

PLANNER'S SUPPLEMENTAL REPORT
REEMPHASIZING BY-RIGHT LAND USAGE
and
COMPREHENSIVE PLAN 'CONSISTENCY'

Prepared for: Natick Solar, LLC

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INTRODUCTORY STATEMENT

Pimentel Consulting Inc. ("Consultant") has prepared this supplemental report in support of the **By-Right** solar facility development put forth by Natick Solar, LLC ("Applicant"). It must be emphasized at the outset that solar installations are rarely permitted as a matter-of-right, and therefore careful attention to all regulatory details, as has been evidenced in this Consultant's initial Land Use Analysis report and once again in this Supplemental report, have been carefully analyzed and documented. The referenced solar facility development necessitates Major Land Development Project ("Major LDP") review and approval, which should be granted without reservation in light of the formally adopted foundational Comprehensive Plan language evidencing absolute **Consistency** and dimensionally compliant design. Once again, in preparation for the Supplemental report, this Consultant has thoroughly reviewed the following regulatory documents, and more importantly the pertinent regulatory amendments, Comprehensive Plan and Zoning Ordinance alike, adopted in direct support of such solar facility developments.

- o City of Cranston Comprehensive Plan 2010 - Amended 2 May 2017: 'Renewable Energy Production' Supportive Goals and Objectives (hereinafter 'Comprehensive Plan');
- o City of Cranston Zoning Ordinance ["Ordinance"];
- o City of Cranston Subdivision and Land Development Regulations ["LDP Regulations"]; and,
- o Pertinent Case Law and Rhode Island General Law ["RIGL"].

REGULATORY 'GENERAL CONSISTENCY' ANALYSIS

A Comprehensive Plan is comprised of several mandatory components, identified as 'content' pursuant to RIGL 45-22.2-6(b) 'Required content of a comprehensive plan'. Two (2) of the referenced mandatory plan items include addressing 'energy production' and 'distribution of land uses'. In fact, in deciding both type and location, a community must also ensure there is appropriate synergy, averting negative interaction.

(b) "The comprehensive plan must be internally consistent in its policies, forecasts, and standards, and shall include the content described within this section. The content described in subdivisions (1) through (10) may be organized and presented as deemed suitable and appropriate by the municipality. The content described in subdivisions (11) and (12) must be included as individual sections of the plan."

(8) Services and facilities. "The plan must be based on an inventory of existing physical infrastructure such as, but not limited to, educational facilities, public safety facilities, libraries, indoor recreation facilities, and community centers. The plan must describe services provided to the community such as, but not limited to, water supply and the management of wastewater, storm water, and solid waste. **The plan must consider energy production and consumption.** The plan must analyze the needs for future types and levels of services and

facilities, including, in accordance with § 46-15.3-5.1, water supply system management planning, which includes demand management goals as well as plans for water conservation and efficient use of water concerning any water supplier providing service in the municipality, and contain goals, policies, and implementation techniques for meeting future demands.”

(11) Land use. “In conjunction with the future land use map as required in subsection (b)(2) (ii) of this section, **the plan must contain a land use component that designates the proposed general distribution and general location and interrelationships of land uses** including, but not limited to, residential, commercial, industrial, open space, agriculture, recreation facilities, and other categories of public and private uses of land. The land use component shall be based upon the required plan content as stated in this section. It shall relate the proposed standards of population density and building intensity to the capacity of the land and available or planned facilities and services. The land use component must contain an analysis of the inconsistency of existing zoning districts, if any, with planned future land use. The land use component shall specify the process and schedule by which the zoning ordinance and zoning map shall be amended to conform to the comprehensive plan and shall be included as part of the implementation program.”

(Emphases Supplied)

Pursuant to RIGL 45-22.2-12(b) ‘Maintaining and re-adopting the plan’, a community’s comprehensive plan must be reviewed and accordingly amended, if necessary, whenever a substantial zoning change is anticipated, to realize consistency between the two regulatory documents.

(b) “A municipality shall periodically review and amend its plan in a timely manner to account for changing conditions...”

The referenced comprehensive plan procedural process is detailed in RIGL 45-22.2-8(b) ‘Preparation, adoption, and amendments of comprehensive plans’.

(b) “The adoption or amendment of a comprehensive plan shall be conducted according to the following provisions in addition to any other provision that may be required by law.”

