 that around. It will also assist in the extreme
16 financial cost of our electricity in this state,
17 which we saw last year, and I would suggest we're
18 going to see again in the fall when natural gas
19 prices spike again.

20 I want to be clear, though, I'm not
21 arguing that the commission should approve this
22 project because of these benefits. The city
23 council in 2015 already weighed those benefits when
24 it passed the ordinance that we're here under
25 tonight. I'm arguing that this commission should

1 approve this project because it's by-right, and
2 it's consistent with the Comprehensive Plan.

3 The 2017 Comprehensive Plan amendments
4 state that, quote, "The zoning ordinance should
5 permit the development of renewable energy
6 production facilities in appropriate areas
7 including, without limitation, in the A80, M1, M2,
8 and S1 zoning districts and should promote the
9 development of multiple renewable energy production
10 facilities within the city." Everyone, from the
11 current planner to the former planner, to Justice
12 Richard Licht, to the platting board to this plan
13 commission, everyone who has considered the use of
14 solar in the A80 district who is not named Paige
15 Bronk, has determined that use -- solar use in the
16 A80 zone is consistent with the city's
17 Comprehensive Plan. And I don't say that to
18 suggest that this project and this process is a
19 fait accompli.

20 What I'm saying is that if this commission
21 is going to decide to reverse those historic
22 findings, those legal determinations that have been
23 made, I would respectfully suggest that there needs
24 to be an explanation of why we are being treated
25 differently from everybody else who has come before

1 this commission in the past.

2 The last thing I want to address is
3 vesting. When we filed this application in 2018,
4 as I've mentioned a few times here tonight, the
5 zoning ordinance has recognized solar in the A80
6 district as by-right. Over the past five years, we
7 have gone through this process in the first master
8 plan, in the preliminary plan, in the final plan,
9 and the appeal to the platting board, and the
10 appeal to the Superior Court, and all I've heard
11 from the objectors over those five years is make
12 Natick Solar go back and put together a better
13 plan. They're vested. Okay, the suggestion being
14 we could go back to Square One and do better
15 because we have vested rights, but here we are now
16 five years later and all of a sudden, the argument
17 is we're not vested. We've lost our rights, and my
18 understanding of why they contend that we're not
19 vested is because we've made certain changes to the
20 proposal since we filed our master plan back in
21 2018, and as I said in my May 30th letter, I
22 readily admit that changes have been made in the
23 last five years. But it's my understanding that
24 the whole purpose of this three-part planning
25 process is master plan, preliminary plan, final

1 plan, is to encourage just that. It's to encourage
2 a dialogue between the developer and the commission
3 with the input of public comment, and to -- in
4 hopes that the developer, the applicant, will take
5 into consideration those concerns and maybe make
6 some changes that will at least address,
7 ameliorate, mitigate the concerns that are being
8 raised either by commissioners or by the public.
9 But if the rule is going to be that if you make a
10 change as an applicant, you're going to lose your
11 vested rights, I'm going to suggest that that
12 dialog is going to rapidly go away. An applicant
13 is going to have, not only no incentive, it's going
14 to be disincentivized to make any changes if its
15 vested rights are at risk. And I don't think that
16 is the rule. I don't think that can be a rule.

17 And that's what -- the changes that we
18 have to this proposal have been. The changes we've
19 made to this proposal since our application was
20 filed in 2018 were to respond to concerns raised by
21 either the public or the commission over the last
22 five years. In our first master plan approval, we
23 were required to participate in an ad hoc
24 neighborhood committee meeting for the very express
25 purpose of trying to address concerns with our

1 buffer and our landscaping plans and we made a
2 number of changes that come out of the process, a
3 number of changes. The city hired a third party
4 independent landscape architect to review, to sit
5 in on those meetings and issue a report explaining
6 what changes we should make and we made those
7 changes. But, again, if changes like that mean
8 that an applicant like us lost our vested rights,
9 like I said, I think the dialog and the willingness
10 to actively and in good faith participate in this
11 process, it's going to go away. There's no --
12 there's no reason why we would agree to do it if we
13 had threatened our vested rights.

14 So the last thing I just want to address
15 is, you know, as Mr. Pezzullo laid out in his
16 February 3d memo, this application complies with
17 all requirements for master plan review under
18 Section 45-23-60 of the Rhode Island General Laws.
19 We have presented our civil engineer, our
20 landscaping expert, our planning expert, as well as
21 our blasting expert, as well as our real estate
22 appraisal expert, our civil engineer and our
23 landscaping expert are here again tonight if
24 there's any questions for them. And for the
25 reasons that Mr. Pezzullo out -- laid out in his

1 memo, we would respectfully request that the
2 commission adopt the conclusions in Mr. Pezzullo's
3 memo and approve our master plan application.
4 That's all I have. Again, my substantive comments
5 to many of the things raised during the last
6 meeting, I hope were addressed in my May 30th
7 letter. I had to cut it off at a certain point.
8 I'm sure all of you appreciated that coming in on a
9 Friday at the start of the summer. But I'm happy
10 to address any questions that the commissioners
11 have about anything said in that letter, or any
12 questions you generally have about the project.
13 Again, I thank you for your time.

14 CHAIRMAN SMITH: Thank you, Mr. Nybo. Are
15 there any questions at this time for Mr. Nybo on
16 behalf of the applicant?

17 MR. FRIAS: Thank you, Mr. Nybo. I know
18 it's been a long process, and I really don't want
19 to prolong it too much longer for everybody here.
20 I just want to ask you a couple of things that
21 weren't addressed in your letter and you haven't
22 addressed in your comments; and if you don't want
23 to address them, that's fine, but I want to give
24 you the opportunity.

25 One is in public comment we got testimony

1 from Mr. Lawrence and he provided photographs about
2 the condition of the pipeline and what it was
3 buried in. Do you have any comment or response to
4 that.

5 MR. NYBO: So I do have a response,
6 whether it's responsive, I'll leave to you, but I
7 do have a response. You know, I think that we did
8 articulate a bit of this in the letter about the
9 fact that it's my understanding from Mr. Rossi that
10 he was contacted, it was either by Kinder Morgan or
11 the Tennessee Gas pipeline. I said in the letter
12 it was Kinder Morgan and that's who I believe he
13 was contacted by, but to let him know that -- that
14 had been Federal authority who had reached out to
15 them at the behest, I believe, of certain
16 neighbors, reached out to the Federal authority to
17 ask them about this pipeline, and the Federal
18 authority deferred to Kinder Morgan who's legally
19 responsible for this pipeline and Kinder Morgan
20 reached out to Mr. Rossi and said, look, we're
21 going to come stake the pipeline to make sure that
22 it's respected. But, ultimately, if you are going
23 to follow the guidelines and the notice
24 requirements that we have issued in our public
25 guidelines which our blasting expert referred to, I

1 think, during this testimony, then, you know, we
2 have no issue with the blasting as you've proposed,
3 and my understanding is they also said that
4 generally speaking we prefer a use like this over a
5 residential use when it comes to burdens on the
6 pipeline. I can't go any further past why they
7 prefer one over the other. I can speculate, but I
8 don't think it's really appropriate for me to do
9 that.

10 MR. FRIAS: One of the comments we got
11 from Mr. Doe was that after the Lippitt Avenue
12 project, there was, for years, iron bacteria in the
13 watershed nearby. Do you have any response or
14 comment -- let me ask a question, then I'll ask for
15 your response -- what do you -- do you have any way
16 of preventing that from occurring in this project?

17 MR. NYBO: Yes. So my understanding again
18 is that that was a product of the blasting regime
19 that had been put into place for Lippitt Ave. You
20 know, I would note that you had the iron bacteria
21 issue. Mr. Doe reported this to the DEM. The DEM
22 came to us and issued us with some sort of
23 preliminary notice saying we needed to clean it up
24 and we cleaned it up. So -- it shouldn't have
25 happened. I'm not saying it was a good thing that

1 it happened. Obviously, we didn't want it to
2 happen. We had to spend money to clean it up.
3 But, you know, the DEM came and they said you have
4 to fix this, and we fixed it. I believe it was a
5 product of the blasting that we had done at the
6 property. We're using a different blasting company
7 this time. I think that either I said it in the
8 letter or our blasting expert talked about it or
9 perhaps both that they do not use the same
10 chemicals, the same percolates that were used
11 perhaps in the previous blasting issue. I cannot
12 tell you that that is what led to the iron issue,
13 but I know that there's a different chemical regime
14 that's being used this time around.

15 MR. FRIAS: Another thing Mr. Doe asked
16 was about at Lippitt Hill was that -- he
17 characterized that the topsoil is gone. It's no
18 longer there. And his comment was basically, you
19 cannot clear cut and do -- blast and be able to
20 maintain any of the topsoil. Do you have a
21 response to that sort of -- his opinion?

22 MR. NYBO: Can I confer real quick
23 about -- I'd like to respond but I don't want to
24 give you misinformation.

25 MR. FRIAS: No problem.

1 (ATTORNEY NYBO CONFERS)

2 MR. RUSSO: Hi. Good evening. My name is
3 David Russo with DiPrete Engineering. May answer
4 two of your questions, One in terms of the iron
5 bacteria as was referenced. That rock -- there's a
6 wetland in that area. The rock that was laid down
7 was riprap protection. Most of that oxidation that
8 occurred was because the rock was sitting on the
9 edge of the wetland and you can see it in the
10 photos. Then the water rose, the rock was sitting
11 there, would oxidize, and that orange tint you
12 would get would get into the wetland. DEM
13 recognized that, as Mr. Nybo said, and they asked
14 us to remove that rock from around the wetland, and
15 seed and plant that area instead of having the
16 rock, which they did.

17 In terms of the topsoil on these sites,
18 this site does. We do testing on there. They have
19 topsoil. There's an A horizon on the site, and DEM
20 does require topsoil be on the site, and on Lippitt
21 there were required to seed and they went out there
22 and hydro seeded that site with a mixture of
23 basically like chicken scat and other forms where
24 they hydro seeded and DEM went out there multiple
25 times and they were satisfied with the

1 stabilization that occurred on that site.

2 MR. NYBO: Mr. Carter also reminds me that
3 the third party landscape architect, Sara Bradford,
4 she had issued a report a few years ago about this
5 and spoke at length about the topsoil mitigation
6 steps that she believed needed to be taken. So I
7 think that those are detailed in her report and we
8 are complying with her report still.

9 MR. FRIAS: Miss Patten brought up in
10 public comment that this application -- you never
11 contacted the Rhode Island Historical Preservation
12 Commission, and that box was not checked off.
13 Would you like to address that?

14 MR. NYBO: Yes. So I went back and I
15 looked at this, and the application does have a
16 note about the historic society, at least the
17 application I saw in the record does have a note
18 that that historic society issue is going to be
19 addressed at a later step in the planning process.
20 Now, I don't see -- I fully agree that there is a
21 box on the application to be checked, and that
22 unless somebody wants to stand up and correct me,
23 we have not contacted the historic society, but I
24 think that there was a note on the original
25 application. I have to confess I don't know who

1 wrote it, whether it was planning or us about the
2 issue of contacting the historic society was to be
3 addressed at a later date before the project was
4 actually constructed. So I guess my point is the
5 application does address the need to do that. It's
6 not like it was just left not check. I also
7 don't -- I scoured the charter and I don't know
8 that I see where in the city's charter or zoning
9 ordinance that's required, but I agree that there's
10 a box for it and we haven't done it but I do think
11 the application addressed it, that we needed to
12 contact them before this project was actually
13 constructed.

14 MR. FRIAS: Going to your letter now, and
15 you said something in your speech, you said every
16 person who is not compensated by one of the
17 interested parties has looked at this solar use in
18 A80 and found it to be consistent with the Comp.
19 Plan. You are aware that last time this was before
20 the body, this body, years ago at the first master
21 plan stage, it was a 5-4 vote and there was four
22 people who did not find it -- did not vote in favor
23 of this and one of them was Fred Vincent who was a
24 planner.

25 MR. NYBO: I'm aware it was a 5-4 vote and

1 I'm aware that Fred Vincent was in the minority. I
2 don't know that there -- each and every one of
3 their objections was based on their belief that it
4 doesn't comply with the Comprehensive Plan. I
5 mean, there's other reasons why --

6 MR. FRIAS: There could be other reasons.
7 I understand.

8 MR. NYBO: But it's a fair correction. I
9 should have been clear that I mean the commission,
10 speaking as the commission.

11 MR. FRIAS: I debated -- I'm debating -- I
12 debated whether or not to ask you about this, but
13 I'll be really quick because you brought it up in
14 your comments. You go through an analysis of how
15 many trees it would take, you know, for solar
16 energy and stuff like that on Page 14. When --
17 this is based on information you got from a solar
18 energy company on their website, if I recall,
19 Sage -- Energy Sage, right?

