

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

**IN RE: INVENERGY THERMAL DEVELOPMENT LLC's
APPLICATION TO CONSTRUCT THE
CLEAR RIVER ENERGY CENTER IN
BURRILLVILLE, RHODE ISLAND**

DOCKET No. SB-2015-06

**PRE-FILED DIRECT TESTIMONY OF
EDWARD PIMENTEL**

(JUNE 30, 2017)

SUMMARY

Edward Pimentel is the President of Pimentel Consulting, Inc. and is an experienced land use planner. He testifies regarding Clear River Energy Center's ("CREC's") compliance with the Town of Burrillville's Comprehensive Plan and the State of Rhode Island's State Guide Plan as it relates to the Project. He testifies regarding the advisory opinions of the Town Planning and Zoning Boards, Town Building Inspector and Statewide Planning. Mr. Pimentel, relying on his experience and expertise, the application as supplemented, the data responses and information provided to the agencies for their advisory opinions, the Town of Burrillville's Ordinances, the Town of Burrillville's Comprehensive Plan, the Rhode Island State Guide Plan, opines that CREC complies with the Town's Comprehensive Plan and the State Guide and will thereby support the goals expressed in these land use plans and will be in conformance with local and statewide planning requirements. Additionally, relying on his experience and expertise, the site plan documents filed in support of the application, Mr. Pimentel opines that the Project site will meet the requirements and ordinances of the Town or if not where a waiver or relief will be required.

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TESTIMONY OF EDWARD PIMENTEL, PIMENTEL CONSULTING, INC.**

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, BUSINESS TITLE AND BUSINESS ADDRESS.

A. My name is Edward Pimentel. I am the President of Pimentel Consulting, Inc., located at 26 Avon Road, Cranston, RI 02905.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I received my masters in community planning and development from the University of Rhode Island. I received my bachelor of arts in urban affairs from the University of Rhode Island. I am an accredited planner from the American Institute of Certified Planners. I have been an urban and community planner for over twenty-five (25) years, working in Florida, Massachusetts and all over Rhode Island. I have worked for municipal departments and for private companies. A detailed description of my educational background and professional experience is included in my CV, which was submitted to the Board on September 12, 2016.

Q. PLEASE DESCRIBE YOUR EXPERIENCE PROVIDING TESTIMONY TO REGULATORY COMMISSIONS, BOARDS, AGENCIES OR AS AN EXPERT WITNESS.

A. In addition to providing professional opinion testimony as an urban planner and zoning official on behalf of various municipalities, I have also furnished extensive expert testimony before the vast majority of Councils, Planning and Zoning Boards of Review in Rhode Island, on behalf

1 of numerous clients during my approximately twenty (20) years of private consulting. I have
2 appeared as a professional land use planning and zoning consultant within all thirty-nine (39)
3 Rhode Island municipalities as well as throughout southeast Massachusetts municipalities. I have
4 also been requested to provide expert opinions on a variety of projects before various State
5 Agencies, including the Department of Environmental Management, Department of
6 Transportation and Statewide Planning. Finally, I have testified as an expert within all four (4)
7 Superior Court counties, as well as having been expressly quoted in both Superior and Supreme
8 Court decisions.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

10
11 **A.** My testimony is on behalf of the applicant, Invenergy Thermal Development LLC
12 (“Invenergy”), in support of its application (the “Application”) for a license from the Rhode Island
13 Energy Facility Siting Board (“EFSB” or “Board”) to construct the Clear River Energy Center
14 project in Burrillville, Rhode Island (“Clear River” or “CREC” or “Facility” or “Project”). I will
15 address whether CREC is in compliance with the Town of Burrillville’s (“Town’s”)
16 Comprehensive Plan and the State of Rhode Island’s Guide Plan.

17 **Q. WHAT MATERIALS DID YOU REVIEW AND RELY ON WHEN ANALYZING**
18 **WHETHER CREC COMPLIES WITH THE TOWN AND/OR STATE GUIDE**
19 **PLAN?**

20
21 **A.** I reviewed the following: the proposed development and all addenda thereto, including
22 associated production plan(s) and map(s); the Application, including referenced reports; the
23 following state and local regulatory documents: Town of Burrillville Comprehensive Plan 5-Year
24 Update - Update Adopted 14 December 2011 (“Comprehensive Plan”); Town of Burrillville
25 Zoning Ordinance (“Ordinance”); State Guide Plan Element Energy 2035 - Rhode Island State
26 Energy Plan (“State Energy Plan”); and RI Comprehensive Planning Standards Guidance

1 Handbook Series - Guidance Handbook No. 9 - Planning for Energy - Approved 14 January 2016
2 (“Energy Guidance Handbook”); materials submitted by Invenergy to the Town of Burrillville
3 Planning Board; and the subject development site and immediate neighborhood.

4 **II. COMPREHENSIVE PLAN AND ZONING ORDINANCE ANALYSIS**

5 **Q. PLEASE DESCRIBE YOUR APPROACH.**

6
7 **A.** I began by reviewing the Application and all the materials provided. Next, I visited the
8 site. Third, I reviewed all of the pertinent regulatory documents. I excerpted thirty (30) pages of
9 material from all the regulatory documents that I determined were on point and/or things that were
10 nominally addressed in the Application. After going step-by-step through each of the pertinent
11 provisions in the Plan, I then drafted my “Executive Summary,” dated June 2016, submitted to the
12 Board on August 2, 2016, in Invenergy’s Supplemental Response to EFSB Data Request No. 1-1.
13 However, my analysis did not stop there.

14 I reviewed the Town of Burrillville’s (the “Town” or “Burrillville”) Peer Review to see if
15 there were any relevant areas of disagreement between Invenergy and the Town’s experts to
16 include in my analysis. I similarly reviewed the Burrillville Planning Board and Zoning Board
17 Advisory Opinions. Lastly, I have continuously reviewed all Project addenda, such as the revised
18 “Water Supply Plan”, to assure that determine whether anything would cause me to alter my initial
19 conclusions. Nothing did.

