STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: August 30, 2024]

NATICK SOLAR LLC and RONALD ROSSI,	:	
Appellants,	:	
	:	
v.	:	
	:	
MICHAEL SMITH; STEVEN FRIAS; THOMAS ZIDELIS; LISA MANCINI; KATHLEEN LANPHEAR; DAVID EXTER; THOMAS BARBIERI; ROBERT COUPE; JUSTIN MATEUS, solely in their capacities as members of the CRANSTON PLAN COMMISSION; and CHRISTOPHER BUONANNO; JOY MONTANARO; DEAN PERDIKAKIS; CRAIG NORCLIFFE; FRANK CORRAO III, solely in their capacities as members of the CRANSTON ZONING BOARD OF REVIEW, sitting as the PLATTING BOARD OF REVIEW,	:	**C.A. No. PC-2023-05457**
Appellees,	:	
	:	
And	:	
	:	
DANIEL ZEVON, HOLLY ZEVON, JOSEPH MARINO, JESSICA MARINO, CARL SWANSON, CAROL SWANSON, M. DRAKE PATTEN, WRIGHT DETER, JUSTEN DIMAIO, KATE DIMAIO, WALTER LAWRENCE, CLARA LAWRENCE, CHRISTINE MORETTI, MATTHEW MORETTI, ROBERTA TRAVIS, STEVE REID, CHRISTINE REID and STEVE STYCOS,	:	
Intervenors.	:	

DECISION

MONTALBANO, J. Before this Court is Natick Solar, LLC and Ronald Rossi's (collectively, Appellants) appeal from the October 16, 2023 decision of the Cranston Zoning Board of Review, sitting as the Platting Board of Review (the Platting Board), which upheld the Cranston Plan Commission's denial of Natick Solar's Master Plan Application (Application). Jurisdiction is pursuant to G.L. 1956 § 45-23-71.

I

Facts and Travel

Natick Solar is a limited liability corporation organized under the laws of the State of Rhode Island. On November 9, 2018, Natick Solar (then known as "Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC") filed an application with the City of Cranston Planning Department for master plan approval to construct and operate a 29.7-acre solar facility on a leased portion of land in Western Cranston. (Application.) The subject property is identified as Assessor's Plat 22-3, Lots 108 and 119 and is owned by Ronald Rossi. *Id*. The Property consists of approximately sixty-four acres and has been zoned A-80 at all times relevant to this appeal. *Id*. The "Project Narrative" submitted with the Application stated that Mr. Rossi would lease approximately 29.7 acres of land to Natick Solar to "develop, install, and operate an 8.1 megawatt (dc) ground mounted solar energy field" known as the Natick Avenue Solar Project (the Project). *Id*. The Plan Commission voted to approve Natick Solar's Master Plan on February 5, 2019. (Plan Commission Decision, Feb. 11, 2019.)

However, shortly thereafter, a group of abutting property owners appealed the Plan Commission's approval of Natick Solar's Application to the Platting Board and then to the Superior Court. *See Zevon v. Rossi*, No. PC-2019-6129, 2022 WL 2238238 (R.I. Super. May 27,

2022). The abutters argued that the Plan Commission had unlawfully accepted over 100 pages of evidence and a revised site plan into the record after the close of public comment, which in turn deprived the public of its right to comment on that material. *Id.* at *7-8. The abutters further requested that Plan Commission Chairman Michael Smith's vote in favor of the Application be disqualified for bias because he had improperly based his decision on his independent personal research into climate change. *Id*. at *10. On May 27, 2022, the Superior Court vacated the master plan approval and remanded the case back to the Plan Commission "to reopen public comment with appropriate notice to give Appellants and other members of the public the opportunity to review and comment on all additions to the record that were received after the close of public comment." *Id.* at *12. The Court declined to disqualify Chairman Smith but cautioned him to better insulate himself from improper *ex parte* contacts in the future. *Id.*

On November 3, 2022, in accordance with the Superior Court's remand order, Natick Solar resubmitted its November 9, 2018 Application for master plan approval. Because seven of the nine members on the Plan Commission had changed since the prior hearings on Natick Solar's Master Plan Application, the Commission determined that it needed to conduct a complete re-hearing on the Application. (Platting Board Decision, 3.) The Plan Commission conducted public hearings on the Application on February 7, 2023, March 20, 2023, April 19, 2023, and June 6, 2023. At the hearings, Natick Solar presented testimony from the following individuals: David Russo, a civil engineer and an expert in engineering, Ed Pimentel, a planning consultant and expert in planning, John Carter, a registered landscape architect and expert in landscape architecture, Thomas Sweeney, a real estate appraisal expert, and Andy Dufore, a blasting expert employed by Maine Drilling & Blasting.