20 MR. NYBO: It's an industry group. I
21 don't know that it's a -- it's an industry.

22 MR. FRIAS: Solar industry group.

23 MR. NYBO: Yup.

24 MR. FRIAS: For example, the calculation
25 of, like, how much each kilowatt of renewable

1 energy reduces carbon emissions by so many metric
2 tons, what is that based on exactly, what the
3 energy -- is it national or is it regional, or you
4 don't know?

5 MR. NYBO: I don't know whether it's
6 national or regional. My understanding is that it
7 is based on the idea that you are, by producing
8 electricity from solar panels, you're reducing the
9 need to produce electricity from fossil fuels,
10 which has a carbon -- it has the effect of reducing
11 carbon.

12 MR. FRIAS: Yeah. My point on this is
13 that I don't know where this number comes from.
14 It's probably a national number, and there's a
15 difference between, as you know, the regional
16 energy mix and the national regional -- the
17 national energy mix. And as you know, I would
18 assume that in New England we're much less fossil
19 fuel dependant, intensive fossil fuel dependant,
20 than let's say the national number because we have
21 nuclear, we have renewable. If you look at the ISO
22 New England numbers -- have you ever looked at
23 them?

24 MR. NYBO: I haven't looked at the ISO New
25 England numbers, but I have to push back on the

1 idea of that. In Rhode Island, as I said in my
2 comments, we get 87 percent of our electricity from
3 natural gas, which is a fossil fuel. So I don't
4 know, I mean, that's -- it's the highest share of
5 any state in the country on natural gas. So I
6 don't know that we're doing very well generally on
7 getting away from fossil fuels for the basis of our
8 electricity compared to the national average. In
9 fact, we're the worst on natural gas. We don't use
10 coal, which is good.

11 MR. FRIAS: Okay. So let me ask it this
12 way and I don't want to bother everybody on this
13 energy thing because it's offside, but we get our
14 energy, you would agree, from the region, New
15 England region. We're part of ISO New England,
16 correct?

17 MR. NYBO: I agree we're part of ISO New
18 England.

19 MR. FRIAS: And so ISO New England, are
20 you aware that basically gas and oil only
21 constitutes about 55 percent of electric
22 generation?

23 MR. NYBO: That's sounds right to me for
24 ISO New England, but I'll take your word for it.

25 MR. FRIAS: And there is, basically,

1 almost -- compared while at the national level,
2 there is -- goal is a major component. Would you
3 agree with that?

4 MR. NYBO: I wouldn't disagree or agree
5 because I don't know the answer, but I'll take your
6 word for it.

7 MR. FRIAS: That's fine.

8 MR. NYBO: But we do have local
9 generation. We have like six electricity plants in
10 the state and they all use natural gas. So -- now
11 some of those plants will out -- will send
12 electricity out, but we certainly use the majority
13 of the electricity produced by the six plants that
14 are in this state and all six of them use natural
15 gas.

16 MR. FRIAS: I could go about this
17 calculation, but I don't want to do a whole bunch
18 of math with you right now.

19 MR. NYBO: I know your background, Mr.
20 Frias, so I'm pretty sure you would embarrass me in
21 terms of your understanding of this.

22 MR. FRIAS: So, last question, you talked
23 about the economic development aspect of this. My
24 calculation is this is basically \$56,000 of tax
25 revenue a year.

1 MR. NYBO: That's accurate.

2 MR. FRIAS: Okay. And that amount is
3 fixed for 25 years?

4 MR. NYBO: So that number is based on city
5 ordinance.

6 MR. FRIAS: I understand, but I'm asking
7 you, it's a basically a fixed number.

8 MR. NYBO: Well, I don't know -- well, if
9 the city council continues the ordinance, doesn't
10 change the ordinance, it will be fixed. In
11 Cranston, there's an ordinance that sets it at 2
12 and 5. We don't have a pilot with the city for
13 this project. We have an ordinance that says 2 and
14 5. If the city council convened next month and
15 said we don't like our solar ordinance anymore for
16 taxing, it wouldn't be fixed anymore. It would be
17 whatever the city council says it is.

18 MR. FRIAS: And that would not cause a
19 problem with the -- the reason I'm asking this is
20 that your comment was that the new state law that
21 passed basically prevents cities and towns from
22 changing the valuation of solar farm property to
23 increase taxation. Is that -- am I characterizing
24 that correctly?

25 MR. NYBO: So the state law that was

1 passed last year prohibited cities and towns from
2 changing the real estate assessment on property
3 solely by virtue of solar going onto the property.
4 All property, solar property, could be enhanced in
5 its assessment just the way all commercial -- every
6 other type of commercial property was, but the
7 concept that once you put solar on a property, the
8 assessments would sometimes go up by ten times,
9 which happened to us, not here, but in other towns,
10 that is what the state law was addressing. The way
11 Cranston has set up its ordinance is when it comes
12 to solar, it's not assessment-based value, real
13 estate value assessment based at all. It is merely
14 megawatt based. You pay 5 tangible tax, which is
15 the state law as well and 2 for the real estate.
16 So the state law limiting how you assess real
17 estate that solar is on doesn't really have
18 applicability in Cranston because that's not how
19 Cranston taxes solar. It taxes it based on
20 megawatt. But you're right on the 56,000. It's
21 7,000 megawatt, 2 for real estate, 5 for tangible
22 tax. We have 8.1 megawatts. So it's a little over
23 56 a year.

24 MR. FRAIS: Okay. So that's assuming that
25 it's \$56,000 every year for 25 years at the same

1 amount.

2 MR. NYBO: If the city council kept the 2
3 and 5 paradigm. If it increased it, it will go up.
4 If it decreases, it would go down.

5 MR. FRIAS: Okay. Thank you.

6 CHAIRMAN SMITH: Thank you, Commissioner
7 Frias. Any other questions for Mr. Nybo from the
8 committee members at this point? Okay. Thank you
9 very much then.

10 MR. NYBO: Thank you.

11 CHAIRMAN SMITH: Okay. At this time, I
12 will invite anyone who has additional comments. We
13 have the comments from the last session; but if
14 there's anything additional that anyone would like
15 to add, we certainly invite you to come forward and
16 state your name and address for the record, and
17 either ask a question or make a comment either way.
18 Yes, sir.

19 MR. ZEVON: Hi. My name is Dan Zevon, 591
20 Natick Avenue, and I'm an abutter to the property.
21 Really, I just -- I stated some things last time
22 and I got a little bit upset stating it. So I just
23 wanted to reiterate and I have a slide
24 presentation, but I didn't know how to get it to
25 Jason. But, really, it's really been about from me

1 as an abutter and a friend to Ron Rossi for 20
2 years leading you to this solar thing and Ron
3 invited me over to his house just before
4 Thanksgiving back in 2018 because he wanted to show
5 me the plans for the solar farm and what was going
6 to happen. And it was only then that I found out
7 it was a going to be so close in abutting, you
8 know, really five feet over my stone wall to the
9 property. I said, Ron, I'm going to Jamaica
10 tomorrow. When I come back, I'll take a look at
11 it. He goes, oh, you're going to Jamaica tomorrow?
12 I was hoping we could sneak this in, you know, the
13 following -- sneak it in, Ron? What are you
14 talking about? I want to say this is a guy who
15 I've known for twenty years. My wife and I are
16 going up to Nova Scotia tomorrow for a wedding. My
17 kids are driving up there right now. It's a long
18 trip. Ron made the trip up there about fifteen
19 times to my in-laws. So we were close. So he told
20 me that, you know, I'm going to have to fight
21 developers and I knew who the developers were, met
22 them many times at the Rossi family parties.
23 They've known each other for 20 plus years, but,
24 you know, from the beginning, you know, when I
25 first heard that he told he was going to sneak it

1 in, I got kind of a bad feeling, and there's been a
2 lot of intimidation tactics that have been going on
3 that I felt personally and I've witnessed
4 personally.

5 We go to Jamaica, we come back, I get a
6 letter from attorneys, okay, that tell me to meet
7 at this church. Okay. We go to the church, and
8 then I see pictures this size of this site
9 development plan billboard of my home and my
10 kitchen window up there. So I understand Ron's,
11 you know -- and we've talked about, you know, what
12 he's going to do with his land for years, but to,
13 you know, build it like right on my property. He's
14 got a hundred acres of land, okay, but to build it
15 right on my property.

16 Some of the further intimidation that
17 happened, you know, going on then after the first
18 community meeting where we were definitely
19 intimidated in that meeting, I showed up with a pen
20 and paper. Excuse me for showing up with a pen and
21 paper. Mr. Murray came up to me the first thing,
22 he goes, oh, I see you're going to be taking notes
23 here. I don't even know who this man is. And I
24 just remember that first comment. You know, a few
25 months later, you know, when I talked about last

1 week as well when I went to the City of Cranston
2 website to take a look at my property map, okay.
3 So I look at my property map under GIS website and
4 I see that -- this is March of 2019 -- and it says
5 it on the title card, okay, it's not like I made
6 this up. It's written on the title card on the
7 City of Cranston website, property transferred per
8 Attorney Murray. Okay. I've got the photographs
9 of it, I've got the slide deck I could show you. I
10 showed you guys last time. This wasn't some made
11 up story. This wasn't something that my wife made
12 up.

13 We got a threatening letter again from
14 Mr. Murray that the Zevons, creative narrative,
15 that we're making up some story. We're not making
16 it up, but I got no response from the City Of
17 Cranston or anybody as to how that happened.

18 Now, imagine, I'm paying property taxes
19 and I live on about eleven acres. I pay about
20 \$12,000 a year in property taxes. When I called up
21 city hall, they said, oh, Mr. Zevon, you've been
22 paying Mr. Rossi's taxes for the three months. I
23 said, excuse me, and they said, well, it says here
24 the property was transferred per Mr. Murray. I'm,
25 like, what does that mean? I mean, how could --

1 I've been living in this house for 25 years. How
2 does somebody just go to city hall and transfer my
3 property? So, again, intimidation. It got
4 straightened out a couple of days later, but then
5 we get this very threatening letter from Mr. Murray
6 about, you know, how we're make -- my wife is
7 creating some narrative. We just wanted to find
8 out what happened. He could have called me up and
9 say, hey, there must have been a mistake. I don't
10 know how -- of all the houses in the city of
11 Cranston, of all the properties, mine happened to
12 be the one that accidentally got transferred to Ron
13 Rossi's name? I don't know what the benefit it was
14 to this team here, but I never got an explanation.
15 Has anybody here ever heard of anything like that?
16 Nobody in my family has heard anything like that.

17 Now, when that did happen, I happened to
18 see that Ron's abutting, you know, my neighbors
19 next door to me on his 100 acres of land, he pays
20 \$760 a year in taxes. So we're saying he has a
21 right to do whatever he wants to do with his land
22 and the million dollars we're going to get from --
23 to the city of Cranston when he does his solar
24 farm, but what about taxing him for the last thirty
25 years that he's lived there for what really should

1 be tax -- why is he paying \$700 a year when I'm
2 paying 12,000 on ten acres. I just think there's
3 something, you know, wrong there. Yes, he has a
4 Christmas tree farm that we've heard about so much
5 on one of the plots of land there, but that's on
6 like an acre of land. So on that one acre of land,
7 he's getting \$760 for a hundred acres of land.
8 Didn't he already get, perhaps, a sum of money. I
9 don't think you can just run a pipeline across a
10 hundred acres of land and not get a sum of money.
11 So to say that did he do anything, you know, he has
12 a right to do whatever he wants with a property.
13 Well, he's paying \$700 a year for the property, for
14 a hundred acres of land, and he has a pipeline that
15 is running clear across his land that he told me,
16 okay, he told me, again, that he got over \$950,000
17 for. Okay? That seems to me like hey, he already
18 made, you know, he got the land for barely nothing.
19 He made a million dollars on it, and he's paying
20 nothing on it. And now here comes, you know,
21 Revity and their whole, you know, big plans that
22 they're going to do more things with it. It's just
23 the way the whole thing went down.

24 We heard Mr. Lawrence, how he felt some
25 intimidation when they showed up to his house

1 telling him that they're going to have to cut his
2 trees. He felt intimidation when the Brotherhood
3 of Electrical Brothers (sic) come in here wearing
4 sunglasses and bandannas that have nothing to do
5 with this project. There's been a lot of
6 intimidation throughout this entire project. Yes,
7 emotions have gotten high, and I thank you guys for
8 listening to me tonight. Again, I would love to
9 get an explanation, how out of the I don't know how
10 many residents or how many homes were on Cranston,
11 but of all the homes, how contentious things were,
12 that somehow my property got transferred to Mr.
13 Rossi, and then I've got a comedian at city hall
14 who tells me, oh, that I've been paying his. You
15 could imagine how that might have struck me at the
16 time. And I got no answer from anybody. Steven
17 Marsella said that I could reach out to him at any
18 point if I had any questions. Never got a return
19 phone call from him. Okay? So thank you, guys,
20 very much.