20 **Q. AFTER CONDUCTING YOUR REVIEW, DO YOU BELIEVE CREC IS IN**
21 **COMPLIANCE WITH THE TOWN’S COMPREHENSIVE PLAN? PLEASE**
22 **PROVIDE THE BASIS FOR YOUR OPINION.**

23 **A.** Yes. A community’s Comprehensive Plan primarily serves two very important points: (1)
24 solidifying a municipality’s overall land use vision by means of very broad-based goals and
25 objectives; and (2) providing guidance on how to achieve said goals and objectives via a variety
26 of regulatory documents, the most pertinent being the community’s Zoning Ordinance. The

1 Zoning Ordinance not only dictates permissible usage of property, but also establishes the
2 parameters controlling “intensity” of usage. Typical controlling parameters include dimensional
3 criteria such as setback and lot coverage restrictions. More precise controlling measures are
4 furnished in the form of “performance standards,” which are uniquely structured to a specified
5 land use.

6 After reviewing the Town’s Zoning Ordinances, it became apparent that the Town had
7 authorized, from a use perspective, that this land could be utilized as an energy generating facility
8 because this use was permitted by special use permit in this particular zone, F-5
9 (“farming/residential”). When a municipality permits a use through special use permit, that
10 equates to the municipality deeming this use permissible, subject to reasonable conditions of
11 approval.

12 Additionally, I reviewed the Town’s Zoning Ordinances to see if there were any specified
13 performance standards associated with energy facilities. There were none in the Zoning
14 Ordinances.

15 I therefore used the Comprehensive Plan’s broad based goals and objectives as general
16 siting guidelines and concluded that were they adequately addressed: the Comprehensive Plan did
17 fully justify the Zoning Ordinance’s special use permit determination.

18 Specifically, I focused on the provisions dealing with air, noise, water, etc. As discussed
19 further in my Executive Summary, in my opinion, the CREC complies with every single goal and
20 objective in the Town’s Comprehensive Plan.

21 As confirmed in my Executive Summary, the Comprehensive Plan does not condemn new
22 energy production facilities, but acknowledges the presence as well as importance of existing
23 energy production operations. Specifically, Page VII-9 stated:

1 **Existing Economic Development** - *“The following types of*
2 *economic development currently exist in Burrillville.”*

3
4 **“Large private utilities, including gas and electric companies and**
5 **associated distribution and transmission lines.”**

6
7 Pages VII-17 - VII-18 further identifies:

8
9 **Economic Development Strengths** - *“Burrillville has certain*
10 *characteristics which should be considered advantages in*
11 *promoting economic development, among others, as follows:”*

12
13 o **“Presence of large utility companies, and electric, and**
14 **associated distribution and transmission lines.”**

15
16 In turn, the Comprehensive Plan recommends usage of the Zoning Ordinance for purposes
17 of both regulating and controlling land usage, in particular “Power Generating Plants” -
18 recommending the adoption of “Location and Siting Criteria”:

19 **IX.5 “Recognize the important role the Town plays as a host to**
20 **major energy suppliers, and ensure that the interests of the Town**
21 **and its residents are maintained in the forefront of future siting**
22 **decisions.”** [Page IX-27]

23
24 **IX.5.a “Develop adequate location and siting criteria within the**
25 **Town's land use policies for power generating plants. These criteria**
26 **shall be used to negotiate with power plant developers and State**
27 **Energy Facility Siting Council.”**

28
29 **IX.5.a.1 “Amend the Zoning Ordinance to adequately address**
30 **power generating plants, including consideration of a floating**
31 **zone, performance standards, and site plan review.”**

32
33 Subsequent to said guidance, the Zoning Ordinance was evaluated, and it was then concluded that
34 the specified land use category entitled “Electric Generating Facilities” are permissible within the
35 F-5 District by means of a special use permit, meaning that CREC is conditionally permissible.
36 Furthermore, no specific performance standards were attached to the Zoning Ordinance, although
37 that was a consideration.

1 Therefore, the Town’s Comprehensive Plan and Zoning Ordinances do support the
2 specified land use proposed by Invenergy.

3 **III. TOWN OF BURRILLVILLE PLANNING BOARD ADVISORY OPINION**

4 **Q. HAVE YOU READ THE TOWN PLANNING BOARD’S ADVISORY OPINION**
5 **ADVISING THAT CREC DOES NOT COMPLY WITH THE TOWN’S**
6 **COMPREHENSIVE PLAN?**

7
8 **A. Yes.**

9
10 **Q. ON PAGE 5, THE TOWN PLANNER DISAGREED WITH YOUR ANALYSIS,**
11 **CLAIMING YOU DID NOT FOCUS ON OTHER TOWN OBJECTIVES IN THE**
12 **TOWN’S COMPREHENSIVE PLAN. WHAT IS YOUR OPINION REGARDING**
13 **THIS STATEMENT?**

14
15 **A.**First of all, the statement fails to specify any goals and objectives. Secondly, it is not clear
16 to me what is meant by the assertion that the Comprehensive Plan was looked at “*from a different*
17 *perspective.*” The implication is that there are certain goals and objectives that may fail to be
18 realized, should the CREC development be successful. An appropriate response first necessitates
19 clarity of specified goals and objectives.

20 The Comprehensive Plan consistency analysis approach I have taken is not only standard
21 practice, but quite thorough. A Comprehensive Plan furnishes the broad-based vision for a
22 community, rather than concentrating appropriate usage on a property-by-property basis. The
23 Zoning Ordinance and the Land Development and Subdivision Regulations are the regulatory tools
24 used to effectuate appropriate development on a property-by-property basis, while realizing
25 Comprehensive Plan general consistency.