Mr. Russo testified at the February 7, 2023 hearing as to the Property's layout as well as the specifications and requirements for the proposed solar farm. (Plan Commission Tr. 21-29, Feb. 7, 2023.) He testified that the Project site has an average slope of about ten percent and that regrading would only be necessary in areas where the slope exceeds twenty percent. *Id.* at 22-25. He further testified that the amount of necessary blasting is difficult to determine but that they have reduced the grading as much as possible and have been in contact with the gas company to ensure that they do not disturb the existing gas pipeline that runs through the parcel. *Id.* at 27:5-28:4. Mr. Russo also explained that the Department of Environmental Management (DEM) conducted a complete review of the Project and gave a full permit for the site after determining that it met all the requirements for water quality, wetland impact, runoff mitigation, and soil erosion. *Id.* at 23:22-24:12.

Next, Mr. Pimentel testified about the Project's consistency with the City of Cranston Comprehensive Plan (Comprehensive Plan). (Plan Commission Tr. 48-78, Feb. 7, 2023.) He testified that the Natick Solar proposal was consistent with the 2017 Comprehensive Plan because the 2017 Plan contained language that clearly encouraged solar development in A-80 zones. *Id.* at 52:20-53:15. However, he noted that even if the 2017 Comprehensive Plan were deemed legally ineffective since it had not been adopted by the state, the Project would still be consistent with the language of the 2010 Comprehensive Plan. *Id.* at 53:2-21. Mr. Pimentel also testified that solar farms are a form of temporary land banking because they have a life cycle of about twenty-five to thirty years and are easily removable thereafter, whereas a residential development would require a much more permanent disturbance of the land to establish the necessary infrastructure. *Id.* at 60:5-61:4. Prior to the conclusion of Mr. Pimentel's testimony, the Plan Commission voted to continue the hearing to March 20, 2023. *Id.* at 83.

At the March 20, 2023 hearing, after Mr. Pimentel retook the podium to conclude his testimony, Mr. Carter testified as to Natick Solar's landscape plan and the efforts that would be undertaken to mitigate the visibility of the solar farm from abutting residential properties. (Plan Commission Tr. 28-51, Mar. 20, 2023.) He explained that the idea of using a fence to mitigate visibility of the Project was rejected by everyone involved, so they instead decided to use a vegetated buffer. *Id.* at 38:16-39:10. Specifically, Mr. Carter provided that a fifty foot buffer of existing vegetation, extending from the property line onto the site, would remain untouched as a no-cut buffer and that it would be followed up by an additional ten foot buffer with a planting scheme consisting of evergreens, trees, shrubs, deciduous trees, and deciduous shrubs. *Id.* at 39:11-23. He noted however, that some abutters would still be able to see the solar farm at certain times of year. *Id.* at 45:23-46:3.

Mr. Sweeney testified about the impact of solar development on local real estate values. *Id.* at 52-65. He explained that there were three appraiser-conducted studies performed in North Carolina, Indiana, and Illinois in 2018 and 2019 which compared properties in close proximity to solar farms with properties not in proximity to solar farms and determined that, when properly screened, the solar facilities had no measurable impact on residential property values. *Id.* at 53:15-54:20. He later testified about a 2023 study which had examined 1.8 million property sales in and around solar facilities across multiple states and found that while the results varied by state, the changes in value were negligible in the grand scheme of things. *Id.* 55:6-23.

Mr. Sweeney also testified about a study performed by Dr. Corey Lang at the University of Rhode Island in 2020 which examined 78,000 property sales in Rhode Island, Massachusetts, and Connecticut and determined that parcels in proximity to solar farms experienced a 1.9% reduction in value. *Id.* at 54:21-55:6. However, he added that Dr. Lang had subsequently conducted

another study which found that, when given the choice of being next to either a solar farm or a residential subdivision, people were willing to pay more not to have a residential subdivision. *Id.* at 58:3-18.

Following Mr. Sweeney's testimony, Commissioner Frias called upon Mr. Russo to answer some additional questions regarding his involvement in the Gold Meadow Farms solar project. *Id.* at 69:7-72:9. Commissioner Frias asked Mr. Russo if there were any mistakes that were made when he did Gold Meadow Farms project that he would do differently in hindsight to which Mr. Russo responded that he did not think there was any mistake but rather they had to do more significant blasting due to the nature of that site. *Id.* at 69:22-71:7. Commissioner Frias then asked if there was anything Mr. Russo would do differently with regard to blasting specifically and Mr. Russo explained that the sites are very different and that the Natick Avenue site would require much less blasting. *Id.* at 71:16-72:6.

Next, counsel for the opposition presented testimony from Katherine Martin, a registered landscape architect and expert in landscape architecture, and Paige Bronk, an expert in planning. Ms. Martin testified that the Project would have a negative impact upon abutting properties from a landscaping perspective. She explained that the proposed buffer is inadequate because its width and reliance on deciduous trees will make it impossible to confirm the absence of sight lines and adequately block the glare from the solar panels. *Id.* at 85:9-86:12. Ms. Martin also stated that there was no evidence that Natick Solar had made the maximum effort to preserve existing vegetation and specimen trees on the site or to ensure that a minimum of fifteen percent of the development's parcel would be landscape, both of which are required pursuant to the landscape development and landscaping design standards for the City of Cranston. *Id.* at 86:13-90:10.