21 CHAIRMAN SMITH: Thank you. And that was
22 a point that was brought up last time as well, and
23 my question would be and I don't know who would be
24 able to answer it, but how does property get
25 transferred -- was it a surveying error or -- how

1 does that work?

2 MR. ZEVON: On the title card, mind you,
3 okay, the photograph that I have it said, "Per
4 Attorney Murray," okay. It didn't say "Per," you
5 know, "Mike Jones." It said, "Per Attorney
6 Murray." So I -- obviously, yes, my emotions got a
7 little bit high. My wife's emotions got a little
8 bit high, but we didn't do anything other than ask
9 questions, how did this happen, and then to get
10 this nasty threatening letter from Bob Murray and
11 to talk about my wife, I just wish I could bring
12 the letter up to show you guys. It's just not
13 right. You call up and you say hey, a mistake
14 happened. We're sorry, we don't know -- but to get
15 no explanation from the city and a nastygram again
16 from their attorney, and understand, too, that, you
17 know, we got the letter from their attorney first.
18 I remember at one point Bob Murray said how the
19 Zevons lawyered up. I mean who uses that language
20 other than -- if you're trying to be like
21 combative. We didn't lawyer up. We didn't bring a
22 lawyer to the first community meeting that happened
23 at the church. We did it after, you know, a few
24 meetings and we had to find a lawyer from
25 Narragansett that he made fun of in earlier

1 meetings that we couldn't find a Cranston lawyer.
2 That's because every single lawyer from Cranston,
3 Warwick, and Providence, they're on retainer to
4 Revity. So you can't -- every single -- I went to
5 hundreds of lawyers. Every lawyer said sorry, I'm
6 on retainer to Revity. Sorry, I'm on retainer --
7 friends and neighbors, sorry, I'm -- you know what
8 I'm saying. So the intimidation and the lock that
9 they have is -- I'm blown away. I'm blown away.

10 CHAIRMAN SMITH: Just before you come up,
11 Mr. Murray, did you have a -- sounds like a mystery
12 to me, but I know that surveying errors do take
13 place. I have had that experience myself, but I
14 don't know if that's the case with this.

15 MR. MURRAY: I'd be happy to respond. I
16 don't know if Mr. Zevon wants to stand there and
17 intimidate me or he can sit down --

18 CHAIRMAN SMITH: We can only have one
19 person talking at a time.

20 MR. MURRAY: I've listened for the last
21 four years to Mr. Zevon's fiction and rubbish and
22 attacks on my -- me personally. I'm tired of it.
23 Let me give you the facts. This instance that he's
24 talking about is so blown out of proportion, it's
25 ridiculous. There was a time when I discovered in

1 the assessor's records that one of the addresses
2 they were using for Mr. Rossi was incorrect for his
3 address on Phenix Avenue. I believe it was Lot
4 119. I'll stand corrected, but I'm doing this from
5 memory, that Mr. Zevon and his wife own Lot 118.
6 So in the normal course of business, I called the
7 assessor's office to have them correct the address
8 for Mr. Rossi on his lot. The clerk in the office
9 made a mistake and made the notation on Mr. Zevon's
10 title card. I had nothing to do with that. When
11 it was brought to my attention, we attempted to get
12 it corrected. But no one took -- Mr. Rossi did not
13 take Mr. Zevon's land, and I've tried to explain
14 this, and I've communicated to Mr. Dougherty about
15 this that the only way one can transfer an interest
16 in real estate is through a deed. There was no
17 deed done. It was -- nothing. It was a clerical
18 error in the tax assessor's office; and if you look
19 at a myriad of field cards, anytime someone dies,
20 they make a notation or if somebody changes their
21 address, they put a note on the field card.
22 They're all available online. That's what happened
23 in this instance. I didn't tell them to change
24 Mr. Zevon's card to Mr. Rossi's address. Mr. Rossi
25 did not pay Mr. Zevon's taxes or he didn't pay Mr.

1 Rossi's taxes. It was simply a clerical error, but
2 I've listened to that story so many times, it's
3 fiction. It's wrong to keep saying it and he
4 should stop.

5 CHAIRMAN SMITH: Thank you, Mr. Murray.
6 And I did want to add one thing, too. I know
7 there's a lot of passion surrounding this issue on
8 all sides. But what is -- what is relevant to the
9 commission are the facts of the case. And I feel
10 that opinions can be expressed without calling into
11 question competence, integrity, or motivations of
12 any individuals in the process. So I would ask
13 that everyone remember that we're looking at facts
14 and not trying to second guess what went through
15 other people's minds because that doesn't help this
16 process. Thank you. Now the next gentleman.

17 MR. LAWRENCE: Walter Lawrence, 745 Natick
18 Avenue in Cranston. He stated that the -- the
19 expert here, stated that the Federal -- called
20 Federal and they said that it was okay to blast if
21 they use the right -- they're assuming that this
22 pipeline was put in legally and the right way.
23 Now, you seen pictures the last time I was at the
24 other meeting. This pipe, there's places that
25 almost everyone there is no padding under the pipe,

1 around the pipe, or on top of the pipe, and there
2 are stones, I got pictures of stones I showed and
3 that's five, six hundred pounds. I'm a good
4 estimator on how much poundage is in the stone.
5 I've worked with that stuff all my life. There's
6 five and six hundred pounds on top of these pipes.
7 No padding. Nothing. It's right on the side, on
8 the top, and this pipe is from this railing to that
9 screen over there, where there's six inches of just
10 air underneath the pipe, and these stone are on top
11 of it with the fill. They were allowed -- in the
12 assessment book, they could use the spoils along --
13 they could use it if they screened it. They never
14 brought a screen on the place. They just pushed it
15 in from where they dug it and the ledge was
16 blasted. They didn't put no padding. They got the
17 pipe sitting right on the ledge, directly on the
18 ledge; and ledge when it blasts, there's sharp
19 edges. Sooner or later there's going to be a
20 explosion. I can almost guarantee it in my life.
21 I'm on my eighth life.

22 There's a book going to be written about
23 how many times I've been so close to death. I've
24 been struck by lightning and three of us got killed
25 with that bolt, on July 2, 1967, on top of the

1 Almacs store. And the only one that survived --
2 they took me to the hospital and the doctor says,
3 he doesn't know how I survived. He says, "What did
4 you have in your hands?" I told him I was holding
5 a piece of polyethylene around like this as a
6 raincoat; and when it hit us, the partner that I
7 was with, the lightning hit the two of us. We both
8 fell forward. I fell like this here, fell like
9 this here with my fist under my chest, and he says
10 that's probably the only reason why I'm here today.

11 CHAIRMAN SMITH: Okay. Thank you.

12 MR. LAWRENCE: Then I gave my own heart
13 message.

14 CHAIRMAN SMITH: Thank you. No AED's in
15 those days. Okay. --

16 MR. LAWRENCE: And that lightning split
17 and went three miles down the road to Goddard Park,
18 the same lightening bolt, struck a guy having a
19 picnic there and killed him.

20 CHAIRMAN SMITH: Okay. Thank you for your
21 comments. I'm going to bring somebody else up also
22 who is ready to speak. Thank you.

23 MR. LAWRENCE: Washington's relying on
24 their -- that they follow the directions in the EA
25 book, which they didn't, and most of this mess can

1 be traced back to RI DEM. They were supposed to
2 put an inspector there to follow this line along,
3 and like that, and they said they didn't have
4 anybody. And they let the company itself kind of
5 their own person hire their only person.

6 CHAIRMAN SMITH: Thank you so much for
7 your comments.

8 MR. MOSES: My name is Vincent Moses. I
9 live at 826 Natick. I'd like to respond to some of
10 the comments by both of these attorneys. I've
11 lived on Natick Avenue approximately 20 years, and
12 I would like maybe for Mr. Murray to confirm,
13 because I believe he said approximately 250 people
14 were notified of this project. I never received --
15 now maybe it's because of where I live, but when he
16 used the number of 250 approximately, that's a lot
17 of people, and Natick Avenue, fortunately, doesn't
18 have the kind of density of one of the projects you
19 guys approved a little while ago, splitting a lot
20 into what, 40 by 80's. So I don't know where those
21 250 are, but I wasn't one of them.

22 And as far as the other attorney talking
23 about comparing this project with a woman who has a
24 horse farm, I find that comparison kind of off the
25 wall. The impact of that horse farm on neighbors

1 is currently inconsequential. It's probably
2 nothing more than visual. Whereas, the impact of
3 Mr. Rossi's project is certainly going to have
4 significant impact on the people on Natick Avenue
5 and the ones like Mr. Lawrence who's basically an
6 abutter. So I would just ask that these attorneys
7 when making these comparisons, don't buy everything
8 that say just because they're an attorney. They're
9 an advocate for their clients. Okay. So please
10 take some of these statements with a grain of salt
11 and don't buy into them because of their articulate
12 way of presenting their position.

13 I would also like to say I don't think the
14 objectors to this project oppose solar. I think
15 it's the location primarily, at least as far as I'm
16 concerned, and I think most people. I don't think
17 there's anyone under the current state of our
18 climate who would be opposed to reducing fossil
19 fuel use, whether it be natural gas, coal, diesel
20 fuel, whatever. But it's the location of where
21 this project is being, you know, proposed.

22 And, lastly, I'll just say for whatever
23 it's worth, you know, folks, this is our
24 neighborhood. Who knows down the road what the
25 planning department could be advocating for another

1 applicant maybe in your neighborhood and you may
2 find yourself thinking back to the opposition that
3 all of my fellow neighbors on Natick have tied to
4 convince you to please do not approve this
5 recommendation. Thank you.

6 CHAIRMAN SMITH: Thank you for your
7 comments. Okay, Mr. Doe, I see your hand up.

8 MR. DOE: Good evening. Douglas Doe, 178
9 Lippitt Avenue. I read Mr. Nybo's letter and
10 listen to him speak tonight. Apparently, he thinks
11 he's in a courtroom. There are many issues that he
12 did not discuss. I mention those in my letter to
13 you. The selective pruning on Mr. Lawrence's
14 Property, the impact of the interconnection process
15 are two of them. There are two specific things I'd
16 like to speak about, if Jason could start the
17 slide.

18 Glare. Now, here, Mr. Nybo plays word
19 games discussing solar panels. Do they float on
20 air? No. They have frames attached to racks and
21 the frames and the racks glow in the morning sun,
22 as you can see in the photo on the left. That's
23 not Photoshopped. The glare is seasonal depending
24 on the angle and the location of the sunrise. The
25 glare appears with spring. It dissipates during

1 the fall. It is all too real, as anyone who lives
2 on my street can tell you. Anyone who claims
3 otherwise speaks a level of ignorance that I would
4 not expect from the solar developer. They should
5 know this. Maybe they don't live next to one.
6 Next slide.

7 Wetlands. Mr. Nybo tells you they have
8 their permits. They have their sediment and
9 erosion control plan. Wonderful. They had the
10 same thing at Lippitt, and you see the results.
11 Now, they tell us they fixed the iron bacteria
12 problem. I'm showing you photographs taken this
13 year. It's still there. It's going to be there
14 for a long, long time. Why this matters is they
15 can never guarantee that it will not happen at
16 Natick. So one day Drake Patten may walk out into
17 her backyard and find her stream in a wetlands a
18 putrid orange. It stinks. It smells. It reeks.
19 This slowly dissipates, the smell at least. But
20 the color stays. And those are city conservation
21 lands. They're not just private property. This is
22 a real problem. Next slide.

23 I showed you this slide before -- I mean
24 last month. It's a quote from David Russo at the
25 preliminary plan transcript for Lippitt. The

1 earthwork on site is very minimal, compared to a
2 subdivision being on this site. There will be a
3 lot more cutting and filling to get the land
4 properly graded for a subdivision. Out of
5 curiosity, I went to DEM and looked up the
6 subdivision plans. Next slide.

7 This is the grading plan for the main
8 ledge area where they blew up and extracted about
9 40,000 cubic yards of ledge. On the left is a
10 solar project. The red squiggly line is the
11 approximate location of the subdivision road, and
12 you see all those lines on the solar plan. Those
13 are all grading lines. That's the severity of the
14 grading that they did. On the right is the grading
15 plan for the same area for the subdivision. You
16 see very, very few grading lines, just a few along
17 the road where they went up through part of the
18 ledge. They had to cut down the ledge about 10
19 feet in the area. That was it. There's nothing
20 north of that. So, next slide.

21 You've seen this photograph before. It's
22 looking at the same area from the north. They
23 lowered the grade about 18 to 20 feet, depending on
24 the plans. So what are they going to do for the
25 subdivision? That's on the right side. And you

1 can see it very clearly. It says open space. They
2 weren't going to touch it. It was going to stay
3 woods because they weren't fools. They weren't
4 going to go in there and rip out all that ledge for
5 a subdivision. They were going to build it within
6 the contours of the land. And yet Mr. Russo tells
7 us very minimal. I mean, how could they be so, so
8 wrong for something so obvious. And staff said
9 they had no objections to that comment. What does
10 that say about the judgment? How can they be so
11 wrong about this? How could they tell us this when
12 it's obvious. I mean, it speaks to their
13 professional judgment. It has to. Next slide.