26 The Burrillville Comprehensive Plan, which provides guidance, and therefore regulatory
27 justification, has acknowledged the importance of energy production—deferring both specified
28 property usage and associated standards of operation to the Zoning Ordinance. In turn, the Zoning
29 Ordinance has made abundantly clear the appropriateness of the referenced land use in the F-5

1 District, by permitting it by means of a special use permit (being conditionally permitted) without
2 any intervening mandatory performance standards. I could therefore not have reached any other
3 conclusion but one of full legal consistency after thoroughly reviewing both the Zoning Ordinance
4 and Comprehensive Plan.

5 **Q. ON PAGE 10, THE PLANNING BOARD FURTHER STATED THAT YOU DID**
6 **NOT CONSIDER OTHER TOWN COMPREHENSIVE PLAN GOALS AND**
7 **POLICIES, SUCH AS NATURAL AND CULTURAL RESOURCES,**
8 **LANDSCAPES, WILDFILE, BIODIVERSITY, LOCAL AIR QUALITY,**
9 **GROUNDWATER, TRAFFIC AND NOISE. WHAT IS YOUR RESPONSE**
10 **REGARDING THIS STATEMENT?**

11
12 **A.** Invenergy has indeed addressed each and every one of the referenced goals and policies,
13 with the full understanding of their equal importance. I substantiated this in my Executive
14 Summary. My role was to document the requisite “siting guidelines” and then ensure that they
15 had been appropriately addressed in accordance with, and to the full satisfaction of, the
16 Comprehensive Plan. Only then could a determination of full consistency be realized. As for
17 other environmental concerns and Invenergy’s plans for reducing impacts and mitigation, I refer
18 the Board to the appropriate supporting materials filed by Invenergy and the relevant expert
19 witnesses. This should be compared to a by-right residential development that would result in true
20 and vast environmental impacts of far greater quantity of acreage—clear-cutting for infrastructure
21 (e.g., roadways) and home sites.

22 **Q. ON PAGE 10, THE PLANNING BOARD STATES THAT CREC IS CONTRARY**
23 **TO THE ECONOMIC DEVELOPMENT OBJECTIVES OF THE TOWN, GIVEN**
24 **OTHER OBJECTIVES TO PRESERVE OPEN SPACE RESOURCES AND THE**
25 **LOW-DENSITY CHARACTER OF THE COMMUNITY. WHAT IS YOUR**
26 **OPINION REGARDING THIS STATEMENT?**

27
28 **A.** I disagree completely with the statement. CREC is consuming limited land area, thereby
29 having limited impact on any open space land resources. In fact, the subject property is entirely
30 zoned F-5 District, thereby permitting residential development as a matter-of-right. (If a

1 residential developer decided to use the property, that developer would have a much greater
2 negative impact on open space than CREC will have.) Furthermore, it will be surrounded by vast
3 unimproved land resources—both protected and unprotected. It is difficult to comprehend how
4 said resources would somehow be harmed.

5 CREC is likewise not consuming any commercialized and/or industrialized land resources
6 which, as I already concluded, is in very short supply. It will in fact greatly contribute and not
7 detract from said economic resources. Economic benefits will be realized in the form of an
8 expanded tax base as well as via the introduction of both pre and post employment. Whatever
9 resources are necessitated for the proper operation of CREC will be appropriately introduced,
10 otherwise Invenenergy will fail to procure all necessary state and federal approvals. It is also my
11 opinion that the Project cannot negatively impact other community goals and policies, such as
12 provision of water resources, which was one of the profound findings by the Town for issuing a
13 negative recommendation. It was the conclusion of Planning Board and Zoning Board of Review
14 alike, that both quantity and quality (potential further degradation of the Town’s water supply)
15 could very well impact future development. CREC will have no impact on this via the acquisition
16 of off-site water resource(s). Finally, introduction of CREC will most likely result in long-term
17 preservation of the surrounding vast F-5 District zoned acreage for buffering purposes, thus
18 preserving the low density character of the community and retaining vast acreage in a naturally
19 vegetated state realizing all of the noted important goals and policies.

20 **Q. ON PAGES 10-11, THE PLANNING BOARD STATES THAT THE**
21 **COMPREHENSIVE PLAN DOES NOT ENCOURAGE FURTHER EXPANSION**
22 **OR SITING OF ADDITIONAL POWER PLANTS WITHIN BURRILLVILLE.**
23 **WHAT IS YOUR OPINION REGARDING THIS STATEMENT?**
24

25 **A.** Once again, I am surprised by the conclusory statement that, “*The Comp Plan does not*
26 *encourage further expansion of, or siting of additional power plants within the borders of*

1 *Burrillville.*” The Comprehensive Plan not only recognizes the presence, but also the important
2 contribution that such facilities provide to the community, as evidenced by the following:

3 **Economic Development Strengths** - *“Burrillville has certain*
4 *characteristics which should be considered advantages in*
5 *promoting economic development, among others, as follows:”*
6 [Pages VII-17 - VII-18]

7
8 **o** *“Presence of large utility companies, and electric, and associated*
9 *distribution and transmission lines.”*

10
11 **IX.5** *“Recognize the important role the Town plays as a host to*
12 *major energy suppliers, and ensure that the interests of the Town*
13 *and its residents are maintained in the forefront of future siting*
14 *decisions.”* [Page IX-27]

15
16 Although an accurate assessment that such facilities have to be properly sited, thereby
17 acknowledging the importance of evidencing proper provision and protection of a variety of
18 environmental and infrastructural elements (siting guidelines), there is no such contradictory
19 language regarding the prohibition of energy production operations. In fact, the authority of the
20 Zoning Ordinance in regard to regulating both usage and intensity of usage (performance
21 standards) must be recognized. This authority provides the regulatory foundation for the Zoning
22 Ordinance to address both existing and future power generating plants.

