

**MINUTES OF THE PLANNING BOARD MEETING OF AUGUST 22, 2016
AT THE BURRILLVILLE HIGH SCHOOL AUDITORIUM
SUBJECT TO APPROVAL AT THE NEXT MEETING**

I. CALL TO ORDER:

Meeting was called to order at 6:05 p.m., Jeffrey Partington, Chairman, presiding.

Members Present: Jeffrey Partington, Michael Lupis, Bruce Ferreira, Leo Felice, Marc Tremblay, Dov Pick, and Christopher Desjardins.

Members Absent: Jeffrey Presbrey.

Others Present: Michael McElroy, Special Counsel, Joseph Raymond, Building Official, Thomas Kravitz, Planning Director, and Christine Langlois, Deputy Planner.

Invenergy (CREC): Allan Shoer, and Nicole Verdi, of Adler, Pollock & Sheehan, and John Niland, Director of Business Development.

II. ATTENDANCE REVIEW: Mr. Partington acknowledged that Mr. Presbrey was excused.

III. ACCEPTANCE OF MINUTES: *A motion to approve the August 15, 2016 minutes was made by Mr. Ferreira, seconded by Mr. Felice and carried unanimously by the Board.*

IV. CORRESPONDENCE: none.

V. OLD BUSINESS:

Major Subdivision/Land Development: Invenergy Thermal Development LLC's (Invenergy) Clear River Energy Center, Wallum Lake Road, Burrillville; *Map 120, Lot 7; Map 135, Lot 2, Map 137, Lots 1, 2, 3 & 21; Map 153, Lots 1 & 2: Master Plan Review/Informational Meeting (cont'd from June 20, 2016, July 11, 2016 and August 15, 2016):* Chairman Partington informed the Board that they would be reviewing the Advisory Opinion, drafted by the Town Planner and Special Counsel, and asked each member if they had any comments or changes.

Mr. Desjardins stated that he had no changes to recommend as everything seemed clear and straight forward.

Mr. Pick stated that he had no changes as well.

Mr. Tremblay questioned the need to include information from the Pascoag Utility District's advisory opinion, when this advisory opinion is coming from the Planning Board. Mr. Kravitz stated that he has provided the PUD information due to his responsibility of obtaining pertinent information from the various agencies affected by this proposal in order to assure the Planning Board as adequate information to render their decision. And the fact that circumstances have changed with the PUD's cancelling of their previous contract with Invenergy.

Mr. Felice said that he felt the advisory opinion was well thought out in regards to the proposal not fitting in with the Comprehensive Plan and added that he felt comfortable with it.

Mr. Ferreira stated that he felt comfortable with it as well as it addresses dealing with this particular parcel of land, the surrounding area and what the surrounding area represents. He reiterated that the Planning Board welcomes all sources of information when making decisions in support of the Town.

Mr. Lupis stated that he felt the advisory opinion was well written.

The Board then addressed the EFSB request in regards to the noise ordinance. Concerns arose as to whether the Board had actually received assurances that the proposed facility would meet the 43 dba requirements and whether conditions could be put in place if that level was exceeded. Chairman Partington stated that Mr. Hessler, the Town's noise expert, had stated that it could be achieved with proper lagging to mitigate the noise. He added that Attorney McElroy had requested that Invenergy consider providing a performance bond to protect the Town should the level be exceeded. Mr. Kravitz informed the Board that Attorney McElroy had received a response from Invenergy that they would not provide a performance bond. Attorney McElroy referred the Board to page 20 of the Advisory Opinion where conditions have been placed to assure the noise level is achieved.

A motion was made from the Chair to provide a positive recommendation, based on the Advisory Opinion, to the Zoning Board on the granting of a special use permit for the noise for the plant to include the waiver from the low octave band requirement [which is impossible to meet based on testimony from the noise expert] and with the conditions that were set forth in our Advisory Opinion, which is "continuous monitoring and reporting of noise levels by Invenergy, and compliance with 43 dba at all times should be an explicit condition of the license, so that all violations are penalized with fines, a cease and desist order, and possible revocation of the operating license". Also, that it should contain a performance bond or other financial assurance for the Town and compensation for Town residents who are adversely affected by the noises. The motion received a second from Mr. Ferreira. The motion passed with four in favor (Partington, Ferreira, Felice, Tremblay) and three opposed (Desjardins, Pick, Lupis).

A short 5-minute recess was called at 6:34 p.m.

When the meeting resume, Attorney McElroy cited R.I.G.L. Section 45-23-63 which states that the vote would require a "majority of the current Planning Board membership". *As the motion contained only four votes in favor, the motion failed.*

A motion to reconsider the previous vote was made by Mr. Ferreira, seconded by Mr. Pick and carried unanimously.

A motion was made by Mr. Tremblay to provide a positive recommendation to the Zoning Board that the waiver for the low octave noise levels in our Noise Ordinance can be waived. The motion received a second from Mr. Ferreira and carried with five votes in favor (Tremblay, Ferreira, Partington, Felice, Desjardins) and two opposed (Lupis, Pick).

A motion was made from the Chair that it is the Board's opinion that the facility will comply with the Noise Ordinance if the Special Use Permit is granted by the Zoning Board with the conditions that there should be continuous monitoring and reporting of noise levels by Invenergy, compliance with 43 dba at all times should be an explicit as a condition of the license, all violations are penalized by fines, a cease and desist order, and possible revocation of operating license, and that Invenergy posts a performance bond or other financial assurance for the benefit of the Town to ensure this condition is satisfied and the Town residents who are adversely affected by the noise violations are compensated. The motion was seconded by Mr. Tremblay. Under discussions, a request from Mr. Pick was made to include the recommendations made by the Town's expert on noise, Mr. Hessler, in regards to the construction components for sound-proofing the facility. He amended the motion to include the recommendations and specifications from Mr. Hessler, which includes startup,

operating and shutdown. The amendment was seconded by Mr. Tremblay. The motion failed with four votes in favor (Ferreira, Partington, Felice, Tremblay) and three opposed (Desjardins, Pick, Lupis) in accordance with R.I.G.L. 45-23-63 (majority of present Planning Board members).

A motion was made from the Chair to forward an unfavorable opinion to the Zoning Board. The motion received a second from Mr. Ferreira and failed with three votes in favor (Desjardins, Pick, Lupis) and four opposed (Ferreira, Partington, Felice, Tremblay).

A motion was made from the Chair to accept the Advisory Opinion, to include: the recommendations from the Town's noise expert, David Hessler; removal of the language on Page 19 (~~"Accordingly, it is our opinion that the CREC facility will be able to comply with the Noise Ordinance, provided the Zoning Board of Review grants Invenergy a waiver/special use permit exempting the CREC from the octave band limits of the ordinance"~~) and replaced with, "the Planning Board was unable to reach a consensus as to whether or not the CREC facility will comply with our Noise Ordinance. The motion received a second from Mr. Ferreira. Under discussions, Mr. Felice requested a correction to language on page 23 (add the word "amount" after ". . . consume a tremendous"). The motion carried unanimously.

Attorney McElroy stated that he would include the vote on the low octave band waiver on Page 22 of the Advisory Opinion under the Advisory Opinion to the Zoning Board of Review.

A motion to adjourn was made at 7:20 p.m. by Mr. Ferreira, seconded by Mr. Pick and carried unanimously by the Board.

Recorded by: M. Christine Langlois
M. Christine Langlois, Deputy Planner