14 The wetlands in solar versus subdivision.
15 On the left is a 2019 photograph of the two
16 wetlands. They were devastated by Lippitts
17 project. On the right is a subdivision plan. You
18 see a few of the grading lines by the road. The
19 rest of it all open space surrounding the wetlands.
20 And on the right hand side, you see a squiggly line
21 going through the lots, one, one, two and three.
22 That's the limit of disturbance. They weren't
23 going to touch any of that severe ledge slope
24 because they weren't fools. They left it alone.
25 They were going to leave it along anyway. It was

1 all going to stay trees and wooded, not like you
2 see on the left. Next slide.

3 Topsoil. Now they tell us they came back
4 and they hydro seeded it. They did it twice
5 actually. First time they hydro seeded it, it
6 dried up and about two-thirds died. Well, its hard
7 to go hydro seed on mulch that's placed on crushed
8 rock that's covered half the site. So they went
9 back again and re-seeded it. And Mr. Russo told
10 them it would be a good idea to rake the mulch
11 before they did. Now, if there's any topsoil
12 there, they probably would have said rake the
13 topsoil, but there wasn't any. You have a better
14 chance of finding Waldo on that photograph. It's
15 just a field of rocks and dirt. That's what they
16 did. They cannot meet the topsoil requirement of
17 the solar ordinance. They simply cannot do it. If
18 they have to go -- they should go for a variance.
19 You should require a variance where they can go
20 back and explain why they need one. I'm sure they
21 don't want to do that because then it's going to
22 get out to other towns and communities and I'm sure
23 they don't want on the record anywhere. So they go
24 by this fiction, oh, they going to follow the
25 topsoil, when it's obvious in that photograph they

1 didn't. They can't. This isn't rocket science.
2 Next slide.

3 Now, as far as the ordinance -- the
4 Comprehensive Plan goes, one of the statements is
5 temporarily removing the development potential of
6 land located in western Cranston. Temporarily.
7 Next slide.

8 Does this look temporary to anyone? If
9 someone had come back in 25, 30, 35 years and takes
10 out those hideous gray poles and replace them with
11 telephone poles? Is somebody going to come around
12 and dig up, what, a hundred miles, 200 miles of
13 underground wire and the hardware to go with it?
14 Is that really going to happen? Why would anyone
15 do that? I talked about re-powering last time.
16 They haven't mentioned it and maybe you should ask
17 them about re-powering, what they think of that
18 concept. It would be so much easier to just go
19 back through these projects in 10, 20, 15, 30 years
20 and replace the burned out solar panels with newer
21 models or any equipment that falls, falls apart. I
22 mean if your roof fails, you don't tear down your
23 house. If a solar panel fails, they're not going
24 to rip everything out. They're going to keep right
25 on going, which is what other projects are already

1 doing. So these projects are not temporary. They
2 cannot meet that standard, unless you require it
3 in your condition. Next slide.

4 And, finally, encourage the development of
5 renewable energy facilities in appropriate
6 locations, supporting economic growth while
7 fostering low impact development. Slide.

8 Is this an appropriate location? Lowell
9 Street in West Warwick looking at the southeast
10 corner of Lippitt, it's 600 feet to those first
11 solar panels. For all the good they do, you can
12 still see them. So, you know, buffer zones don't
13 work in the winter -- in the fall and early spring
14 because the trees -- all the leaves come off the
15 trees and as you can plainly see, on the right is
16 Mystery Farm. It's 1,250 feet to those first solar
17 panels. It's winter so you can't really see them
18 that well. That field is just a solid sea of
19 metal. The farmhouse in the back is about 3,000
20 feet. So when someone comes up here and tells you,
21 oh, we got 500 feet of space, so what? You know,
22 it's not the distance. It's what's between you and
23 the solar project. That's the critical issue. And
24 there ain't much else there, as far as I know.
25 Final slide.

1 They mention low impact. This is Lippitt.
2 Does this look like a low impact to anyone? Pretty
3 much all of that 40,000 cubic yards of stuff has
4 already been ripped out. You can see two of the
5 piles behind those trees. Is this land
6 preservation? Anyone's idea of land preservation,
7 land banking? Land banking, as far as I know, is
8 the concept of delaying development. Buying land,
9 holding onto it, and doing nothing with it,
10 developing it at some point in the future. This is
11 not land banking. This has nothing to do with land
12 banking. Some lawyers, John Bolton probably, who
13 wrote the Comp. Plan amendment, who worked for a
14 solar developer at the time, dreamed that up. Land
15 banking. This is a joke.

16 And as far as that court case you keep
17 hearing about that supposedly decided the case,
18 that entire case was about preserving agricultural
19 land. Go back and read the judge's decision. He
20 says it over and over again, so does Peter Lapolla,
21 then planning director.

22 Now, as Mr. Nybo quoted, "The plan
23 commission was presented with no evidence to the
24 contrary." So the Court had nothing to go on. All
25 they had was the testimony of the planning director

1 and the assistant planner. First, the Natick site
2 has nothing to do with agricultural land. And,
3 second, I suspect the court will have plenty of
4 evidence contradicting his client's position. I
5 hope so, anyway.

6 Mr. Lapolla testimony simply does not hold
7 water when examined closely. Is any court going to
8 believe that the Lippitt project is an active land
9 preservation and not obtrusive in sensitive areas?
10 That's a direct quote from the court case. Non
11 obstructive in sensitive areas. Rely on the
12 evidence presented to the commission? And
13 remember, that Comp. Plan was written for a
14 cornfield, it wasn't written for the woods. It
15 wasn't written for ledge. It wasn't written for
16 slopes draining into wetlands. It was written for
17 flat dirt along Hope Road to justify his client's
18 project. That's why it was done. At that time, I
19 don't think anyone had any thoughts about
20 bulldozing and blowing up 60 acres of Lippitt Ave.
21 and 30 acres on Natick. It was all about a
22 cornfield. So, please, use your common sense. Say
23 no to this project. Just because it's by-right
24 doesn't mean you have to rubber stamp it, which,
25 apparently, Mr. Nybo wants you to do because, hey,

1 the city council said it was okay back then.

2 You know, I've been standing at this
3 lectern talking about this issue for eight years
4 now. So I probably got Mr. Nybo beat on that. I'm
5 getting tired of it. This is simple common sense
6 at this point. You can look at that photograph.
7 It has nothing to do with land preservation, land
8 banking, low impact development, any of it. It's
9 destructive to wetlands. It's harmful to
10 residences, never mind the wildlife that now have
11 to navigate -- that fence is about a mile and a
12 half around that site, which wasn't built according
13 to the building plan review committee. They went
14 back a while later and just rewrote the edition to
15 get around that. So, please, common sense goes a
16 long way and reject this project. Thank you.

17 CHAIRMAN SMITH: Thank you, Mr. Doe.
18 Certainly.

19 MR. DOUGHERTY: Thank you, Mr. Chairman.
20 Patrick Dougherty, representing a number of
21 abutters and interested parties.

22 I want to thank the commission for
23 offering us the opportunity to come here and
24 address the additional issues that have been
25 brought forth. And I'm going to respect the

1 chairman's comments and admonitions with regard to
2 not making this on a personal level, although I
3 think that would be well deserved to put back to
4 the other side because if you look at the 21 pages
5 of comment by Reivity's counsel, there's a lot of
6 political -- a lot of personal attack and
7 mischaracterization contained in that. Let's stick
8 to the facts because a lot of what you've heard
9 from the developer in this is based on distraction
10 and distortion. Simple as that. They're
11 distracting you from the facts, and they're
12 distorting the facts and the efforts that have gone
13 on here on the part of my clients and other
14 interested people in the community.

15 For one, my clients and I have gone
16 through countless records in reviewing records and
17 there are no notes on the application or anything
18 that's public that we can see that states that the
19 HP and HC, Rhode Island Heritage and Preservation
20 Heritage Commission, Historic Preservation and
21 Heritage Commission, would be dealt with before
22 final approval, and I'm going to tell you I was
23 here before during that defective process, and it
24 never once came up prior to final approval. So
25 that's hogwash. In addition, the

1 mischaracterization of my comments about Judge
2 Licht's decision astounded me again. Again, it was
3 made to portray me as seemingly besmirching Judge
4 Licht's reputation, which is anything but the case,
5 as aptly put by Mr. Doe just now. The decision,
6 itself, speaks to what evidence was put before the
7 judge. And there was no evidence, whatsoever, of
8 inconsistency with the Comp. Plan by the objectors.
9 And as you know, any appeal is restricted to the
10 record of what was presented before the
11 administrative body when a Superior Court judge is
12 reviewing it. If the evidence is not out there
13 before the administrative body, it doesn't come in,
14 except for very extraordinary purposes and, you
15 know, limited means. And it didn't apply because
16 shame on you. You have an opportunity to put your
17 arguments before an administrative body. If you
18 didn't do it and you could have, you're not going
19 to get a judge in the world that's going to allow
20 you to reopen the record on appeal. It's not fair
21 to the other side.

22 Here, though, you have an abundance of
23 evidence to show inconsistency with the Comp Plan.
24 Number one, the passage of a single Comprehensive
25 Plan amendment by the city council does not

1 supercede the parts of the entire plan, especially
2 when the amendment doesn't even comply with the
3 state guidance. That amendment is defective. It
4 doesn't carry any weight, and it certainly doesn't
5 override all or reduce the other -- the weight of
6 the other elements of the Comp Plan contained in
7 the land use, natural resources, and other
8 sections.

9 So they couldn't be further away from the
10 truth when they say that it's a matter of -- it's a
11 decided matter by the courts, by the body, by
12 everyone that this solar ordinance is consistent
13 with the Comprehensive Plan. It's not. And I'm
14 looking forward to arguing that very same -- well,
15 actually, I hope you don't. I hope this commission
16 votes it down as it should because this project
17 stinks. It should never be in this place. They
18 haven't complied with the standards that are
19 applicable. And no matter what they say about us
20 personally, not matter what they say in
21 manipulation and distortion of the facts, it still
22 can't change the fact that this is a project that
23 has a special place in hell. How rich does the
24 developer have to get off of these horrible
25 projects on a inside track, on a bad ordinance,

1 that was passed in violation of the state
2 procedures and the Comprehensive Plan that was in
3 effect -- or in conflict with the Comprehensive
4 plan. And how many lives does this developer have
5 to ruin through these horrific projects? You saw
6 those pictures from Lippitt. You see the other
7 one -- everything by Mr. Doe. It flies in the face
8 of all the representations of the developer, and
9 for a good reason, because they don't give a damn
10 what happens after the fact. They want their
11 approvals. They want their money. They don't give
12 a damn about this special place in western Cranston
13 where people have invested their life savings in a
14 lifestyle at a location and a neighborhood that
15 they call their home.

16 Rhode Island -- on Page 2 of the diatribe,
17 the 20-something page diatribe that we submitted,
18 there's a lot of emphasis placed on without
19 limitation, the words "without limitation." And,
20 again, it was mischaracterized, there have been,
21 you know, focused on by Paige Bronk. Well, Paige
22 Bronk our expert, was not the guy who focused on
23 it. It was Rhode Island Statewide Planning because
24 they found that the language was vague, didn't
25 reference any standards, offers no clarity, and it

1 simply underscores how horrific this ordinance is
2 in terms of the Comprehensive Plan. For instance,
3 your future land use map, which was ratified and
4 accepted in the other one, it identifies, it says,
5 "residential." It doesn't say anything about solar
6 facilities, especially one of this magnitude.

7 Again, Cranston's plan expired a long, long, time
8 ago. I have no idea. I've been doing this for 30
9 years. I've been involved in land use planning.
10 I've advised planning boards, zoning boards, city
11 councils, town councils. I've never seen a plan be
12 expired for so long, and then have these things pig
13 piled on top of it that just totally contradict
14 major elements, multiple major elements, in terms
15 of the, you know, the ecology in terms of the land
16 use, in terms of the situation of certain uses and
17 future plans and, again, this is not land banking.
18 This isn't preservation of land. This is denuding,
19 deforesting, blasting, and totally changing forever
20 the landscape of a very beautiful place in western
21 Cranston. I mean you've all been out there.

22 Everyone has. Western Cranston, and this
23 particular area is stunningly beautiful and it's
24 special because of its proximity, and the ease that
25 up have to getting to the city, to the airport, to

1 different places.