23 **IX.5.a** *“Develop adequate location and siting criteria within the*
24 *Town's land use policies for power generating plants. These criteria*
25 *shall be used to negotiate with power plant developers and State*
26 *Energy Facility Siting Council.”* [Page IX-27]

27
28 **IX.5.a.1** *“Amend the Zoning Ordinance to adequately address*
29 *power generating plants, including consideration of a floating zone,*
30 *performance standards, and site plan review.”*

1 **Q. THE PLANNING BOARD OPINED THAT CREC WOULD BE INCONSISTENT**
2 **WITH CERTAIN PROVISIONS OF THE COMPREHENSIVE PLAN, LISTED AT**
3 **PAGES 11-14. WHAT IS YOUR OPINION REGARDING THAT ASSERTION?**
4

5 **A.** Again, CREC is consuming limited land area, thereby having limited impact on any open
6 space land resources. Furthermore, it will be surrounded by vast unimproved land resources—
7 both protected and unprotected. It is difficult to comprehend how said resources would be
8 materially harmed. In fact, the subject property is entirely zoned F-5 District, thereby permitting
9 residential development as a matter-of-right. Such a by-right development would in all likelihood
10 result in far greater disturbance and impact on those environmental and natural resources deemed
11 both important and inexplicably harmed by the proposed CREC.

12 CREC is likewise not consuming any commercialized and/or industrialized land resources,
13 which are in very short supply. CREC will greatly contribute and not detract from said economic
14 resources. As stated by Ryan Hardy from PA Consulting, Inc., economic benefits will be realized
15 in the form of an expanded tax base, as well as via the introduction of both pre and post
16 employment.

17 **Q. ON PAGES 14-16, THE PLANNING BOARD ALSO STATES THAT IT IS OF THE**
18 **OPINION THAT CREC IS NOT CONSISTENT WITH THE RHODE ISLAND**
19 **COMPREHENSIVE PLAN. DO YOU AGREE?**
20

21 **A.** No. I conducted an extensive study of all pertinent state regulatory documents, inclusive
22 of those that would be directly pertinent regarding energy production. I stand by my professional
23 opinion that consistency will be realized by approving the CREC development.

24 The overall goal of the State Energy Plan is to provide cleaner, more efficient, energy to
25 meet the needs of residents and business community alike. Therefore, the statewide directive,
26 directed towards the individual municipalities as well, is to carefully consider all energy proposals,
27 introducing regulatory standards as required.

1 Additionally, the statewide energy directive is now mandated to be reflected in each
2 Municipality’s Comprehensive Plan, pursuant to the Energy Guidance Handbook, as evidenced by
3 the following:

4 *The plan must consider energy production and consumption...The*
5 *Rhode Island Comprehensive Planning and Land Use Regulation*
6 *Act, RIGL subsection 45-22.2-6(b)(8).”*
7

8 **STANDARD 9.1: INCLUDE GOALS THAT EMBODY THE**
9 **STATE’S GOALS FOR ENERGY AND POLICIES TO**
10 **SUPPORT EACH GOAL [Page 9]**
11

12 *“Energy 2035: Rhode Island State Energy Plan looks to a future in*
13 *which energy services across all services - electricity, thermal and*
14 *transportation - are provided in a secure, cost-effective and*
15 *sustainable energy system. The goals and policies of the State as*
16 *laid out in Land Use 2025 call for the efficient use of energy, the*
17 *availability of energy-efficient transportation options and the*
18 *development of sustainable energy resources. Additionally, the*
19 *Rhode Island General Laws state the importance of supporting and*
20 *encouraging energy efficiency and renewable energy generation as*
21 *a way to reduce environmental impacts, to diversify the state’s*
22 *energy sources, to stimulate economic development, to improve the*
23 *energy system’s resilience and reliability and to reduce energy*
24 *costs.”*
25

26 ***“The comprehensive planning process provides communities the***
27 ***opportunity to consider the future of energy in their city or town***
28 ***and to craft goals that exemplify the desired future condition.***
29 *Municipalities are encouraged to be energy innovators by*
30 *implementing public energy conservation measures, creating*
31 *municipal energy production facilities and setting up policies and*
32 *standards that encourage the use and production of renewable*
33 *energy...”*
34

35 In conclusion, the Town has taken the directive of Standard 9.1: *“The comprehensive planning*
36 *process provides communities the opportunity to consider the future of energy in their city or town*
37 *and to craft goals that exemplify the desired future condition,”* and has decided that energy
38 production shall be permitted by means of a special use permit within the F-5 District.
39

1 **Q. ON PAGE 23, THE PLANNING BOARD STATES THAT THE PROJECT IS NOT**
2 **CONSISTENT WITH STATE PRESERVATION POLICIES AND STANDARDS**
3 **RELATED TO BUFFERING AND OPEN SPACE. WHAT IS YOUR OPINION**
4 **REGARDING THAT STATEMENT?**

5
6 **A.** I disagree completely. Vast surrounding, permanently protected land resources, such as
7 Pulaski State Forest, do serve as permanent physical and visual buffering. There is no evidence to
8 support any conclusion that CREC will in some manner negatively impact these resources. Once
9 again, minimal acreage will be allocated towards the CREC development, and the vast surrounding
10 land resources—both protected and unprotected—will remain in their present naturally vegetated
11 state for many, many years to come. I agree that resources such as the Pulaski State Forest are in
12 conformance with numerous preservation policies. However, F-5 zoned land resources are not
13 protected and have in fact been deemed regulatorily compatible for energy production facilities.

14 **Q. THE PLANNING BOARD ALSO STATES ON PAGE 23 THAT:**

15
16 “the notion that a Town needs to grant a special use permit if
17 specific performance standards are met by an applicant is not proper
18 because the standards only represent one evaluation task by the
19 community. For communities to approve applications in this
20 manner would be a reckless land use practice.”

21 **DO YOU AGREE?**

22
23 **A.** The preceding conclusion is not only in error, but also illustrates a total misunderstanding
24 of what it means to permit a land use by means of a special use permit. Case law is abundantly
25 clear – provided the intended land use can be shown to promote the public health, safety and
26 general welfare (enabling act) and it can be evidenced that the established criteria for granting the
27 special use permit have been sufficiently addressed, a community has no basis for denying a special
28 use permit.