Mr. Bronk testified that the Project would be inconsistent with both the 2010 and 2017 Comprehensive Plans but that the 2010 Plan carried greater weight because it was the last full update to the Comprehensive Plan, whereas the 2017 amendment only touched on certain elements and was not accepted by the State of Rhode Island. *Id.* at 106:14-107:16, 113:4-18, and 125:17-126:3. He explained that the Project would be inconsistent with over twenty Goals and Policies espoused in the 2010 Comprehensive Plan. *Id.* at 107:23-112:9. When asked whether solar development was considered a form of land banking among planning experts, Mr. Bronk stated that he was unaware of solar facilities ever being considered a form of land banking. *Id.* at 127:6-128:7. At the conclusion of Mr. Bronk's testimony, the Plan Commission continued the hearing to April 19, 2023. *Id.* at 149.

At the April 19, 2023 hearing, Mr. Dufore testified as to Natick Solar's proposed blasting plan and the associated safety protocols. He stated that before blasting, Maine Drilling & Blasting conducts pre-blast planning and a hazard assessment to take note of important infrastructure and document the existing conditions of abutting homes. (Plan Commission Tr. 6:13-8:19, Apr. 19, 2023.) He also explained that, as a prerequisite to any blasting, they would first need to provide notice to all abutters within 500 feet of the blast site, obtain a blasting permit from the Fire Marshal's Office, and get approval from the gas company to blast within 300 feet of the existing pipeline. *Id.* at 9:18-22, 14:10-15:10. Mr. Dufore then provided two nearby examples of Maine Drilling & Blasting safely blasting within the vicinity of pipelines. *Id.* at 15:19-16:15.

Next, the Plan Commission opened public comment and heard testimony from sixteen members of the public. (Plan Commission Minutes 4-5, Apr. 19, 2023.) Notably, Walter Lawrence, an abutting homeowner with over sixty years of experience in the construction industry, testified that even the vibrations from blasting near the pipeline on the site could set off a major disaster

due to certain deficiencies which he had observed in the pipeline's construction. *Id.* at 55:3-60:14. He provided the Plan Commission with photographs that he had taken of the pipeline when it was being constructed to demonstrate that the pipe is surrounded by large rocks, welding rods, and other items that pose a risk of rupturing it and polluting the surrounding area if the ground is disturbed. *Id.*

After considering the Application, the testimony, and exhibits presented, the Plan Commission voted five-to-three to deny Natick Solar's Master Plan Application. (Plan Commission Amended Decision, 1.) In its written decision, the Plan Commission explained that it found the proposal inconsistent with the following provisions of the 2017 Comprehensive Plan: Land Use Principle 4 ("Protect and stabilize existing residential neighborhoods by basing land use decisions on neighborhood needs and quality of life"), Land Use Goal (LUG)-9 ("Protect and stabilize existing residential neighborhoods"), LUG-1 ("Preserve the rural quality and critical resources of Western Cranston through appropriate land use controls"), LUG-13 ("Preserve scenic landscapes and view sheds"), and Land Use Policy (LUP)-1.3 ("Preserve existing farmland and recreational open space areas through land use regulation and taxation policies").[1] *Id.* at 2. Furthermore, the Plan Commission concluded "that the 2017 [Comprehensive Plan] amendment concerning solar development should not be interpreted to encourage solar development on all A-80 zoned parcels, as certain parcels are encumbered by natural and/or man-made constraints." *Id.*

The Plan Commission also determined that the proposal did not comply with § 17.20.120 of the Cranston Zoning Ordinance (CZO), which establishes a ten percent maximum lot coverage standard for the A-80 zoning district. *Id.* The Commission explained that the "lot building

[1] Despite determining that the 2017 Amended Comprehensive Plan was applicable at the municipal level, the Plan Commission erroneously relied upon the 2010 version of LUP-1.3 in its decision rather than the amended 2017 version of LUP-1.3.

coverage" standard applies to "structures" as well, and because it found that solar arrays should be considered structures, Natick Solar's proposal was deemed non-compliant with such standard. *Id.* Lastly, the Plan Commission found that the proposal was inconsistent with G.L. 1956 § 45-23-60(a)(3) because "[t]he clearcutting, blasting, and re-grading necessary to prepare the site to accommodate solar development have the potential for significant negative environmental impacts, and these impacts could occur during construction (after RIDEM permits have been issued)." *Id.*

Thereafter, on June 29, 2023, Appellants timely appealed the Plan Commission's Decision to the Cranston Zoning Board, sitting as the Platting Board. (June 29, 2023 Appeal.) Appellants argued that the Plan Commission had committed "clear error" in finding its Application (1) was inconsistent with the Comprehensive Plan, (2) was noncompliant with § 17.20.120 of the CZO, and (3) had the potential for significant negative environmental impact. *Id.* at 2. The Platting Board heard oral argument for the appeal on September 13, 2023 before unanimously voting to uphold the Decision of the Plan Commission on October 11, 2023. (Platting Board Decision, 1, 4.) The Platting Board issued its written decision on October 16, 2023.