2 This is a very, very special microcosm.
3 And, again, let's get back to the microcosm. You
4 cannot do a development plan review of this project
5 with blinders on. This is a big tract of land.
6 There is no subdivision going on here. So you
7 can't exclude all the other information that
8 they've hidden from you as to what's going on on
9 the lots. You simply cannot stick your head in the
10 sand, follow the developer's admonition. Don't
11 look over there. We don't control that. Mr. Rossi
12 has his own issues. We just have control of this.
13 Well, I'm sorry. There's no subdivision. You have
14 to look at the entity of the land upon which this
15 project is situated and you have to look at that in
16 the context of the standards, in particular, the
17 landscaping standards. This project is way too big
18 for that leased parcel, simply because it can't be
19 effectively screened. You can't protect the harm
20 that is going to be done on the abutting
21 properties. You can't stop the glare. You can't
22 do a number of different things that our experts,
23 our landscape architect testified to.

24 We talked to Paige Bronk. We've put in
25 enough evidence in the record on that, but it can't

1 been done. So if you do choose, and I hope you
2 don't, I hope you don't approve this. And, again,
3 if you do, that's all right, the battle's not over.
4 It's going to be going on for a long time. But if
5 you do choose in any way to entertain any kind of
6 an approval for this, don't give them carte blanche
7 on all their engineered plans that they crammed --
8 improperly crammed into the record that they used
9 for their defective preliminary and final
10 approvals. Don't accept any of that. Make them
11 come back again and adequately protect and keep up
12 with the standards that are inherent in the
13 development standards, particularly with regard to
14 the landscaping.

15 Now, I think that this project, other than
16 being severely limited, should also be judged
17 simply on itself, it's location, the property on
18 which it's situated. We've heard a lot of
19 discussion, you know, particularly from the
20 developer, and we've heard it in some of the
21 comments about the nation's environmental state and
22 the impact of solar nationally or on the state or
23 in New England. Well, you know what, none of that
24 matters. What you must look at is what the impact
25 is on this particular property and in the

1 surrounding properties within the radius of
2 abutters and those affected. Don't get distracted
3 by that. You know, and I -- I -- again, I applaud
4 anyone's environmental concerns and their sense of
5 ecological justice and trying to maintain and
6 preserve natural resources and clean air and clean
7 water and all that. You know, I'm an outdoorsman.
8 I love being outside. I appreciate nature just as
9 much as anyone, but look at this particular
10 project. Solar panels, they're made under the most
11 polluting conditions on the planet. They're made
12 in a hostile country whose interests are hostile to
13 us, most of it China. They don't have -- they're
14 destroying vast areas of the earth, mining the rare
15 earth, the metals, the other things that are
16 necessary to build these things. Put all that
17 aside, okay. Look at what this project is doing in
18 this area. And if you look within yourselves,
19 you're going to find that there is no way in hell
20 that you could possibly justify doing that to all
21 of these people, to this city, just to benefit
22 someone who's already decimated landscapes and
23 enriched themselves in untold millions on other
24 projects that have proven to be the worst thing
25 that ever happened and not what they had called for

1 in the beginning and represented would be at the
2 end.

3 So, again, I urge you to not follow the
4 distraction, not buy the distortion of the facts.
5 Look at the property and rest assured, I'm sure, a
6 Superior Court judge is going to come to a far
7 different conclusion as far as consistency with the
8 Comprehensive Plan. It weighed heavy on four out
9 of five members at the first initial hearing of
10 this before a previous plan commission, and I hope
11 we have votes far against it based upon the facts
12 and the legal defects in the Comprehensive Plan
13 process and the amendments that were adopted and
14 the zoning ordinance as well to benefit this type
15 of horrific project that the city council has now
16 seen fit to not allow for in the future under these
17 conditions.

18 Thank you very much. I appreciate your
19 time, and I appreciate the extra time you gave me,
20 Mr. Chairman, and I'm very passionate about this,
21 as are all the people in this room. Please,
22 please, deny this project.

23 CHAIRMAN SMITH: Thank you, Mr. Dougherty.
24 Is there anyone else here who'd like -- yes, the
25 woman in the back in the green or blue.

1 MS. MORETTI: My name is Kristen Moretti.
2 I live at 595 Natick Avenue. We are also one of
3 the abutters to this project. Going to keep it
4 brief. I don't want to take up a lot of our time,
5 but I just have a couple of points to make. If
6 you've ever been down Natick Avenue, you know how
7 narrow it is. It's one lane each way. There's a
8 lot of vegetation. There's a lot of stone walls.
9 There's a lot of curves. I can't imagine them
10 putting these poles up to get the energy
11 transferred.

12 The second thing that I want to just
13 mention because it keeps getting dismissed is the
14 impact on the property owners that live near the
15 blasting site. We have a well, and we have a
16 septic system at our home and being in the
17 proximity of blasting when you think about it,
18 you know, obviously there's going to be debris that
19 is flying around, just, you know, because obviously
20 they can't keep it contained to the ground. So is
21 this the public forum, and we put it on record that
22 each one of us gets up and puts Revity on notice
23 that if we suffer any property damage to our homes,
24 that they're going to be held responsible for it
25 because they're blasting and with any luck what

1 Mr. Lawrence said won't come true and the pipeline
2 won't be compromised because bits of our houses
3 will all be in Scituate.

4 And the last thing that I just wanted to
5 bring up is that if -- if something's a by-right
6 and it is -- you can -- it is your property and you
7 can do with it what you want, then why are we even
8 having this discussion? Why is the applicant
9 looking for permission, and we are opposing it? So
10 if it's by-right and you can do what you want on
11 your property, I can go home and build a roller
12 coaster. So please take that into consideration.
13 It is clearly not by-right and you can do what you
14 want on your own property or we wouldn't be here
15 fighting this battle for five years. Thank you.

16 CHAIRMAN SMITH: Thank you. Someone else
17 had their hand up, I believe. Yes, right over
18 here.

19 MS. CLARK: Hello. Rachel Clark,
20 Woodcrest Court. I'll be brief. I'm going to kind
21 of piggy back on what she said. I just want to
22 make -- bring everyone's attention to comments made
23 about Mr. Rossi's rights that he should be able to
24 do whatever he wants with his property. I want you
25 to keep these words in mind. Major changes. Major

1 changes to a land development may be approved by
2 the planning commission. Such changes shall
3 include, but are not limited to, and you have to
4 forgive me, I can't -- A, B, C. And I'm not going
5 to read all of them. B is -- I mean, C is changes
6 which may have a significant negative impact on
7 abutting property or property in the vicinity of
8 the proposed land development. That's why we're
9 here. Please keep that in mind. That's why she
10 can't build a roller coaster. Thank you.

11 CHAIRMAN SMITH: Okay. Anyone else wish
12 to be heard? Okay. Well, let me bring it back to
13 the commission members then and entertain any
14 questions, comments that you may have on this.
15 Mr. Frias -- Commissioner Frias.

16 MR. FRIAS: Question, Chairman, for
17 clarification, is this the point where we start
18 debating this?

19 CHAIRMAN SMITH: I would say so, yes, I
20 mean, the people, everyone has been heard and --

21 MR. MARSELLA: So, I'm sorry, just -- I
22 think, we haven't heard from our planning director
23 yet. Since he works for you guys, we might want to
24 hear that, too. So, before we start debating, I
25 think we should hear from Jason, rather it's --

1 quickly or not.

2 CHAIRMAN SMITH: I've heard those findings
3 so many times, I can recite them. But, yes, for
4 the purposes of the record here, please, yes.
5 Commissioner Mancini.

6 MS. MANCINI: Are we going to close public
7 comment?

8 CHAIRMAN SMITH: Not at this time.

9 MR. PEZZULLO: Mr. Chairman, I issued the
10 recommendation on this back in February. It was
11 based upon all of the information we had up to that
12 point. I have not changed the recommendation at
13 this point. So it's left as it since we began this
14 process.

15 I don't quite know where we want to begin
16 with this. If we want to debate or talk about the
17 findings of fact, but, you know, this has been out
18 there for quite a while. This is not -- there's no
19 special sauce in this memo that anyone hasn't
20 already seen or read or picked over at this point.

21 CHAIRMAN SMITH: Commissioner Coupe.

22 MR. COUPE: Mr. Chairman, since some of us
23 have been doing this for four years, maybe a review
24 of that memo and the findings might be helpful.

25 CHAIRMAN SMITH: I think that would be

1 helpful. We don't -- exactly, analysis and
2 findings of fact.

3 MR. PEZZULLO: Okay. We've reviewed the
4 master plan application, consistent with our normal
5 standards of practice. The memo breaks down the
6 application components for the analysis of the
7 findings of fact. Staff reviewed this master plan
8 application with the line agencies prior to
9 issuance. There's no sewer for this. So Veolia
10 Water has no comments. Providence Water had no
11 comments since there's no water. Public works
12 reviewed the plans and had no comments to offer on
13 the master plan. Traffic safety reviewed them and
14 had no issues since there would be no anticipated
15 trip generation once completed. The fire
16 department reviewed the plans and had no additional
17 comments. Building and zoning had no additional
18 comments. The issue is, of course, that they had
19 reviewed the master plan, the preliminary plan, the
20 development plan review plan, and this is
21 essentially unchanged, you know, largely from what
22 they had seen. So there was no additional comments
23 from those folks. When we did the analysis, and
24 this was in 2018, 2019, Joshua Berry, senior
25 planner, had written most of these sections. So we

1 did an analysis with the consistency with the
2 Comprehensive Plan. On Page 6 it begins of the
3 staff memo. We're essentially going through
4 different goals and policies of the Comprehensive
5 Plan, including elements such as the land use
6 element, natural resources element, economic
7 development, and the implementation program. So
8 the quote in this was, "Cranston should actively
9 encourage the availability and implementation of
10 energy infrastructure throughout the city. For
11 example, the zoning ordinance should permit the
12 development of renewable energy production
13 facilities in appropriate areas, including, without
14 limitation, A80, M1, M2, S1 districts, and should
15 promote the development of multiple renewable
16 energy production facilities within the city.
17 Development of such renewable production facilities
18 can advance the city's goals of developing the
19 city's economic resources by limiting the impact of
20 development on surrounding areas and on municipal
21 services. Such developments also further the
22 city's low impact and green development objectives
23 by improving air quality, reducing reliance and
24 tradition -- on traditional energy sources. That
25 was what we were working with in 2017, 2018, 2019.

1 Those are the same policies, framework that we're
2 working under with the other solar farms that we
3 did, not just Lippitt.

4 Staff was able to also provide a number of
5 exhibits that had developed over time, challenges,
6 discussions, different exhibits. These are the
7 same exhibits that had been part of the master plan
8 back in 2019, and all of these were before we had
9 passed the solar development standards. Staff
10 stands by that. We don't intend to change that.
11 We can debate that, but that's what the police
12 standpoint was when we did this master plan and
13 that really has not changed. So we can take a look
14 at the findings of fact at this point. There are a
15 number of findings of fact in the state law that we
16 are required to make findings on.

17 The first is proposed development is
18 consistent with the Comprehensive Plan and has
19 satisfactorily addressed the issues where it may be
20 inconsistent. Within that report, we had
21 documented that in the planning analysis, and we
22 were able to make our own findings of fact on that.
23 The proposed development is compliant with the
24 city's zoning ordinance. At the time that this was
25 submitted, the development was an allowed use by

1 right within the A80 zone. That's how we had
2 treated this. Findings on environmental impacts.
3 There's no creation of individual lots as part of
4 that master plan finding, and physical access to
5 streets. So, again, this has all been public for
6 quite sometime.

7 So if we want to discuss these and debate
8 them, that's fine, but we tried to stick closely to
9 our original master plan analysis and findings,
10 since the plan had really not changed and neither
11 had the underlying scheme that this plan was vested
12 under.

13 CHAIRMAN SMITH: And the overall
14 recommendation, do you have words in there --

15 MR. PEZZULLO: And the recommendation is,
16 staff finds the proposal consistent with the
17 required findings of fact. In section 45-23-60,
18 the Comprehensive Plan, as well as the city
19 subdivision and land development regulations, staff
20 therefore recommends the city plan commission adopt
21 the findings of fact and approve the master plan
22 submittal.

23 CHAIRMAN SMITH: Okay. Thank you,
24 Director Pezzullo. I didn't want to cut you off.
25 Do you have anything else to add to that? Okay.

1 Thank you. Questions, comments from the members of
2 the commission on this? Discussion?

3 MR. MARSELLA: Yeah. So if we're going to
4 do this tonight, before we close the matter, you
5 know, public comment and you guys can deliberate,
6 obviously, a couple of things is you have to
7 make -- whether you're voting in the affirmative or
8 in the negative, you know, there's six, as Jason
9 said, the six required findings of fact based upon
10 45-23-60 and Cranston Planning subdivision laws,
11 you have to either -- you can accept staff findings
12 and enhance those based upon testimony or should
13 you decide on that -- that the project does not
14 need one of those findings, you certainly would
15 have to state the reason for that.

16 You've also heard experts on both sides
17 as -- in one of the comments put forward,
18 Mr. Pezzullo and myself, we work for this board.
19 Should this board approve this matter, we will -- I
20 will defend the approval. Should this board deny
21 this, I will work to, again, uphold whatever the
22 decision of the board is. So, you know, again,
23 experts on both sides certainly give their opinion
24 based upon essentially who they work for, but, you
25 know, I absolutely encourage you to also take into

1 consideration staff's findings. Based upon that,
2 any other kind of legal -- I mean, again, I've been
3 at this for many years, too. So before we close it
4 and you guys deliberate, any questions of me.