(1) “**Prior to the adoption or amendment of a comprehensive plan, the city or town council shall first conduct a minimum of one public hearing.**”

(2) “**A comprehensive plan is adopted, for the purpose of conforming municipal land use decisions** and for the purpose of being transmitted to the chief for state review, when it has been incorporated by reference into the municipal code of ordinances by the legislative body of the municipality. All ordinances dealing with the adoption of or amendment to a municipal comprehensive plan shall contain language stating that the comprehensive plan ordinance or amendment shall not become effective for the purposes of guiding state agency actions until it is approved by the State of Rhode Island pursuant to the methods stated in this chapter, or pursuant to any rules and regulations adopted pursuant to this chapter. The comprehensive plan of a municipality shall not take effect for purposes of guiding state agency actions until approved by the chief or the Rhode Island superior court.”

(Emphases Supplied)

The same is true of a community's zoning regulations. In fact, the referenced regulations are deemed to be regulatorily enforceable and internally consistent, regardless of the dated status of the respective comprehensive plan. Any zoning regulation, regardless of when it was adopted (at the outset or subsequent to comprehensive plan approval), dictates a community's land use actions. Considering the direct regulatory impact that zoning regulations have on an individual's property rights, all amendments must proceed through a vigorous review process prior to formal adoption. The referenced procedural review process is instituted to ensure that the proposed amendment(s) are both consistent with the Comprehensive Plan and fulfill respective goals and objectives. The zoning procedural amendment process is detailed in both RIGL 45-24-51 'Zoning Ordinance Adoption - Procedure for adoption or amendment' and Ordinance Section 17.120.020 'Procedure for adoption or amendment'. The referenced review process also assures public participation.

Section 17.120.030 'Review by Planning Commission - *"Among its findings and recommendation to the city council with respect to a proposal for adoption, amendment or repeal of a zoning ordinance or zoning map, the planning commission shall."*

A. "Include a statement on the general consistency of the proposal with the comprehensive plan of the city, including the goals and policies statement, the implementation program and all other applicable elements of the comprehensive plan."

(Emphases Supplied)

REGULATORY 'SPECIFIC CONSISTENCY' ANALYSIS

The City of Cranston has acknowledged the need for a well-balanced energy program that incorporates both renewable and non-renewable energy. It also understands that solar power is by far the most productive means of achieving such a program, while also realizing other noteworthy objectives such as land preservation, averting fiscally draining residential development in the near-term (land-banking), and attracting true economic value. This understanding has been properly detailed in the Comprehensive Plan, thereby providing the necessary foundation in support of the requisite regulatory amendments.

Land Use Plan Element - Key Strategies: Renewable Energy Production and Consumption [Page 22]

"Cranston should actively encourage the availability and implementation of energy infrastructure throughout the City. For example, the Zoning Ordinance should permit the development of renewable energy production facilities in appropriate areas, including, without limitation, in the A-80, M-1, M-2 and S-1 zoning districts, and should promote the development of multiple renewable energy production facilities within the City. Development of such renewable energy production facilities can advance the City's goals of

developing the City's economic resources while limiting the impact of development on surrounding areas and on municipal services. Such developments also further the City's low-impact and green development objectives by improving air quality and reducing reliance on traditional energy sources."

"The Zoning Ordinance should be modified to identify which types of renewable energy production facilities are to be allowed within the City, the zoning districts in which such facilities are to be located, and the standards by which such facilities are to be developed."

Element 2: LAND USE PLAN - "Rhode Island Comprehensive Planning and Land Use Regulation Act Goals." [Pages 7 - 8]

"To promote orderly growth and development that recognizes the natural characteristics of the land, its suitability for use, and the availability of existing and proposed public and/ or private services and facilities."

"To encourage the use of innovative development regulations and techniques that promote the development of land suitable for development while protecting our natural, cultural, historical, and recreational resources and achieving a balanced pattern of land uses."

LUG-1 - "Preserve the rural quality and critical resources of Western Cranston through appropriate land use controls." [Page 8]

LUP-1.3 - "Preserve existing farmland and recreational open space areas through land use regulation and taxation policies. **Preserve existing farmland and developable land that is currently undeveloped, by temporarily removing the development potential through land banking by allowing the land to be used for passive alternative energy generation such as solar power.**"

Element 4: Economic Development Goal and Policies [Page 12]

EDG-2: "Attract capital into the Cranston area and expand the City's economic base."