On October 24, 2023, Appellants took a timely appeal to this Court from the decision of the Platting Board.

II

Standard of Review

The Superior Court's review of a decision of a zoning board of review, sitting as a board of appeal, is governed by § 45-23-71(d), which provides:

> "The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if

> substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions that are:
>
> "(1) In violation of constitutional, statutory, ordinance, or planning board regulations provisions;
> "(2) In excess of the authority granted to the planning board by statute or ordinance;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error of law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 45-23-71(d).

When reviewing an appeal from a decision of a board of appeal, the Court "shall consider the record of the hearing before the planning board[.]" Section 45-23-71(c). "This Court 'lacks authority to weigh the evidence, to pass upon the credibility of witnesses, or to substitute . . . findings of fact for those made at the administrative level.'" *Revity Energy LLC v. Hopkinton Zoning Board of Review*, No. WC-2021-526, 2022 WL 17249332, at *6 (R.I. Super. Nov. 21, 2022) (quoting *Lett v. Caromile*, 510 A.2d 958, 960 (R.I. 1986)). "The judgment of the board will be affirmed if the Court 'can conscientiously find that the board's decision was supported by substantial evidence in the whole record.'" *Id.* (quoting *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004)). Substantial evidence is '"such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance."' *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 690 n.5 (R.I. 2003) (quoting *Caswell v. George Sherman Sand & Gravel Co., Inc.*, 424 A.2d 646, 647 (R.I. 1981)). However, questions of law are not binding upon this Court and "may be reviewed to determine what the law is and its applicability to the facts." *Narragansett Wire Co. v. Norberg*, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977).

III

Analysis

A

Comprehensive Plan Consistency

Appellants first argue that the Plan Commission committed clear error in denying Natick Solar's Master Plan Application based on inconsistency with the Comprehensive Plan. As noted above, the Plan Commission found that the Application was inconsistent with five provisions of the Comprehensive Plan. (Plan Commission Amended Decision, 2.) Specifically, the Plan Commission determined that the proposal was (1) inconsistent with Land Use Principal 4 and LUG-9 because solar farms cause a reduction in property values; (2) inconsistent with LUG-1 and LUG-13 because the vegetated buffer proposed by Natick Solar's landscaping plan would not shield the development from all sightlines in all seasons; and (3) inconsistent with LUP-1.3 because the Commission does not consider the development of solar facilities to be a form of land banking that serves to preserve open space. *Id.* The Court will address each of these findings in turn.

1

Impact on Existing Residential Neighborhoods

First, the Plan Commission determined that the Application was inconsistent with Land Use Principal 4 and LUG-9 due to the fact that solar farms cause a reduction in neighboring property values, as was demonstrated in the 2020 study conducted by Dr. Cory Lang. *Id*; *see also* Cory Lang, *Property Value Impacts of Commercial-Scale Solar Energy in Massachusetts and Rhode Island* (2020). Land Use Principal 4 provides that the City should "[p]rotect and stabilize existing residential neighborhoods by basing land use decisions on neighborhood needs and quality

of life." (Cranston 2017 Comprehensive Plan, Land Use Principal 4.) LUG-9 similarly advises that the City should "[p]rotect and stabilize existing residential neighborhoods." (Cranston 2017 Comprehensive Plan, LUG-9.)

As previously noted, Dr. Cory Lang's 2020 study examined 78,000 property sales across Rhode Island, Massachusetts, and Connecticut and determined that those parcels in proximity to solar farms saw a reduction in value. *See* Cory Lang, *Property Value Impacts of Commercial-Scale Solar Energy in Massachusetts and Rhode Island* (2020). While it is clear that Dr. Lang's 2020 study constitutes substantial evidence on the record to support a finding that solar farms may reduce property values, it cannot support a determination that the Project would adversely affect surrounding residential neighborhoods due to the fact that solar power is a permitted use in the A-80 zone.

Our Supreme Court has established that "when seeking dimensional relief for *lawfully permitted uses* the review should not focus on the use of the parcel because a legislative determination has been made previously that the use is appropriate and does not adversely affect the general character of the area." *Lischio*, 818 A.2d at 693. The same holds true with respect to the review of a master plan application for a lawfully permitted use. A permitted use, under § 45-24-31(56) and CZO § 17.04.030, is "[a] use by right that is specifically authorized in a particular zoning district." Thus, by definition, a permitted use is one which the local legislature has "found to be harmonious with those [other] uses which are permitted in the district." *Nani v. Zoning Board of Review of Town of Smithfield*, 104 R.I. 150, 155, 242 A.2d 403, 406 (1968).