5 MS. LANPHEAR: Just to clarify the -- I
6 can't remember if it's five or six findings that
7 are required, do we vote on those separately?

8 MR. MARSELLA: No. You can certainly
9 state -- in other words, what I would suggest is,
10 for instance, does it -- well, one, you could do it
11 all in bulk, accept staff recommendations, et
12 cetera, should you wish to go that way. However,
13 you certainly -- what I would do is -- and this is,
14 we actually had this recently in another town,
15 would be you certainly -- who's ever making the
16 motion should make the motion regarding finding
17 number one, Comprehensive Plan, find the
18 Comprehensive Plan, and number two, subdivision,
19 you can make your findings either positive or
20 negative within that one motion. You wouldn't vote
21 -- you wouldn't vote on every separate item
22 separately. You would certainly draft a motion
23 whether it's -- based upon your findings or the
24 staff finding -- you know, again as we normally do.
25 We normally either accept or reject staff findings.

1 Should you accept staff findings, you would need a
2 specific reason on a specific line item
3 to certainly state that because, for instance, it
4 could comply with one of them and not comply with
5 another one. In other words, to expand on that
6 line of thinking. Also, if you were to accept
7 staff recommendations and you wish to add the
8 testimony or your recollection of certain experts
9 in addition to what staff said in their memo,
10 you're certainly free to do that, too. In other
11 words, I find it in conformance with the
12 Comprehensive Plan because of what Mr. Pimentel
13 said. I find it not in conformance with the
14 Comprehensive Plan because of, you know, what the
15 other expert said. So you certainly can add the
16 testimony that you've heard in crafting any motion.

17 CHAIRMAN SMITH: Would it help to put the
18 findings up on the board so we can all take a look
19 at them?

20 MR. MARSELLA: So equally as important of
21 staff's findings which you certainly can adopt is
22 the required perfect -- obviously, you see, Item
23 Number One, proposed development is consistent with
24 the Comprehensive community planner has
25 satisfactorily addressed the issues where there may

1 be inconsistency. So obviously staff had directed
2 positive findings on this. Again, should you
3 decide to accept that, you can accept staff
4 recommendations as is, enhance them, you know.

5 Again, should whoever makes the motion
6 wish to make a negative motion, they certainly
7 would need to specifically state the reason why it
8 does not and the evidence behind that. But we
9 can -- should the motion be global, it's a lot
10 easier. But should the motion be more specific as
11 to each one, we certainly can discuss that as we go
12 along. And at this point, I think we can --
13 there's no new evidence. I think we certainly can
14 make a motion to close public comment and the
15 board -- we're going to deliberate tonight and make
16 a decision.

17 CHAIRMAN SMITH: Okay. Is there a motion
18 to close public comment, seeing no further comment.
19 Commissioner Lanphear so moves, Seconded by
20 Commissioner Mancini.

21 (VOICE VOTE: PASSED)

22 CHAIRMAN SMITH: The ayes have it. Motion
23 passes. Commissioner Lanphear.

24 MS. LANPHEAR: Just a question. In terms
25 of -- I understand that public comment is closed.

1 We will not be hearing from attorneys from anyone
2 either. This is just the board now, correct?

3 MR. MARSELLA: At this point, you may see
4 scowls and then jumping up and down, but the only
5 people you can ask are myself and certainly Jason.

6 MS. LANPHEAR: Thank you.

7 CHAIRMAN SMITH: Yes. Commissioner
8 Lanphear.

9 MS. LANPHEAR: I don't want to break the
10 suspense, but I anticipate we are now going to go
11 into a period of time that's going to take a little
12 bit. Would it be an appropriate time to take a
13 short break. Well, does our stenographer wish to
14 have a break?

15 CHAIRMAN SMITH: How does the commission
16 feel? Okay. Just a five-minute recess, and then
17 we all have to be back here. We'll start the
18 clock.

19 (SHORT RECESS)

20 CHAIRMAN SMITH: Okay. Questions, anyone?
21 Who wants to start? Commissioner Frias.

22 MR. FRIAS: This is the comment where
23 we -- okay. I have sat through hours of testimony.
24 I have spent hours researching, reviewing this
25 case, all the documents, and I do not come to the

1 conclusions I do lightly. I recognized the rights
2 of people involved, and so I wanted to start out
3 that way. And sometimes I have made decisions
4 which I do not like because I believe I'm obligated
5 to do so under the law.

6 So let's start with the Comprehensive
7 Plan. Is it consistent with the Comprehensive Plan
8 and has the applicant satisfactorily addressed the
9 issues if there are consistencies? My belief it is
10 not. Let me start out with my reasoning because
11 everybody deserves the right to know why I think
12 the way I do.

13 I do believe the 2017 amendment was valid.
14 I believe the applicants had the better of the
15 argument there and, therefore, I'm going to assume
16 it's valid for purposes of local decisions.
17 However, as the 2017 amendment does not trump all
18 other aspects of the Comp. Plan, Mr. Pimentel, the
19 expert for the applicant, agreed that the Comp.
20 Plan must be viewed holistically and that there are
21 competing goals in the Comp. Plan.

22 The 2017 amendment speaks of permitting
23 renewable energy production facilities in
24 appropriate areas, including, without limitation,
25 A80, M1, M2. Without limitation does not mean that

1 these people -- that the applicant could do
2 whatever they want. It does mean, and I agree with
3 the footnote in Mr. Nybo's document, which
4 basically meant that it should be interpreted as
5 it's appropriate in A80 and these areas, but it
6 could be appropriate elsewhere.

7 So the question becomes is it appropriate
8 everywhere in A80. The answer is it's not. Mr.
9 Pimentel, the expert for the applicant, agreed that
10 every location in A80 may not be appropriate.
11 There could be, for example, constraints. So I
12 tried to figure out is there constraints on this
13 property. Constraints can be natural or manmade.
14 There is a manmade piece -- there is a manmade
15 object on this property. It's an interstate gas
16 pipeline. In and of itself, that pipeline does not
17 make this property inappropriate or have
18 constraints. Blasting near an interstate gas
19 pipeline in and of itself does not make this
20 property inappropriate or have constraints. The
21 problem is that I cannot ignore Mr. Lawrence's
22 testimony. I cannot brush it aside and say don't
23 worry about it. Mr. Lawrence's testimony, which
24 was documented with photographs, indicates there
25 are some serious concerns of the installation of

1 this pipeline. The installation of this pipeline
2 before this master plan presumes -- excuse me, this
3 master plan, in all likelihood, is going to require
4 blasting near this pipeline for this project to be
5 built because of the ledge. Therefore, I'm not
6 convinced this is an appropriate area.

7 Under our subdivision regulations,
8 physical constraints can be manmade and includes --
9 in which would -- to have significant difficulties
10 to construction and require extraordinary methods.
11 The blasting expert said when he blasts, he does
12 not look at the condition or the pipeline. He does
13 not look at the rock or soil near that pipeline in
14 that area. He relies on the Tennessee Gas pipeline
15 to do that stuff or at least to say if it's okay.

16 I believe, based on the evidence presented
17 by Mr. Lawrence, I do not believe that -- I believe
18 that we are taking a risk, a significant risk, if
19 we don't do our due diligence and make sure that
20 that pipeline's in sound condition and the soil and
21 rocks are -- and that the soil in which it is
22 buried is in an okay condition. We have heard from
23 Mr. Lawrence. There are stones on top of it.
24 There are welding rods, broken drills buried with
25 it. But putting aside for a moment the blasting

1 issue, is this area an appropriate area in general?

2 Mr. Pezzullo put in his report, and I've
3 heard other places, the intent behind the
4 Comprehensive Plan Amendment of 2017 and the
5 ordinance of 2015 by the way was that we were going
6 to prevent suburban development, housing
7 development. In lieu of that, we were going to
8 have these solar farms. So you had this on Hope
9 Road. You had this on Lippitt Ave. Both those
10 developments have subdivisions for homes. There is
11 no evidence that a subdivision was ever planned for
12 this property. This property has been around for a
13 long, long time, and it has never had a
14 subdivision. There are problems with this
15 property. I've heard there would be a lot of work
16 in order to develop homes here. Could it be done?
17 Absolutely. You can build anywhere you want but
18 it's going to be very expensive and very tiny --
19 very time consuming. So I don't believe that the
20 Comp. Plan, Solar Comp. Plan Amendment was really
21 geared about this type of property, which is
22 basically never had been the subject to a
23 subdivision for housing in the past, and it seems
24 an unlikely candidate to do so in the future.
25 We're going to -- and I'm -- by the way when I say

1 this, I assume for a moment that it's okay for us
2 to do Comp. Plan amendments that deter housing
3 because under state law, we're supposed to have
4 housing for all income levels. But, again, I'm
5 going to assume -- let's say assume this is an
6 appropriate area. It still needs to not be
7 inconsistent with other goals and principles in the
8 Comp. Plan, or at least you need to minimize the
9 negative impact on those goals. So, for example,
10 Land Use Goal 9, Land Use Principle 4 talks about
11 protecting and stabilizing residential
12 neighborhoods to further the quality of life and
13 needs of that community. I asked Mr. Pimentel
14 about Land Use Principle 4 and how this works with
15 it. He didn't directly answer the question. But
16 he mentioned how most people don't like to look at
17 solar. There's a reason why people don't like
18 looking at solar. It negatively impacts property
19 values. When we have received evidence that there
20 is a negative impact, the URI study which this
21 commission never had before in the past said that
22 within a tenth of a mile, there's a 7 percent
23 decline in property values. This is the only
24 academic study of its kind for Rhode Island. The
25 applicant brought up an academic study that looked

1 at six other states other than Rhode Island. But I
2 found that that study actually didn't help them.
3 On Page 12 of the study stated our results are
4 consistent with some prior literature and cites the
5 URI study. On Page 13, it says our results suggest
6 there are adverse property value impacts of LSPVP
7 construction for homes very close to LSPVP, that
8 means large solar farms. I also heard public
9 comment from Miss Cooney about her -- from public
10 comment about how she tried to sell -- have an open
11 house and as soon she said there was solar
12 development in the works, three or four people
13 walked. That's real testimony about this community
14 and how a solar farm can impact property values.

15 Now, Mr. Sweeney, lastly, I should note,
16 did acknowledge that a decline in property values
17 can destabilize a neighborhood. And I'm not --
18 when I say about -- I'm not saying that we should
19 oh, this is going to stay the way it is with
20 conservation or whatever with trees. The point is
21 that solar farms, the academic literature is there,
22 there's evidence it has a negative impact.

23 The other issue is Long Use Goal Number
24 13, and by the way, some of these principles are in
25 Mr. Bronk's report. And this talks about

1 preserving scenic landscapes. Developer believes
2 he's done enough to protect scenic views, but
3 Mr. Carter admitted that sometimes during the year
4 and at some points, people are able to see these
5 solar farms. I've heard the same thing from Miss
6 Martin, the other expert. You don't need to be an
7 expert to realize there is going to be -- you'll be
8 able to easily see solar farms when the entire
9 southern boundary of that property is not buffered.
10 Could that southern boundary have more buffering?
11 Yes, if the solar farm was smaller. The problem
12 was the shading issue.

13 Traditional planning tries to
14 understand -- let me just back up a second.
15 Traditional planning tries to keep manufacturing
16 uses separate from residential. And that goes back
17 a century because putting the two uses together are
18 challenging. I don't think the developer has done
19 enough to do that. It doesn't have the buffering
20 and, therefore, it's going to negatively impact
21 scenic values that are negative. It negatively
22 impacts scenic views and also negatively impact
23 residential property values, which all are bad
24 under -- excuse me, Land Use Principle 4, Land Use
25 Goal 9, Land Use Goal 13. Could a smaller project

1 have worked here? This is the one I want to be
2 clear about. Could a smaller solar farm project
3 have worked here? I think so.

4 Mr. Bronk actually admitted in his
5 testimony, a solar farm actually could exist at
6 this site, at the appropriate scale, that could
7 actually more satisfy the Comprehensive Plan. That
8 was Mr. Bronk's testimony. I agree with it. It
9 takes a holistic view of the Comp. Plan and
10 recognizes how you try to make two uses work, a
11 manufacturing use and these solar farms and a
12 residential use.

13 On the Licht decision, I want to say the
14 following. Give me a moment. To quote the Court,
15 "The issue for this Court is whether there is
16 evidence to support the conclusion." What
17 conclusion is this? The planning commission's
18 conclusion and the zoning board's conclusion, I
19 guess, that the Comp. Plan was that solar is
20 allowed under the Comp. Plan. And then it stated,
21 "The planning commission was presented with no
22 evidence to the contrary." We have evidence to the
23 contrary. The Licht decision is not a decision as
24 a matter of law that the Comp. Plan allows solar
25 farms in this particular property, under the

1 particular significances. We have Mr. Bronk's
2 testimony, and we have all these other evidence.