EDP-2.4: "**Encourage the development of renewable energy facilities.**"

Table 2-4 Smart Growth – Green Development Action Items: Land Use Action Program
[Page 53]

LU-10 - "Preserve agricultural lands:"

o "**Temporarily removing the development potential of the land located in western Cranston [land banking] by allowing the land to be used for passive alternative energy generation, such as solar power.**" [Page 48]

(Emphases Supplied)

The Cranston City Council amended the zoning regulations in 2017 to address the appropriateness and placement of 'solar facility installations'. As a precursor to this legislative discussion and approval, and as required by RIGL 45-24-51 and 45-24-52, as well as Section 17.120.020 'Procedure for adoption or amendment' of the Ordinance (detailed above), the Planning Commission would have been requested to review said amendment(s) and provide, after careful study, its 'Findings.' These 'Findings', would have included a determination as to consistency with the Comprehensive Plan. It is therefore logical to conclude that the Commission deliberated their appropriateness, and more specifically their appropriateness within the A-80 District, and proffered an affirmative recommendation on 'consistency.'

RIGL § 45-24-51. Adoption – Procedure for adoption or amendment: *“The city or town shall designate the officer or agency to receive a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map(s). Immediately upon receipt of the proposal, the officer or agency shall refer the proposal to the city or town council, and to the planning board or commission of the city or town for study and recommendation. The planning board or commission shall, in turn, notify and seek the advice of the city or town planning department, if any, and report to the city or town council within forty-five (45) days after receipt of the proposal, giving its findings and recommendations as prescribed in § 45-24-52. Where a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map is made by the city or town planning board or commission, the requirements for study by the board may be waived; provided, that the proposal by the planning board includes its findings and recommendations pursuant to § 45-24-52. The city or town council shall hold a public hearing within sixty-five (65) days of receipt of a proposal, giving proper notice as prescribed in § 45-24-53. The city or town council shall render a decision on any proposal within forty-five (45) days after the date of completion of the public hearing. The provisions of this section pertaining to deadlines shall not be construed to apply to any extension consented to by an applicant.”*

RIGL § 45-24-52. Adoption – Review by planning board or commission: *“Among its findings and recommendations to the city or town council with respect to a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map, the planning board or commission shall.”*

(1) “Include a statement on the general consistency of the proposal with the comprehensive plan of the city or town, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan.”

(2) “Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as presented in § 45-24-30.”

(Emphases Supplied)

It can therefore be categorically concluded that both the Comprehensive Plan and Ordinance language amendments, permitting as a matter-of-right the subject solar facility development within the respective Residential A-80 District (“A-80 District”), have been properly reviewed and appropriately adopted. The referenced ordinance amendment acknowledges that a solar facility

is an appropriate usage of residential property, and can well co-exist with surrounding residences provided certain design criteria are implemented. It needs to be reemphasized that the subject development is fully compliant with all dimensional and site design standards.

CONCLUDING COMMENT

The City of Cranston has indeed adopted the necessary foundational Comprehensive Plan language evidencing solar facility development appropriateness, in direct support of the Ordinance amendment permitting the referenced land use a matter-of-right in the A-80 District. Regardless, even if there were inconsistencies, which there are not, the Ordinance amendment would nevertheless still be deemed appropriate and enforceable as it pertains to all regulatory actions.

§ 45-22.2-13. Compliance and implementation.

(a) *"The municipality is responsible for the administration and enforcement of the plan."*

(b) *"All municipal land use decisions shall be in conformance with the locally adopted municipal comprehensive plan."*

(c) *"Each municipality shall amend its zoning ordinance and map to conform to the comprehensive plan in accordance with the implementation program as required by subdivision 45-22.2-6(b)(11) and paragraph 45-22.2-6(b)(12)(iv). **The zoning ordinance and map in effect at the time of plan adoption shall remain in force until amended. In instances where the zoning ordinance is in conflict with an adopted comprehensive plan, the zoning ordinance in effect at the time of the comprehensive plan adoption shall direct municipal land use decisions until such time as the zoning ordinance is amended to achieve consistency with the comprehensive plan and its implementation schedule. In instances of uncertainty in the internal construction or application of any section of the zoning ordinance or map, the ordinance or map shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable content of the adopted comprehensive plan.**"*

(Emphases Supplied)