The City of Cranston established "solar power" as a permitted use in the A-80 zoning district in 2015. (City of Cranston Ordinance, No. 2015-32 (Amending CZO § 17.20.030, schedule of uses, to add solar power).) Therefore, because the proposed solar development is a lawfully

permitted use of the subject property, it necessarily follows that, as a matter of law, such development will not adversely impact the surrounding residential neighborhood. *See Lischio*, 818 A.2d at 693.

Accordingly, the Plan Commission erred in finding the Application inconsistent with Land Use Principal 4 and LUG-9 of the Comprehensive Plan. The Plan Commission's determination that the lawfully permitted use proposed by the Application would adversely impact the surrounding residential neighborhood constituted a clearly unwarranted exercise of discretion.

2

Vegetated Buffer

Next, the Plan Commission determined that the Application was inconsistent with LUG-1 and LUG-13 "because the applicant's proposed landscaping plan [would] not create a buffer that shields the development from all sightlines in all seasons." (Plan Commission Amended Decision, 2.) LUG-1 provides that the City should "[p]reserve the rural quality and critical resources of Western Cranston through appropriate land use controls" while LUG-13 encourages the City to "[p]reserve scenic landscapes and view sheds." (Cranston 2017 Comprehensive Plan, LUG-1, LUG-13.) In finding the Application inconsistent with such goals, the Plan Commission relied upon the testimony of Natick Solar's landscaping expert, John Carter. Mr. Carter explained that there was no new planting proposed on the southern property line because they cannot plant over the buried pipeline, and although there is a lower density of development in that direction, those few abutters would be able to see the solar farm from parts of their properties at certain times of the year. (Plan Commission Tr. 45:23-46:3, Mar. 20, 2023.)

With respect to LUG-1, which aims to preserve the rural quality of Western Cranston, the aforementioned *Lischio* precedent remains applicable. *See Lischio*, 818 A.2d at 693. That is,

because solar power is a permitted use in the A-80 zone, there has necessarily been a previous legislative determination that "the use is appropriate and does not adversely affect the general character of the area[,]" rural or otherwise. *Id.* The Plan Commission's determination that the Project would adversely affect the rural character of the surrounding area is incongruous with the Cranston City Council's decision to make solar power a permitted use in the A-80 zone. For that reason, this Court finds that the Plan Commission erred, as a matter of law, when it determined that the Project was inconsistent with LUG-1 because it would negatively impact the rural character of the surrounding area.

With that, the Court turns its attention to LUG-13, which advises to preserve scenic landscapes and view sheds. In finding the Application inconsistent with this goal, the Plan Commission made the determination that the proposed project site constitutes a "scenic landscape" which the solar farm would disturb. However, the Plan Commission did not provide any objective criteria for determining what constitutes a "scenic landscape" warranting preservation. Although LUP-13.1—a sub-policy listed under LUG-13 in the Comprehensive Plan—contemplates a scenic preservation program to identify scenic landscapes and view sheds for preservation, there is no indication that such a program identified the proposed project site as a landscape warranting preservation. *See* Cranston 2017 Comprehensive Plan, LUP-13.1 ("Establish a scenic preservation program to preserve scenic landscapes and view sheds").

Apart from the subjective judgment of the Plan Commission, there is nothing in the record to support the finding that the proposed project site qualifies as a scenic landscape which must be preserved. In the absence of any objective criteria as to what constitutes a scenic landscape, the Plan Commission's determination can hold little weight. If the Plan Commission could unilaterally deem any undeveloped wooded area or wetland to be a scenic landscape warranting preservation,

then every new development proposed in a previously undeveloped area could effectively be found to run afoul of LUG-13 according to the subjective whims of the Commissioners. For that reason, absent objective criteria, any finding of inconsistency with LUG-13 is inherently arbitrary and capricious.

Moreover, even if there had been an objective basis to support the Plan Commission's finding with respect to LUG-13, "the fact that the solar array might impede third-party views is 'of no merit[.]'" *GD Richmond Beaver River I, LLC v. Town of Richmond Zoning Board of Review*, No. WC-2021-0111, 2023 WL 2825918, at *10 (R.I. Super. Mar. 31, 2023) (quoting *Phelan v. Zoning Board of Review of City of Warwick*, 90 R.I. 490, 491, 159 A.2d 802, 803 (1960)). The Supreme Court has established that "purely aesthetic considerations do not supply sufficient basis for the exercise of the police power." *City of Providence v. Stephens*, 47 R.I. 387, 393, 133 A. 614, 617 (1926). Accordingly, the Plan Commission erred when it denied Natick Solar's Application based on a finding of inconsistency with LUG-13.