29 As has been repeatedly noted throughout my reports and testimony, I engaged in an
30 exhaustive analysis of both state and local regulatory documents, specifically assessing the

1 degree of need and support for energy production facilities, and it continues to be my
2 professional land use opinion that they are much-required for the benefit of all and will further
3 the public health, safety and general welfare. This opinion is based on the studies and
4 conclusions proffered by Invenergy’s experts, as corroborated throughout the peer review
5 process.

6 Secondly, the Town failed to provide any specified performance standards, in its
7 Zoning Ordinance or elsewhere. This is not meant as some form of offensive remark, merely
8 a statement of fact. Therefore, I had to rely on the general standards for the granting of the
9 special use permit, which were individually assessed and properly addressed. I agree that those
10 operational elements necessary to realize the proper and safe operation of the energy
11 production plant are required, prior to rendering an affirmative decision on the granting of a
12 special use permit. The operational elements would include the wide range of siting guide-
13 lines referenced in the Comprehensive Plan. However, once again, there was no rebuttal in
14 regard to the manner in which the development was proposed.

15 For example, as confirmed by all noise experts, never personally experiencing such
16 desired decibel levels was not grounds for assuming that compliance was not achievable. In
17 fact, it was the experts’ mutual determination that compliance would be achievable provided
18 Invenergy followed manufacture’s specifications. It is these types of operational elements that
19 have to be considered and, if sufficiently satisfied, there is simply no basis, legal or factual, for
20 a denial. As set forth in the R.I. Zoning Handbook, 2nd Edition, Page 219, prepared by Roland
21 Chase:

22 *“The fears of neighbors concerning possible unfavorable conditions*
23 *that might result from granting a special-use permit are not an*
24 *adequate basis for denial of the application.” [Perron v. Zoning*
25 *Board of Review of Burrillville, 117, R.I. 571, 369, A.2d 638 (1977)]*

1
2 *“Such fears should be addressed by imposing appropriate safe-*
3 *guards and conditions on the special-use permit, rather than by*
4 *denying the owner an opportunity to use his property for an*
5 *otherwise conditionally permitted use.” [Perron v. Zoning Board*
6 *of Review of Burrillville, 117, R.I. 571, 369, A.2d 638 (1977). As to*
7 *the power of a zoning board of review to grant conditional relief,*
8 *see Section 99.]*
9

10 Finally, it is my professional opinion that the Planning Board reviewed the proposed
11 development and proffered an advisory opinion to the Zoning Board of Review, applying an
12 improper set of guidelines. It is quite clear that the proposed land use is not prohibited, but
13 conditionally permitted. And yet, the Planning Board proffered Findings (Page 10 of the
14 Advisory Opinion) that would acknowledge that they would not support any future energy
15 production plants, suggesting that the Comprehensive Plan in fact prohibited such land uses.

16 *“One of our members stated it this way:*

17
18 *The Burrillville Comprehensive Plan recognizes the important role the Town plays as*
19 *a host of energy infrastructure (Land Use Goal IX.5), and it seeks to broaden sources*
20 *of revenue from industrial projects (Economic Development Goal VII.1). However, the*
21 *Comp Plan does not encourage further expansion of, or siting of additional power*
22 *plants within the borders of Burrillville.”*
23

24 This was improper.

25
26 **Q. IN YOUR PROFESSIONAL CAPACITY, DO YOU HAVE AN OPINION TO A**
27 **REASONABLE DEGREE OF CERTAINTY IN YOU FIELD AS TO WHETHER**
28 **CREC MEETS THE CONSISTENCY REQUIREMENTS OF THE TOWN’S**
29 **COMPREHENSIVE PLAN?**
30

31 **A. Yes. It is my opinion that CREC is consistent with the Comprehensive Plan.**
32

33 **Q. WAS THERE ANYTHING THAT YOU HEARD DURING THE TOWN’S**
34 **PLANNING BOARD HEARINGS OR DURING THE TOWN’S ZONING BOARD**
35 **HEARINGS OR IN ANY WRITTEN REPORTS OR IN THE ADIVOSRY**
36 **OPINIONS THAT WOULD CHANGE OR ALTER YOUR OPINION AS TO THE**
37 **CONSISTENCY WITH THE COMPREHENSIVE PLAN?**
38

39 **A. No.**

40 **IV. TOWN OF BURRILLVILLE ZONING BOARD ADVISORY OPINION**

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Q. HAVE YOU REVIEWED THE TOWN ZONING BOARD’S ADVISORY OPINION?

A. Yes.

Q. LET’S ALSO ADDRESS CERTAIN SECTIONS OF THIS OPINION. STARTING WITH PAGE 7, THE ZONING BOARD CRITICIZED THE CALCULATIONS YOU RELIED UPON FOR THE AMOUNT OF ACRES AVAILABLE FOR DEVELOPMENT. DO YOU HAVE A RESPONSE?

A. My data was directly excerpted from the most recent and approved Comprehensive Plan, the Plan that the Town relied on and quoted directly from when rendering their own advisory opinion. In referencing the F-5 District, I was discussing all zoned acreage that has the potential viability for development. For example, acreage zoned open space would not have been considered, because it is zoned in such a manner as to protect it from residential / commercial / industrial development. Likewise, the entire community’s acreage was not considered, because typically water resources (lakes, ponds, etc.) are also included, albeit unusable from a development perspective. The quoted data was excerpted from the table below. Therefore, I stand by my conclusion that approximately 74% of all Town-wide zoned acreage that has some form of

1 development potential is included in the F-5 District.