3 I'll then move on to my second point. I
4 do not believe the proposed development is in
5 compliance with the municipality zoning ordinance.
6 The abutters raised a lot of points about zoning,
7 and I didn't agree with all of them, or at least
8 don't agree with them as to master plan stage. But
9 there's one that resonated with me strongly. Lot
10 coverage. Maximum lot coverage. In an A80 zone,
11 we can't have more than 10 percent. From what I
12 can tell, this property exceeds the 10 percent
13 requirement for lot coverage. I looked at the
14 definitions in the zoning code. I looked at the
15 state law. Lot coverage is basically lot building
16 coverage. So what's a definition of a building
17 under state law and our code? Well, building, see
18 definition for structure. That's in our zoning
19 code. Structure means a combination of materials
20 to form a construction for use, occupancy, or
21 ornamentation, whether installed on, above, or
22 below the surface of land or water. Those solar
23 panels are structures. You don't need to be --
24 doesn't have to be a residential building. It
25 doesn't have to be a building that could be used

1 for human beings. Similar languages in our state
2 law. I looked through the code as it existed at
3 the time that this application was filed. I found
4 no exception from minimum lot coverage for solar
5 farms. None. Now, this lot coverage doesn't just
6 apply to, of course, residential, it can also apply
7 to other uses in A80. As noted by Mr. Nybo, he
8 cited Mr. Lapolla at one point where he said there
9 could be other uses in A80 under certain
10 circumstances. Talked about family day cares, bed
11 and breakfasts, hospitals, religious worship
12 centers. All those places, I don't see any
13 exception about the minimum lot coverage in regard
14 to those places either. I don't believe that solar
15 under our code or under state law as it existed
16 when this application was filed is exempt or is any
17 implicit exemption for the minimum lot coverage
18 requirement.

19 Mr. Nybo, in his report, tried to argue
20 that it's not required. First, he argued there
21 was -- he argues an ambiguity. I see no ambiguity.
22 I see no exception. I see no definition of
23 structure that would not apply to this. I see
24 nothing saying that's strictly limited to
25 residential. His other argument is that, well, the

1 city got it wrong and statewide planning in 2019
2 basically said you can't have lot coverage for
3 regular developments be the same as solar. And
4 then in 2020, I believe the city changed its lot
5 coverage requirements for some solar projects.
6 That is correct for some. They changed the lot
7 coverage requirement. But it didn't do so in A80.
8 In A80 solar is not allowed that's major, but minor
9 accessory ground supported is still permitted in
10 A80 with a special use permit. No change was made
11 by the city council to change the lot coverage
12 requirement for those facilities. The city council
13 wanted to allow solar farms to have more than 10
14 percent lot coverage, they could have made a change
15 -- they could have done something in 2015. They
16 could have done something in 2020. They didn't. I
17 believe that the council -- what the council did
18 was said it's 10 percent. That's not just for
19 solar. It could be residential. It could be any
20 commercial type thing in A80, and left it to the
21 applicant to request a variance if they deemed it
22 necessary. They never requested a variance here.
23 Therefore, I do not believe the proposal is in
24 compliance with our zoning ordinance as it was at
25 the time this application was filed.

1 So at the appropriate time, I will not be
2 voting in favor of this master plan application. I
3 want to compliment, first, the public for taking
4 the time out to come out and speak the way they
5 did. They inform. They educate us as planning
6 board members. I'd like to applaud the parties for
7 a vigorous, zealous advocacy. I'm an attorney
8 myself, and it's hard to listen to somebody who
9 disagrees with you. Reasonable minds can disagree.
10 But when I looked at all the evidence and looked at
11 it in total, it doesn't meet one and it doesn't
12 meet two under the statute. So that's why I'm
13 going to vote no. Thank you, Mr. Chairman. Thank
14 you, all.

15 CHAIRMAN SMITH: Thank you, Commission
16 Frias. Any other members wish to be heard? Yes.
17 Commissioner Coupe.

18 MR. COUPE: Mr. Chairman, I think
19 Commissioner Frias brings up some good questions.
20 And we've heard lawyers from both sides giving
21 legal opinions and I'd like to ask our lawyer,
22 since he works for us, to give us his opinion on
23 some of these questions. We've had an expert say
24 that the -- it also complies with the Comprehensive
25 Plan and zoning code. We've had expert say it

1 doesn't. I'd like our lawyer's opinion on that.
2 And I would -- particularly I noted Commissioner
3 Frias's point about the pipeline, and I guessed
4 from his line of questioning over the past few
5 months that that was an issue he was concerned
6 about. And I mean no disrespect to Mr. Lawrence,
7 but we, you know, we rely generally on expert
8 testimony, and we didn't really have expert
9 testimony other than a series of experts and -- who
10 said we rely on the pipeline company and the
11 pipeline company says this is okay. So a neighbor
12 who's very concerned about it, I understand and I
13 understand his concern. I really sympathize with
14 it. But, you know, do we weigh that more than
15 experts who say if the pipeline company says it's
16 okay, then it's okay?

17 MR. MARSELLA: Well, to answer that second
18 question first, obviously expert testimony and lay
19 testimony are considered separately and are weighed
20 separately. In this case, you do have with --
21 regarding the pipeline, you do have uncontroverted
22 expert testimony regarding the safety of the
23 blasting of the pipeline. You do have lay
24 testimony which certainly you can consider, and
25 photographs of construction at some point and the

1 lay testimony's opinion regarding -- his opinion
2 regarding the safety of the construction or not.
3 But in this case, the only expect testimony
4 regarding the safety of the pipeline or, in this
5 case, the work that would be done in the future
6 is -- you would only be able to consider or you
7 would consider the expert testimony of the blasting
8 company based -- again, based upon their experience
9 in the field. However, you certainly can obviously
10 consider the lay testimony and the photographs.

11 MR. COUPE: And then the broader question
12 of the compliance with the Comprehensive Plan.

13 MR. MARSELLA: And I think that's less of
14 a legal question and more of a planning question
15 from our -- can be directed or answered by the
16 planning director. We hear this all the time. The
17 Comprehensive Plan is a Bible and people can pick
18 out whatever they want to or whenever they want to
19 support their side, and you hear this pretty much
20 on every project. I would defer or I would say in
21 this case, the planning department has made --
22 given their opinion that it is in conformance with
23 the Comprehensive Plan based upon their reasoning.
24 You have additional reasonings from both Mr.
25 Pimentel and Mr. Bronk regarding how it is or how

1 it's not. You certainly can take that into
2 consideration. But, however, to answer that
3 question, in my opinion, it's less of a legal
4 question, and it is more of a planning director or
5 a factual question, and in this case our
6 planning -- or your planning director has given his
7 reasons. You certainly can disagree with his
8 reasons, but, you know, it's my opinion that those
9 are neutral reasons as opposed to the experts
10 which, again, each side has contracted for it to
11 give their opinions.

12 MR. COUPE: So before I go there, there
13 was one very specific issue that was raised with
14 the amendment to the Comprehensive Plan that was
15 not accepted by the State Planning Office, and I
16 had an exchange about that and I'd like your
17 opinion --

18 MR. MARSELLA: Yeah. Correct. And in
19 that matter, I certainly -- this board -- if that
20 was the case, we wouldn't be able to do anything
21 over the last five years; but it's my opinion
22 that Mr. Bronk was -- I disagree with him on that.
23 This board certainly can make a decision and it
24 would be legally binding based upon the 2000 -- in
25 this case, what, the 2015 amendment.

1 MR. COUPE: Mr. Chair, I'd like to then
2 restate my or redirect my initial question about
3 the compliance with the Comprehensive Plan to
4 Director Pezzullo, particularly in light of
5 Commissioner Frias's comments. Are there other
6 factors in the Comprehensive Plan that outweigh the
7 language of the amendment that specifically states
8 that this is an appropriate use or an allowable use
9 in A80?

10 MR. PEZZULLO: It was staff's opinion at
11 the time in 2017 that the amendment was consistent
12 with the Comprehensive Plan. It was consistent
13 with our policies. And at the time, we had brought
14 up a number of other goals and policies within the
15 implementation plan to back that up and that was in
16 the context of the Lippitt project; and if you were
17 to go back and look at that staff report, we get a
18 pretty length dive into, you know, how that
19 amendment was consistent with a number of goals,
20 policies, objectives within the plan. And
21 that's -- that was our finding then and we stuck
22 with it all the way through until, you know, this
23 has been -- this has been questioned now that the
24 Comprehensive Plan does not -- the Comprehensive
25 Plan Amendment does not conform with the greater

1 Comprehensive Plan, and that's not what we had put
2 on the record at the time. So what we put on the
3 record at the time was accepted by the commission.

4 MR. COUPE: So just to be clear, at the
5 time this amendment was added to the Comprehensive
6 Plan, it was the staff's belief that it did not
7 conflict with other provisions within the
8 Comprehensive Plan?

9 MR. PEZZULLO: No. That's correct.

10 MR. COUPE: Okay. And that's still the
11 staff's opinion at this point?

12 MR. PEZZULLO: Yes.

13 CHAIRMAN SMITH: I had a question. You
14 know the Comprehensive Plan is like the definition
15 of beauty. It's really in the eye of the beholder.
16 I think you can find language in there somewhere
17 that can justify almost any course of action, and
18 that's because the Comprehensive Plan, by its very
19 nature, has to tackle competing goals, and it is
20 basically up to a commission such as this one to
21 interpret those goals and to weigh and to measure
22 to what extent it does comply with the
23 Comprehensive Plan. But specifically on Number 3
24 on the findings where it says, esthetically there
25 are many qualities of the project which preserve

1 the rural character of western Cranston, and it
2 goes on to talk about buffering and we spent a lot
3 of time on that and that's very important. But I
4 would have a hard time agreeing that it will
5 preserve the rural -- I think that might be going a
6 little too far. So I'm not sure that I would be in
7 favor of that Number 3 finding. That's just my
8 opinion. Commissioner Lanphear.

9 MS. LANPHEAR: Thank you, Mr. Chairman. I
10 have also, as Commissioner Frias has, have gone
11 through everything and tried to distill a lot of
12 what we heard and what was presented to what is
13 most relevant to the findings and conclusion that
14 we have to make this evening. I think I agree with
15 almost everything that Commissioner Frias said, and
16 some of what I am going to discuss may be a little
17 bit redundant, but I may have just a little bit of
18 a different take on it.

19 First of all, the ordinance, and I would
20 agree it was an appropriate ordinance that was
21 adopted at the time, encourages the development of
22 renewable energy facilities in appropriate
23 locations. This particular site is not an
24 appropriate location under the ordinance and the
25 Comprehensive Plan for the following reasons: The

1 specific topography of the site, the presence of
2 ledge requiring blasting and the consequences of
3 that blasting, the steep slope of the land, the
4 significant proposed land disturbance and clear
5 cutting, the proximity to residences, and the
6 distance to an interconnection.

7 The proposed development is also
8 detrimental to the rural character of western
9 Cranston. The proposed interconnection will
10 require upgrade replacement and additional utility
11 poles along a 1.2 mile length of Natick Avenue and
12 will result in the cutting of trees along Natick
13 Avenue negatively affecting the rural character of
14 the area. Clear cutting will negatively impact
15 abutting property owners. The applicant's
16 landscape buffer plan will not adequately screen
17 abutters from viewing the solar arrays. I think
18 Commissioner Frias mentioned that Mr. Carter did
19 admit that in his testimony. This will be
20 especially so during the late fall, winter, and
21 spring when deciduous trees lose their leaves and
22 the solar arrays are even more visible.

23 The development is also inconsistent with
24 Comprehensive Plan LUP 1.3, which allows solar
25 development where it, quote, "Preserves existing

1 farmland and developable land by temporarily
2 removing development potential through land banking
3 by allowing the land to be used for passive
4 alternative energy generation such as solar power."
5 Close quote. This proposed development is neither
6 temporary nor passive. The duration of the initial
7 lease term is 25 years, with two additional
8 five-year lease options for a current time frame of
9 35 years. This is not a temporary use. Further,
10 this is no bar to further extensions. Use as a
11 solar facility could continue well beyond 35 years
12 and in perpetuity in contravention of the
13 Comprehensive Plan and ordinance. The development
14 of the project with its proposed clear cutting,
15 blasting, grading, stump removal, and regrading
16 will not be passive. These activities will
17 transform the existing landscape character and
18 rural character of the site and it will do so in a
19 timeframe that is not temporary.