3

Land Banking

Finally, the Plan Commission determined that the Application was inconsistent with LUP 1.3, which aims to preserve existing farmland and recreational open space, because "the Commission does not consider the development of solar facilities to constitute a form of 'land-banking' that ultimately serves to preserve open space[.]" (Plan Commission Amended Decision, 2.) The Plan Commission explained that it does not consider solar development to be a form of land banking due to the amount of blasting and clearcutting necessary to regrade land for solar. *Id.* However, when reaching this conclusion in its decision, the Plan Commission erroneously relied upon the outdated 2010 version of LUP-1.3, rather than the 2017 amended version of LUP-1.3. *Id.*

The 2010 version of LUP-1.3 encouraged the City to "[p]reserve existing farmland and recreational open space areas through land use regulation and taxation policies." (Cranston 2010 Comprehensive Plan, LUP-1.3.) In contrast, the 2017 amended version of LUP-1.3 advises the City to "[p]reserve existing farmland and developable land that is currently undeveloped, by temporally removing the development potential *through land banking by allowing the land to be used for passive alternative energy generation such as solar power*." (Cranston 2017 Comprehensive Plan, LUP-1.3) (emphasis added).

Upon examining the 2017 version of LUP-1.3, it is evident that the Plan Commission engaged in a clearly unwarranted exercise of discretion when it determined that solar power is not a form of land banking. While the Plan Commission may have had the discretion to make such a determination under the language of the 2010 version of LUP-1.3, that is not the case with respect to the 2017 language. The 2017 version of LUP-1.3 expressly encourages the City to pursue land banking by allowing undeveloped land to be used for passive alternative energy generation such as solar power, which is precisely what Natick Solar's Application is proposing.

Furthermore, there are numerous other provisions in the 2017 Comprehensive Plan amendment which also refer to solar power as a form of land banking. *See* City of Cranston Ordinance, No. 2017-12 (Enacting the 2017 Comprehensive Plan amendment regarding solar power). Thus, it is apparent that the 2017 Comprehensive Plan inherently considers solar power to be a form of land banking. *Id.* As such, the Plan Commission's determination that the Application is inconsistent with LUP-1.3 because solar power does not constitute a form of land banking is in express contravention to the language of the 2017 Comprehensive Plan and therefore, erroneous.

In sum, the Plan Commission erred in finding Natick Solar's Application inconsistent with the 2017 Comprehensive Plan.

B

Maximum Lot Coverage Ordinance

Appellants next argue that the Plan Commission committed clear error in denying Natick Solar's Master Plan Application based on a finding that it did not comply with § 17.20.120 of the CZO, which establishes a ten percent maximum lot coverage standard for the A-80 zone. The City's zoning ordinance defines "lot building coverage" as "that portion of the lot that is or may be covered by buildings and accessory buildings." (CZO § 17.04.030.) In its decision, the Plan Commission explained that it interpreted the maximum lot coverage standard as applying to the proposed solar equipment because it considers solar arrays to be structures and the CZO does not differentiate between buildings and structures such that both must be considered when calculating the lot coverage percentage. (Plan Commission Amended Decision, 2.)

Appellants assert that this finding is erroneous and inequitable because the Plan Commission has never before applied the ten percent lot coverage requirement to a solar development in the A-80 district. Rather, Appellants contend that the Plan Commission has historically interpreted the maximum lot coverage standard as not applying to solar development, including when it previously approved Natick Solar's initial master plan and preliminary plan applications. In response, Appellees maintain that the lot coverage ordinance is applicable to Natick Solar's Application regardless of whether it was applied to solar developments in the past.

Appellants are correct that the maximum lot coverage standard was not previously applied to Natick Solar's identical project proposal when it was approved by the Plan Commission at the initial master plan stage, in 2019, or at the preliminary plan stage, in 2021. *See* 2019 Natick Solar Master Plan Decision; 2021 Natick Solar Preliminary Plan Decision. In fact, there is no evidence in the record to suggest that the maximum lot coverage ordinance has ever been applied to another

solar development in the A-80 zone. Thus, the evidence in the record suggests that prior to the instant Application, the Plan Commission had, at least implicitly, interpreted the maximum lot coverage ordinance as not applying to solar development.

Additionally, at the February 7, 2023 Plan Commission hearing, Ed Pimentel testified to the fact that in 2019, following Natick Solar's original master plan application, the City passed a solar ordinance which established new lot coverage standards specifically applicable to solar projects. (Plan Commission Tr. 70:14-71:9, Feb. 7, 2023.) The subsequent enactment of a solar specific lot coverage standard coupled with the fact that the general lot coverage standard had not been applied to solar projects in the past is further evidence of the City's historic interpretation that the general maximum lot coverage standard established in § 17.20.120 of the CZO is not applicable to solar development. Moreover, such an interpretation is consistent with the State of Rhode Island Renewable Energy Guidelines, in which the Division of Statewide Planning advised that "[s]olar energy systems are not buildings. Therefore, municipalities must distinguish between lot building coverage and define another lot coverage standard for solar energy systems." *Id.* at 68:6-69:6.