**Table IX-2
Land Capability Analysis
Summary Table - Town wide Data**

| Zoning District | Total Acres | Developed Acres | Undeveloped Acres | Developable Acres | 7% Design Factor for Roads etc. | Total Developable Acres | Potential Development |
|--|---------------|-----------------|-------------------|-------------------|---------------------------------|-------------------------|-----------------------|
| Notes | 1 | 1 | 1 | 2 | 3 | | 4 |
| Residential | 26,974 | 15,109 | 11,865 | 3,915 | 274 | 3,641 | (Housing Units) |
| F-5 | | 10,717 | 10,038 | 3,313 | 232 | 3,081 | 616 |
| F-2 | | 1,697 | 876 | 289 | 20 | 269 | 135 |
| R-40 | | 1,169 | 458 | 151 | 11 | 140 | 152 |
| R-20 | | 925 | 294 | 97 | 7 | 90 | 196 |
| R-12 | | 601 | 199 | 66 | 5 | 61 | 221 |
| VPD Overlay Zone (see Chapter V) | | | | | | 129.4 (*) | 573 |
| Subtotal | | | | | | | 1,893 |
| Commercial (GC and VC) | 400 | 179 | 221 | 73 | 5 | 68 | |
| Industrial (GI and LI) | 700 | 336 | 364 | 120 | 8 | 112 | |
| Total | 28,074 | 15,624 | 12,450 | 193 | 13 | 200 | 1,893 |
| Total residential units / commercial & industrial sq. ft. | | | | | | 2,395,800 | 20,926 |

Notes:

1 Assessor's Database, 7/19/04

2 Deduct 33% average

3 Deduct 7% average

2 The Table represents the following:

3

4 10,717-acres (Developed F-5 District)

5

6 10,038-acres (Undeveloped F-5 District)

7

8 For a grand total of 20,755-acres (Total F-5 District)

9

10 Total acreage is 28,074.

11

12 Therefore, $20,755 / 28,074 = 73.9\%$

13

14

15

16

17

18

1 **Q. THE ZONING BOARD ALSO STATED THAT GRANTING A SPECIAL USE**
2 **PERMIT AS REQUIRED IN AN F-5 ZONE WOULD NOT BE IN COMPLIANCE**
3 **WITH THE TOWN'S COMPREHENSIVE PLAN AND WOULD NOT MEET THE**
4 **CRITERIA SET OUT BY THE RHODE ISLAND SUPREME COURT IN LLOYD**
5 **V. ZONING BOARD OF REVIEW, 62 A.3d 1078 (R.I. 2013). ARE YOU FAMILIAR**
6 **WITH LLOYD V. ZONING BOARD OF REVIEW DECISION?**
7

8 **A.** Coincidentally, as I testified to before the Burrillville Zoning Board of Review, I became
9 very familiar with Lloyd v. Zoning Board of Review, a mere several months prior when addressing
10 the Newport Zoning Board of Review on a totally dissimilar zoning matter.

11 **Q. DO YOU AGREE WITH THE ZONING BOARD REGARDING WHETHER CREC**
12 **MEETS THE CRITERIA OF LLOYD?**
13

14 **A.** It is my understanding, purely from a land use perspective, that Lloyd v. Zoning Board of
15 Review resulted from the opinion that the City of Newport was not entitled to grant a special use
16 permit in conjunction with dimensional relief. This is clearly not applicable in the subject
17 circumstance, given that the Town of Burrillville expressly permits said granting in accordance
18 with Section 30-34(e)(4) of the Zoning Ordinance. Regardless, it is my understanding that the
19 referenced case involved the presence of a pre-existing land use, and whether certain
20 improvements resulted in the intensification of said pre-existing non-conforming land use. Once
21 again, there is no application to the subject circumstance. The property is presently unimproved,
22 and the proposed used is expressly permitted by special use permit. There is neither a present nor
23 intended non-conforming usage of the subject property.

24 **Q. BOTH THE PLANNING BOARD AND ZONING BOARD HAVE CONCLUDED**
25 **THAT CREC DOES NOT COMPLY WITH THE TOWN'S COMPREHENSIVE**
26 **PLAN. WHY IS IT YOUR OPINION THAT CREC COMPLIES?**
27

28 **A.** I will reiterate my previous statements. The Comprehensive Plan consistency analysis
29 approach I followed is not only standard practice, but quite thorough. A Comprehensive Plan
30 furnishes the broad-based vision for a community, rather than concentrating appropriate usage on

1 a property-by-property basis. The Zoning Ordinance and Land Development and Subdivision
2 Regulations are the regulatory tools used to effectuate appropriate development on a property-by-
3 property basis, while realizing Comprehensive Plan general consistency.

4 The Burrillville Comprehensive Plan, which provides guidance and, therefore, regulatory
5 justification, has acknowledged the importance of energy production, deferring both specified
6 property usage and associated standards of operation to the Zoning Ordinance. In turn, the
7 Ordinance has made abundantly clear the appropriateness of the referenced land use in the F-5
8 District, by permitting it by means of a special use permit (being conditionally permitted) without
9 any intervening mandatory performance standards.

10 The Comprehensive Plan’s siting guidelines were treated as performance standards. It is
11 my professional opinion that Invenergy has indeed addressed each and every one of the referenced
12 goals and policies, with the full understanding of their equal importance. My role was to document
13 the requisite “siting guidelines” and then ensure that they had been appropriately addressed in
14 accordance with, and to the full satisfaction of, the Comprehensive Plan.

15 I could therefore not have reached any other conclusion but one of full legal consistency
16 after thoroughly reviewing both the Zoning Ordinance and Comprehensive Plan.

17 **Q. LASTLY, THE BOARD ALSO STATED THAT IT COULD NOT EVALUATE THE**
18 **APPLICATION WITHOUT REVIEWING ACTUAL PLANS AND THE**
19 **PROPOSED UTILIZATION OF WATER DISCHARGE. WHY WERE YOU ABLE**
20 **TO EVALUATE THE APPLICATION WITHOUT THIS INFORMATION?**

21 **A.** I reviewed a development proposal that properly addressed all operational elements. The
22 initial submission addressed all requisite siting guidelines, including water obtainment, usage and
23 discharge. Clearly, regardless of project changes, without evidencing to the satisfaction of
24 pertinent state agencies that water consumption and discharge will be in accordance with all
25 regulatory standards, Invenergy will not acquire the necessary permits.
26

1 It is important to note that all protective measures remain intact. The respective Boards
2 can and have imposed conditions of approval regarding the respective siting guidelines, mandating
3 full compliance. The sole distinctive difference is the inability to provide the Planning Board with
4 all necessary permits prior to receiving local final approval. Regardless, state and federal
5 permitting processes must nevertheless be followed and approvals obtained before the CREC can
6 be developed.