20 The project narrative by engineer Dave
21 Russo of DiPrete Engineering states clearing of
22 natural vegetation will be limited to what is
23 necessary for the construction and operation of the
24 solar power facility and also that topsoil will
25 only be disturbed as necessary to provide proper

1 grading for installation of the solar power
2 facility and will not be removed from the site.
3 Regardless of the applicant's representation, the
4 applicant has failed to provide measurable
5 information regarding the extent of clearing of
6 vegetation, removal, and disturbance of topsoil,
7 and the blasting of ledge. This is inconsistent
8 with the Comprehensive Plan and with Cranston's
9 solar performance ordinance. Allowing the
10 applicant to unilaterally determine the extent of
11 clearing necessary and the amount of topsoil
12 disturbance and removal does not protect and
13 preserve farmland or the landscape character and
14 rural character of the site, two important goals of
15 the Comprehensive Plan. Allowing this applicant
16 and its engineering team to make these important
17 decisions is particularly concerning in light of
18 the results of the clear cutting, grading, and
19 disturbance of topsoil performed by the applicant
20 and the same engineering team in recently
21 constructing a previously approved solar facility
22 also in Western Cranston. The consequences of
23 allowing applicant and its engineering team to
24 clear natural vegetation, disturb topsoil, and
25 grade the site as they deem necessary is

1 inconsistent with Land Use Goal 14 of the
2 Comprehensive Plan and will negatively affect the
3 existing landscape character and rural character of
4 western Cranston, in contravention of the plan's
5 goal of preserving scenic landscapes.

6 And I will also say, and this is not --
7 this is not to besmirch any one's reputation or
8 when they appear before the board, and I have many
9 times found Mr. Russo to be credible, but I will
10 say that in this particular instance, I did not
11 find his testimony to be credible. And, in
12 particular, I would note the back and forth when
13 Commissioner Frias asked him questions about
14 whether there were any mistakes made or things that
15 would be done differently in the project at
16 Lippitt, and I did not find him to be forthright in
17 answering that question or candid in answering that
18 question. And so in this particular matter, I
19 don't find his testimony to be credible.

20 Also the proposed development does not
21 protect and stabilize existing residential
22 neighborhoods as stated in Land Use Goal 9 of the
23 Comprehensive Plan, and as further discussed in
24 Land Use Strategies Principle 4. The plan mandates
25 the protection of the natural historic and visual

1 resources that define neighborhoods. The proposed
2 development will negatively affect the current
3 visual and natural resources that define this
4 neighborhood. The development of a solar farm will
5 de-stabilize home values, especially in close
6 proximity, and I would cite the same citation as
7 Commissioner Frias, the study performed, the only
8 academic study that was performed by Lang.

9 Pre-blasting design and survey work will include
10 structures such as homes and bridges, but it will
11 not include wells used for residential use. That
12 does not project and stabilize a neighborhood.

13 A member of the public living in close
14 proximity to the pipeline demonstrated through
15 statements and photographs that portions of the
16 pipeline on the development site were installed in
17 a manner not consistent with safety requirements.
18 This person has over 60 years of experience in the
19 construction industry, including excavation and
20 tunneling experience. His statements were based on
21 personal observation of portions of the pipeline on
22 the site and within 75 feet of the site. I will
23 also note that that was the only testimony given
24 that related to the laying of the pipe and what the
25 pipe looked like at the time it was first

1 installed. Although we had expert testimony on
2 other aspects of blasting, there was no expert
3 testimony that related to the same issue that
4 Mr. Lawrence testified about.

5 The information provided raises safety
6 concerns regarding the condition of the pipeline
7 and the potential negative effects that could
8 result to the neighborhood. These issues were not
9 adequately addressed by the applicant. I would
10 also -- and as I -- those are with regard to the
11 Comprehensive Plan. I would also state that under
12 one of the other required findings, that there will
13 be no significant negative environmental impacts
14 from the proposed development as shown on the final
15 plan. I would disagree with the staff finding on
16 that, and I would find that the applicant has
17 proposed clearing, grading, and blasting which, for
18 the reasons I have stated previously, have the
19 potential for significant negative environmental
20 impacts. The fact that they may have obtained
21 necessary permits from DEM is only one piece of
22 whether there could be negative environmental
23 impacts. There is much work that will be done on
24 that property that might be within the scope of
25 those permits that results in a negative

1 environmental impact.

2 So for those reasons, I would find that
3 this proposal is not consistent with the standards
4 of required finding of fact set forth in Section
5 45-23-60, is not consistent with the Comprehensive
6 Plan or the City of Cranston's subdivision and land
7 development regulations, and I will be voting no on
8 approval of the master plan.

9 CHAIRMAN SMITH: Thank you, Commissioner.
10 Other comments? Questions? Are we ready for a
11 vote?

12 MR. MARSELLA: Yeah. I mean, first we
13 need a motion and a second and then we can --
14 discussion on the motion, correct?

15 CHAIRMAN SMITH: Yes. I will accept a
16 motion at this time.

17 MR. ZIDELIS: Mr. Chairman, prior to doing
18 so, may I ask one question. Are we voting it in
19 mass or -- and that's what just confused me
20 where --

21 MR. MARSELLA: So there are six required
22 findings. What I would suggest is that whether --
23 if it is a motion to approve, we go through each of
24 them and the vote will be either to approve or
25 deny. However, it's my opinion that you can have a

1 motion to deny and have positive findings on two or
2 three of those but negative findings on the other
3 ones. So your ultimate vote -- the ultimate vote
4 will be to approve or to deny. Within that
5 approval -- if you do a motion to approve, the
6 person doing the motion would need to find -- make
7 positive findings on all the six. If there was a
8 motion to deny, you could possibly make a motion to
9 deny based upon negative findings of 1 and 2, but
10 positive findings on 3, 4, 5, and 6. The reason
11 for that, in my opinion, is this is going to be
12 appealed; and if you just do a negative finding for
13 one, for instance, and don't address the other
14 ones, that, in and of itself, could be a reason for
15 appeal. So I would suggest that whoever makes the
16 motion in either way addresses all six; and if it's
17 a motion to approve, also six need to be in a
18 positive form. If it is a motion to deny, whoever
19 makes that motion should address all six items.
20 Does that answer your question? We're not
21 individually voting on each one. We're ultimately
22 going to vote on either a positive -- an approval
23 or a denial. However, the motion should contain
24 all six. I can certainly assist someone making the
25 motion to do that, if they wish, but that would

1 answer --

2 MR. FRIAS: Mr. Chairman, just to try to
3 help this along, if somebody wants to make a
4 positive motion, okay, could a way of doing this is
5 saying, like we usually do, hey, I'd like to make a
6 motion to adopt the staff's positive
7 recommendation?

8 MR. MARSELLA: And certainly you can -- in
9 addition to staff's positive recommendations, I
10 additionally find the testimony of this expert
11 correct --

12 MR. FRIAS: Yeah, you can do that, but I
13 mean to say, if there's somebody here who wants to
14 make a positive recommendation, the way to simply
15 get this thing going, if that's what you want, is
16 to say, hey, I'd like to make a motion to adopt
17 staff's positive recommendation and then we can
18 have a vote and see where everyone stands. And
19 then we can figure out if there's 5/4 in favor of
20 it or there's not. As I indicated before, I'm
21 voting no. So, I'm not trying to advocate for it.
22 I just want to make clear.

23 MR. MARSELLA: I mean, we certainly --
24 that would be the simplest version. However,
25 should someone make a positive recommendation and

1 accept staff's findings, you certainly can enhance
2 those with whatever additional reasonings that
3 you're giving for the positive findings, just as
4 Ms. Lanphear gave reasons for her potential
5 negative vote.

6 MR. COUPE: I make a motion to accept the
7 staff's findings.

8 CHAIRMAN SMITH: Unless there is something
9 you wanted to add to the findings, but -- but the
10 staff findings, themselves, will support a
11 positive --

12 MR. MARSELLA: So your motion is to accept
13 staff's positive findings and based upon the memo
14 dated -- what's the memo dated -- February 3,
15 2023 with a motion to approve the master plan based
16 upon those positive findings.

17 MR. COUPE: Yes.

18 MR. MARSELLA: Is that accurate?

19 CHAIRMAN SMITH: Okay. And you have made
20 that motion then?

21 MR. COUPE: Yes.

22 CHAIRMAN SMITH: Okay. Commissioner Coupe
23 has moved a positive recommendation based on staff
24 findings. Is there a second?

25 MR. ZIDELIS: I'll second.

1 CHAIRMAN SMITH: Seconded by Commissioner
2 Zidelis. Any further discussion at this point?
3 Okay. All those in favor of a positive -- okay.
4 All those who are in favor, and it might be easier
5 actually just to raise hands so that the person,
6 the staff member who is doing the minutes, will be
7 able to record everybody's vote. That would be
8 appreciated. All those in favor of a positive
9 recommendation, please raise their hand. Okay,
10 Commissioner Coupe, Commissioner Mateus, and
11 Commissioner Zidelis are in favor. All those
12 opposed raise their hand. Okay, the remainder of
13 the members are opposed.

14 MR. MARSELLA: So at this point, I would
15 suggest that someone, it was 6-3 opposed to that
16 motion. So that motion failed --- 5-3, I'm sorry.
17 5-3. We're missing one. So if someone wishes to
18 make a motion, I would suggest someone make a
19 motion to deny the master plan application based
20 upon a reasoning that either of you have given.
21 Don't pass anything around. Just read it into the
22 record. I apologize, Kathleen. I don't want
23 anything passed around. I mean, I can read it for
24 you if you wish, but -- okay.

25 MR. FRIAS: I would just say, Commissioner

1 Lanphear, to try to make this motion as simple as
2 possible. I understand that if we're going to
3 like, for example, make a motion of a negative
4 recommendation, find a denial based on the fact
5 that, you know, that it's not consistent with the
6 Comprehensive Plan, and cite which principles that
7 we want there, you know, that could be one way of
8 doing it, but I'll -- you can handle it if you
9 already have -- I kind of just do everything off
10 the top of my head.

11 MS. LANPHEAR: Just ask counsel are we
12 able to just incorporate by reference --

13 MR. MARSELLA: You can incorporate by
14 reference your comments into your motion,
15 certainly. You've made -- you've clearly stated
16 your reasons for denial for -- on regarding the
17 Comprehensive Plan and regarding Item Number 2. I
18 would just ask that you also address the additional
19 items 3, 4 -- the final plan that Jason has
20 addressed in his memo.

21 MS. LANPHEAR: Okay. And could I also
22 incorporate by reference Commissioner Frias's
23 comments, or does he need to do that after I make
24 the motion?

25 MR. MARSELLA: After you make the motion.

1 MS. LANPHEAR: Okay. Just so that it's
2 clear that that's a basis for our decision as well?

3 MR. MARSELLA: Correct.

4 MS. LANPHEAR: Okay.

5 CHAIRMAN SMITH: Okay. Commissioner
6 Lanphear, you have the floor.

7 MS. LANPHEAR: Thank you, Mr. Chairman. I
8 would move -- I would say for the reasons that have
9 been articulated on the record, I would move that
10 the commission find that this proposal is not
11 consistent with the standards for required findings
12 of fact set forth in Rhode Island General Laws
13 Section 45-23-60, is not consistent with the
14 Comprehensive Plan or the City of Cranston's
15 subdivision and land development regulations, and
16 the commission would adopt the findings that were
17 articulated into the record and deny the master
18 plan application.

19 MR. FRIAS: I'll second that.

20 CHAIRMAN SMITH: Okay. Motion made by
21 Commissioner Lanphear and seconded by Commissioner
22 Frias.

23 MR. FRIAS: I'd like to slightly amend it
24 to include also the proposed development is not in
25 compliance with the zoning; and as you originally

1 indicated, Commissioner Lanphear, that it did not
2 comply with Number 3, which was there's no
3 significant environmental impact. So, it would be
4 all those four, the subdivision, the zoning, the
5 Comprehensive Plan, and the environmental, for all
6 the reasons you stated and myself, so we can come
7 to a majority here.

8 CHAIRMAN SMITH: Would we also be able to
9 include the concern about Finding Number 4 about
10 the rural character?

11 MR. FRIAS: Yes, we can.

12 CHAIRMAN SMITH: Okay. Okay, motion's
13 been made by Commissioner Lanphear and seconded by
14 Commissioner Frias. Okay. All in favor please
15 raise your hand. This is for a negative
16 recommendation -- to deny. Same five. And
17 opposed? Same three.

18 MR. MARSELLA: So the motion to deny
19 passes 5 to 3. That's it.

20 (ADJOURNED AT 9:57 P.M.)

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C-E-R-T-I-F-I-C-A-T-E

I, RONALD M. RONZIO, Notary Public, do hereby certify that I reported in shorthand the foregoing proceedings, and that the foregoing transcript contains a true, accurate, and complete record of the proceedings at the above-entitled hearing.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22d day of June, 2023.

Ronald M Ronzio, Notary Public

RONALD M. RONZIO, NOTARY PUBLIC/CERTIFIED COURT REPORTER

MY COMMISSION EXPIRES: July 24, 2025

IN RE: Cranston Plan Commission/Natick Avenue Solar

DATE: June 6, 2023