Based on the foregoing, this Court finds that the City has historically interpreted § 17.20.120's maximum lot coverage provision as being inapplicable to solar facilities. Furthermore, the Plan Commission induced Natick Solar's reliance upon such interpretation when it twice approved development plan applications for this exact project without subjecting them to the ten percent maximum lot coverage standard for the A-80 zone. As such, the Plan Commission's decision to change course in its most recent ruling and to start applying § 17.20.120's maximum lot coverage standard to solar facilities is arbitrary and capricious. For that reason, the Court is

compelled to find that the Plan Commission erred in determining that the Application was inconsistent with the Cranston Zoning Ordinance.

C

Environmental Impact

Appellants' final argument is that the Plan Commission erred in denying Natick Solar's Master Plan Application based on a finding of inconsistency with § 45-23-60(a)(3). Section 45-23-60(a)(3) provides that, in order to grant a development application, the Plan Commission must find that "[t]here will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval." In the matter at hand, the Plan Commission determined that it could not make such a finding because "[t]he clearcutting, blasting, and regrading necessary to prepare the site to accommodate solar development have the potential for significant negative environmental impacts, and these impacts could occur during construction (after RIDEM permits have been issued)." (Plan Commission Amended Decision, 2.) Appellants assert that the Plan Commission's determination was improper at the master plan stage of review because § 45-23-60(a)(3) unambiguously establishes that the environmental impact finding is not to be made at the master plan stage but rather at the final plan stage. In response, Appellees maintain that the language of § 45-23-60(a)(3) did not preclude the Plan Commission from considering the environmental impact at the master plan stage.

The Rhode Island Supreme Court has stated that the ultimate goal of statutory interpretation '"is to give effect to the purpose of the act as intended by the Legislature."' *Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 983 (R.I. 2023) (quoting *Butler v. Gavek*, 245 A.3d 750, 754 (R.I. 2021)). "If the language of a statute or ordinance is clear and unambiguous, it is given 'its plain and ordinary meaning."' *Id.* (quoting *City of Woonsocket v. RISE Prep Mayoral*

Academy, 251 A.3d 495, 500 (R.I. 2021)). Further, '"the Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the [C]ourt will give effect to every word, clause, or sentence, whenever possible."' *State v. Clark*, 974 A.2d 558, 571 (R.I. 2009) (quoting *State v. Bryant*, 670 A.2d 776, 779 (R.I. 1996)).

Here, the subject statute clearly and unambiguously states that the environmental impact determination is to be made with respect to "the proposed development as shown on the *final plan*[.]" *See* § 45-23-60(a)(3) (emphasis added). The term "final plan" is defined under § 45-23-32 as "[t]he final stage of land development and subdivision review." Section 45-23-32(13). Conversely, the term "master plan" is defined, in pertinent part, as "[a]n overall plan for a proposed project site outlining general, rather than detailed, development intentions. . . . It is the first formal review step of the major land development or major subdivision process[.]" Section 45-23-32(22). Keeping in mind that each word of a statute is presumed to express significant meaning, this Court finds that the Legislature would not have included the term "final plan" in the language of § 45-23-60(a)(3) if it had intended for the environmental impact determination to be made at the master plan stage. Accordingly, the Plan Commission acted prematurely in making the § 45-23-60(a)(3) environmental impact finding at the master plan stage.

Despite the clear statutory language, Appellees contend that, in *Narragansett Improvement Co. v. Wheeler*, the Supreme Court interpreted § 45-23-60(a)(3) to permit the environmental impact determination at the master plan stage. 21 A.3d 430 (R.I. 2011). Contrary to Appellees' contention, *Wheeler* was not an appeal from a master plan decision. *Id.* Rather, the *Wheeler* Court was reviewing the dismissal of an action for declaratory and injunctive relief which had been filed against the Rhode Island Advisory Commission on Historical Cemeteries. *Id.* Although the Court, in setting forth the Facts and Procedural History, noted that the Newport Planning Board had

previously denied the plaintiff's master plan application, there was no substantive analysis of that master plan decision or the bases underlying the denial. *Id.* In fact, the only reference to § 45-23-60 in the *Wheeler* decision is a footnote in which the Court lists the findings of fact made by the Newport Planning Board when it denied the plaintiff's master plan application. *Id.* at 435 n.10. Thus, Appellees' reliance on *Wheeler* is misplaced.

For the foregoing reasons, this Court finds that the Plan Commission erred in denying Natick Solar's Master Plan Application based on a finding of inconsistency with § 45-23-60(a)(3). Pursuant to the unambiguous language of § 45-23-60(a)(3), the environmental impact finding is not to be made until the final plan stage of review.