7 **V. TOWN OF BURRILLVILLE BUILDING INSPECTOR ADVISORY OPINION**

8
9 **Q. HAVE YOU REVIEWED THE TOWN BUILDING INSPECTOR'S ADVISORY**
10 **OPINION?**

11
12 **A.** Yes.

13
14 **Q. DO YOU HAVE ANY OPINIONS AND/OR RESPONSES TO IT? IF SO, PLEASE**
15 **SUMMARIZE FOR THE BOARD.**

16
17 **A.** The initial proposal did appear to be slightly encumbered by the A-80 Overlay District
18 (hereinafter "Overlay"), which would have incurred additional Zoning Ordinance relief, possibly
19 even the need for a use variance. Given the vast surrounding acreage, it was my determination
20 that property reconfiguration could very well avert any interference with the Overlay. I have been
21 provided a revised Administrative Subdivision Plan, prepared by Waterman Engineering, that
22 avoids any intrusion into the Overlay, rendering moot the argument that a use variance may be
23 necessary. It is my professional opinion that the Burrillville Building Inspector is simply wrong.
24 Any attempt to suggest that the proposed development necessitates a use variance is erroneous.

25 **Q. I'D LIKE TO ADDRESS CERTAIN SECTIONS IN MORE DETAIL.**
26 **SPECIFICALLY, ON PAGE 7, THE BUILDING INSPECTOR NOTED THE**
27 **TOWN'S ORDINANCE 30-153, THAT RIDEM HAS NOT VERIFIED WETLANDS**
28 **AND THAT UNTIL THAT HAS TRANSPIRED, THERE IS NO WAY OF**
29 **KNOWING IF RELIEF IS NECESSARY. WHAT IS YOUR OPINION**
30 **REGARDING THAT STATEMENT?**

31

1 A. I have received data from Mike Feinblatt, of ESS Group, Inc., that expressly documents
2 compliance with Section 30-153 of the Zoning Ordinance. The proposed CREC property will at
3 most contain upwards of 9.28-acres of delineated wetlands (or 13.8% of the overall property) and
4 8.99-acres dedicated to the regulatory 50-foot wetland buffer (or 13.4% of the overall buffer), for
5 a total of 18.27-acres (or 27.2%). Therefore, pursuant to Section 30-153, CREC will be below the
6 40% and thus, Section 30-153 is not applicable.

7 **Q. NEXT, ON PAGES 10-11, THE BUILDING INSPECTOR EXPLAINED THE**
8 **DIFFERENCE BETWEEN USE VARIANCE AND DIMENSIONAL VARIANCE.**
9 **DO YOU AGREE WITH HIS SUMMARY OF THE DIFFERENCES?**
10

11 A. It is without question that the Zoning Ordinance’s “Use Schedule” determines land use
12 permissibility. It is equally clear that “Electric Generating Facilities” are permitted by special use
13 permit within the F-5 District. The Building Inspector’s suggestion that the definition of a special
14 use permit somehow imparts that a use must be permissible as a matter-of-right, otherwise it must
15 be deemed prohibited, is not only incorrect, but would render the special use permit category
16 superfluous. Any use defined within the Use Schedule as being permissible by special use permit
17 would have to be deemed prohibited. This is not only preposterous, but entirely contrary to the
18 enabling legislation. The Building Inspector has taken the stance of equating a land use permitted
19 by special use permit as being more-so synonymous with a prohibited land use. The Building
20 Inspector fails to understand that a use permitted by special use permit is synonymous with being
21 permissible, albeit conditionally permissible - appropriate subject to reasonable conditions of
22 approval. This is well corroborated by case law.

23 **Q. DO YOU AGREE THAT, ABSENT THE ENERGY FACILITIES SITING ACT,**
24 **INVENERY WOULD HAVE TO OBTAIN A USE VARIANCE TO CONSTRUCT**
25 **CREC IN AN A-80 AQUIFER ZONE?**
26

1 A. This discussion is moot because the development has been reconfigured, avoiding any
2 intrusion into the Overlay.

3 **Q. DO YOU HAVE AN OPINION AS TO WHETHER INVENERGY SHOULD BE**
4 **GRANTED A USE VARIANCE UNDER 30-03?**

5
6 A. This is no longer a relevant consideration, because the development has been appropriately
7 reconfigured averting the need for a use variance.

8 **Q. NEXT, ON PAGE 12, THE BUILDING INSPECTOR STATES THAT A USE**
9 **VARIANCE WOULD BE REQUIRED TO CONSTRUCT TWO GENERATING**
10 **PLANTS ON THE SAME PARCEL OF LAND. DO YOU AGREE WITH THAT?**

11
12 A. There is no basis for the Building Inspector's assertion that the development entails
13 multiple energy production facilities. The CREC development proposes construction of a singular
14 energy production facility.

15 **Q. DO YOU HAVE AN OPINION REGARDING THE ADVISORY OPINION AS A**
16 **WHOLE?**

17
18 A. I reiterate my professional disagreement with the Building Inspector's conclusions. Once
19 again, every attempt to conclude that the proposed development necessitates a use variance is in
20 error. The sole agreement, and only to a certain extent, was previously in regard to the potential
21 incursion into the Overlay. However, this is now a moot point since the property has been
22 reconfigured, averting any Overlay intrusion.

23 **Q. HAVE YOU REVIEWED THE BURRILLVILLE BUILDING INSPECTOR'S**
24 **STATUS REPORT, FILED WITH THE EFSB ON JUNE 12, 2017? IF SO, DO YOU**
25 **HAVE A RESPONSE TO HIS STATEMENT: "ANY ONE OF THESE THREE**
26 **VARIANCES REQUIRED WOULD ALSO PROVE FATAL TO THE SPECIAL**
27 **USE PERMIT AS GRANTING A ZONING USE RELIEF IN CONJUNCTION**
28 **WITH A SPECIAL USE PERMIT IS NOT ALLOWED"?**

29
30 A. Yes. Although a number of municipalities have not pursued that regulatory authorization,
31 the Town has already adopted the requisite enabling legislative language. The referenced

1 authorization is specifically granted by Section 30-34(e)(4) of the Burrillville Zoning Ordinance,
2 which provides:

3 Zoning Board of Review - Special Use Permit:

4 When a use is permitted by special use permit, the zoning board may
5 grant dimensional relief in conjunction with said special use permit
6 if the special use could not exist without the dimensional variance.
7 The zoning board of review shall consider the special use permit and
8 the dimensional variance together to determine if granting the
9 special use is appropriate based on both the special use criteria and
10 the dimensional variance evidentiary standards.
11

12 Burrillville has the authority to grant dimensional relief in conjunction with a special use permit.

13 **VI. STATE GUIDE PLAN ANALYSIS**

14
15 **Q. DID YOU ANALYZE WHETHER CREC COMPLIES WITH THE STATE GUIDE**
16 **PLAN?**

17
18 **A.** Yes.

19
20 **Q. PLEASE DESCRIBE YOUR APPROACH.**

21
22 **A.** I conducted an extensive study of all pertinent state regulatory documents, inclusive of
23 those that would be directly pertinent regarding energy production. The referenced documents
24 include the State Guide Plan Element Energy 2035 - Rhode Island State Energy Plan (“State
25 Energy Plan”), and RI Comprehensive Planning Standards Guidance Handbook Series - Guidance
26 Handbook No. 9 - Planning for Energy - Approved 14 January 2016 (“Energy Guidance
27 Handbook”). I then compared the goals, objectives and policies of the referenced documents to
28 those of the Burrillville Comprehensive Plan and Zoning Ordinance for purposes of determining
29 consistency.

30 **Q. HAVE YOU READ THE RHODE ISLAND DIVISION OF PLANNING ADVISORY**
31 **OPINION?**

32
33 **A.** Yes.
34

1 **Q. DO YOU HAVE AN OPINION REGARDING ITS CONTENTS?**

2
3 **A.** Yes. The opinions proffered by the Rhode Island Division of Planning are on point with
4 every pertinent siting guideline.

5 The first element reviewed was the economic component of the proposed development,
6 to include energy cost impacts, local and statewide business impacts and employment
7 (construction and operation), as well as state and local revenues. In all instances, it was concluded
8 that construction of CREC would realize positive impacts. Although there have been some
9 operational changes, such as capacity being distributed over two (2) phases and the recognition
10 that post construction employment will be somewhat reduced, there is no contradicting the benefits
11 to be garnered. Revenues, in the form of salaries and taxes—both local and statewide—are well
12 documented and corroborated.

13 The second element is the provision of reliable energy. One of the primary purposes for
14 the CREC development is to realize the provision of reliable and affordable energy, which will be
15 an off-set to plants that are antiquated and inefficient. I quote from Page 15 of the Advisory
16 Opinion:

17 The socio-economic benefits of a more reliable energy system
18 accrue to both individuals and businesses. A more reliable energy
19 system will lessen interruptions to the region's power supply. At a
20 minimum, electrical power disturbances can result in
21 inconveniences to customers but power supply interruptions can
22 also harm vulnerable populations, cause economic loss to
23 businesses, disrupt quality of life, and lead to more serious
24 consequences such as fatalities. In the long-term, a system that is
25 not reliable may lead to increased cost of service and an inability to
26 respond to emergencies.

27
28 Third are the local potential societal and infrastructural implications: social impacts
29 (population); housing; infrastructure, to include school and library services, police and fire, and
30 solid waste. As I have concluded, given the limited land resources to be consumed, proposed

1 CREC location, and overall manner of operation, there will be little impact on any of the referenced
2 resources.

3 Finally, and a component of the proposed development that I similarly deemed vitally
4 important, is potential visual impacts. Once again, based upon the methodology employed, it has
5 been conclusively determined that there would be little to no visual impact. This conclusion was
6 evidenced by the employment of a “viewshed analysis” and conducting said analysis from all
7 locations deemed even remotely significant. Ultimately, 175 resources were deemed significant
8 enough to include in the analysis, and the tallest structures, namely the stacks, were visible from
9 only 23 of said resources. However, given existing vegetation and topography, visibility was even
10 limited in those instances.

11 **Q. IN YOUR PROFESSIONAL CAPACITY, DO YOU HAVE AN OPINION, TO A**
12 **REASONABLE DEGREE OF CERTAINTY, WHETHER CREC COMPLIES**
13 **WITH THE STATE GUIDE PLAN?**

14
15 **A.** Yes. I agree with the conclusions proffered in the Division of Planning’s Advisory Opinion
16 that CREC complies with the State Guide Plan.

17 **VII. REVISED WATER SUPPLY PLAN ANALYSIS**

18 **Q. HAVE YOU REVIEWED THE REVISED WATER SUPPLY PLAN, FILED WITH**
19 **THE BOARD ON JANUARY 11, 2017?**

20
21 **A.** Yes.

22 **Q. HAS THE REVISED WATER SUPPLY PLAN CHANGED ANY OF YOUR**
23 **OPINIONS?**

24
25 **A.** No.

26 **Q. PLEASE EXPLAIN THE BASIS FOR YOUR OPINION?**

27
28 **A.** The revised “Water Supply Plan” is consistent because it altogether averts any natural
29 resource intrusion. Furthermore, project redesign will realize an operation that necessitates a

1 fraction of the water supply initially required, thereby reducing water consumption and wastewater
2 production. Finally, this can all be accomplished with minimal traffic increase, as demonstrated
3 by McMahon Associates.

4 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

5

6 **A.** Yes.

7