IV

Conclusion

For the reasons stated herein, this Court grants the instant appeal and reverses the Platting Board's decision upholding the Plan Commission's denial of Natick Solar's Master Plan Application. This matter is therefore remanded to the Plan Commission to grant Natick Solar's Master Plan Application. In light of this ruling, the Court need not reach Appellants' *ex parte* communication claims.[2]

In filing this instant appeal, Appellants also made a request for the recovery of attorneys' fees and expert fees under the Equal Access to Justice Act (EAJA) at G.L. 1956 § 42-92-3. Section 42-92-3(a) provides in pertinent part:

[2] In Appellants' memorandum of law, they argued that certain email correspondences on the part of members of the Plan Commission, which occurred while the master plan remand hearing was ongoing, constituted improper *ex parte* communications because they concerned Natick Solar's Application and were never disclosed or put on the record. However, because the Plan Commission's decision is hereby reversed on other grounds, this Court does not reach the *ex parte* allegations.

> "Whenever the agency conducts an adjudicatory proceeding subject to this chapter, the adjudicative officer shall award to a prevailing party reasonable litigation expenses incurred by the party in connection with that proceeding. The adjudicative officer will not award fees or expenses if he or she finds that the agency was substantially justified in actions leading to the proceedings and in the proceeding itself. The adjudicative officer may, at his or her discretion, deny fees or expenses if special circumstances make an award unjust." Section 42-92-3(a).

Here, Appellants have presented evidence in the form of an affidavit from Natick Solar's manager, Ralph A. Palumbo, to establish that Natick Solar qualifies as a "party" under the EAJA as defined in § 42-92-2(5). (*See* Appellants' Reply Mem. in Resp. to Appellees' Mem. in Opp'n to Appeal, Ex. 1.) As Respondents have not presented any evidence to contradict the statements made in that affidavit, this Court accepts the assertions made therein as true and finds that Natick Solar qualifies as a party under the EAJA. As such, the Court turns its attention to whether the Plan Commission was substantially justified in its actions that led to the instant proceeding.

Our Supreme Court has "held that in meeting the substantial justification test 'the Government now must show not merely that its position was marginally reasonable; its position must be clearly reasonable, well founded in law and fact, solid though not necessarily correct."' *Taft v. Pare*, 536 A.2d 888, 893 (R.I. 1988) (quoting *United States v. 1,378.65 Acres of Land, More or Less, Situate in Vernon County, State of Mo.*, 794 F.2d 1313, 1318 (8th Cir. 1986)). Here, any individual basis given by the Plan Commission in support of its denial of the Application would have been independently sufficient to support such denial if it were not for the errors of law detailed above. Accordingly, if any single reason given by the Plan Commission for the denial of the Application is found to be clearly reasonable despite being incorrect, then the Plan Commission's actions must be deemed substantially justified.

To that end, this Court finds that the Plan Commission's determination that the Application was inconsistent with Land Use Principal 4 and LUG-9 to be clearly reasonable. While such conclusion was ultimately deemed to be incongruous with Rhode Island Supreme Court precedent, the Plan Commission's actions leading to that conclusion were well founded in law and fact. The finding itself was based on the Plan Commission's interpretation and application of Comprehensive Plan provisions as mandated by § 45-23-60(a), thus the Commission's action in making such finding was well founded in law. Further, the ultimate conclusion was factually supported by competent evidence in the record in the form of Dr. Lang's 2020 study showing that proximity to solar farms was associated with a decrease in property values. *See* Cory Lang, *Property Value Impacts of Commercial-Scale Solar Energy in Massachusetts and Rhode Island* (2020). In light of the fact that the aforementioned finding was clearly reasonable, this Court holds that the Plan Commission's actions in denying the Application were substantially justified.

Accordingly, Appellants' request for an award of attorneys' fees and expert fees under § 42-92-3 of the EAJA is hereby denied.

Counsel shall confer and submit an appropriate order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Natick Solar LLC and Ronald Rossi v. Michael Smith; Steven Frias; Thomas Zidelis; Lisa Mancini; Kathleen Lanphear; David Exter; Thomas Barbieri; Robert Coupe; Justin Mateus, solely in their capacities as members of the Cranston Plan Commission; and Christopher Buonanno; Joy Montanaro; Dean Perdikakis; Craig Norcliffe; Frank Corrao III, solely in their capacities as members of the Cranston Zoning Board of Review, sitting as the Platting Board of Review, and Daniel Zevon, Holly Zevon, Joseph Marino, Jessica Marino, Carl Swanson, Carol Swanson, M. Drake Patten, Wright Deter, Justen DiMaio, Kate DiMaio, Walter Lawrence, Clara Lawrence, Christine Moretti, Matthew Moretti, Roberta Travis, Steve Reid, Christine Reid and Steve Stycos (*Intervenors*)**
CASE NO:	**PC-2023-05457**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**August 30, 2024**
JUSTICE/MAGISTRATE:	**Montalbano, J.**

ATTORNEYS:

For Appellants:	**Nicholas L. Nybo, Esq.; Robert D. Murray, Esq.**
For Appellees:	**Marc DeSisto, Esq.**
For Intervenors:	**Patrick J. Dougherty, Esq.**