

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. BURRILLVILLE PLANNING BOARD

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IN RE: \*

MAJOR SUBDIVISION/LAND DEVELOPMENT \*

INVENERGY THERMAL DEVELOPMENT, LLC'S \*

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 \*

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HEARD before the Burrillville Planning Board  
at the Burrillville High School Auditorium,  
425 East Avenue, Harrisville, Rhode Island  
on August 22, 2016 at 6:00 p.m.

**PLANNING BOARD MEMBERS PRESENT**

Mr. Jeff Partington, Chairman	
Mr. Christopher Desjardins	<b><u>ALSO PRESENT</u></b>
Mr. Marc Tremblay	Mr. Thomas Kravitz,
Mr. Dov Pick	Planning Director
Mr. Leo Felice	
Mr. Mike Lupis	Ms. M. Christine Langlois,
Mr. Bruce Ferreira	Deputy Planner
Mr. Robert Woods (Recused.)	

**PLANNING BOARD MEMBERS EXCUSED**

Mr. Jeffrey Presbrey

**APPEARANCES**

MICHAEL R. McELROY, ESQUIRE . . . SPECIAL COUNSEL FOR  
THE TOWN OF BURRILLVILLE

ADLER, POLLOCK & SHEEHAN P.C.  
BY: ALAN SHOER, ESQUIRE . . . . . FOR INVENERGY



1           Development, Invenergy Thermal Development, LLC,  
2           Clear River Energy Center, Wallum Lake Road,  
3           Burrillville, Map 120, Lot 7; Map 135, Lot 2;  
4           Map 137, Lots 1, 2, 3 and 21; Map 153, Lots 1 and 2.  
5           Master Plan Review/Informational Meeting, continued  
6           from June 20th, July 11th and August 15th, 2016.

7           So, this evening we have the advisory opinion  
8           which was drawn by Mike and Tom. And, gentlemen,  
9           would you like to lead us through this?

10           MR. KRAVITZ: I thought what we were going to do  
11           this evening is you guys, of course, all had this.  
12           I believe it was Friday it went out. So, we were  
13           just going to poll the Board.

14           MR. PARTINGTON: Yup.

15           MR. KRAVITZ: If you had any changes that you  
16           wanted to make to this, you articulate those, and we  
17           could go one member at a time, and I think for the  
18           benefit of the public, you know, we, of course,  
19           articulate those here and decide upon them tonight;  
20           and then this opinion would get published. I assume  
21           we could do it on the Town's website, you know,  
22           meeting thereafter.

23           MR. PARTINGTON: Correct, so we'll need -- and  
24           this evening we'll be looking for two votes. One  
25           would be to either accept or accept with revisions

1 the advisory opinion; and then also we need to vote  
2 on the Noise Ordinance again, which there's been  
3 significant correspondence back and forth on that,  
4 which I believe everyone has seen. Correct?

5 MR. PICK: Was it --

6 MR. KRAVITZ: Speak into the mike. Grab the  
7 mike. Please take it out. You might have to pass  
8 it.

9 MR. PICK: Is it just the octave band, or is it  
10 the entire noise --

11 MR. PARTINGTON: It would be in compliance --  
12 whether it's in compliance with the Noise Ordinance  
13 or if -- for the octave band and the Noise Ordinance  
14 itself. I believe, if I'm not mistaken, Mr. Tremblay  
15 last time brought up the point about the effect on  
16 wildlife; and I believe, if you look through the  
17 emails, you will find that that question has been  
18 answered so that, hopefully, because that answer is  
19 in place, hopefully, that will allow us to go forward  
20 on that, okay.

21 So, gentlemen, we have a choice, and I'll yield  
22 to what you'd like to do. Each of -- there are  
23 several sections, obviously, to this advisory  
24 opinion. Would you care to go page by page, or would  
25 you care to simply give your comments on what is

1 here?

2 MR. TREMBLAY: The second.

3 MR. PARTINGTON: The second one, all right.  
4 Everyone feel good about that? Chris, in that case,  
5 we're going to start with you.

6 MR. DESJARDINS: After reading through the  
7 advisory opinion, I actually don't have any  
8 additional changes. Everything seemed to be pretty  
9 clear, pretty forward, referenced some of the  
10 material in the Comprehensive Plan. So, I don't have  
11 any additional changes. I wouldn't advise any.

12 MR. PARTINGTON: Okay.

13 MR. PICK: I concur. I don't see any changes.

14 MR. PARTINGTON: Okay.

15 MR. TREMBLAY: This is not as to content as much  
16 as it is to form, and this is in the discussion part;  
17 but, on Pages 6 and 7, there's a lot of stuff taken  
18 right out of PUD's advisory opinion; and I'm  
19 wondering. This is the Planning Board's advisory  
20 opinion, and referencing the PUD's opinion that they  
21 came up with is fine. It's just I'm not sure if we  
22 need all these paragraphs in here; and, like I said,  
23 it doesn't take away from our opinion. It's just I'm  
24 not sure if we need the two pages of paragraphs that  
25 quote directly from the PUD's advisory opinion.

1 This is our advisory opinion, not theirs; and it's  
2 one thing to incorporate a paragraph that summarizes  
3 their their points, but not necessarily just  
4 reiterating all of or half of their opinion.

5 MR. KRAVITZ: I would say that I kind of fall  
6 back to the job here. I'm supposed to reach out to  
7 all the other departments, right, and I did that back  
8 a long time ago now. I want to say maybe May.  
9 I'm trying to remember. But all I had at that time  
10 was an agreement that was executed I believe between  
11 Mike Kirkwood and the Invenergy. So, now that we  
12 have something different than that, we felt like it  
13 should be in there. I mean I understand what you're  
14 saying, but I think it only adds to I think the main  
15 theme here, which is water. Water quantity is a big  
16 deal. So, it is two pages, but it's --

17 MR. TREMBLAY: All right, like I said, it  
18 wasn't --

19 MR. KRAVITZ: I don't know, I think it would do  
20 more harm to take it out and less harm to leave it  
21 in.

22 MR. TREMBLAY: Okay. That was the only thing.  
23 I was wondering about why we needed to regurgitate  
24 what Pascoag Utility District had already --

25 MR. KRAVITZ: PUD is an intervenor now, right;

1 so, they'll probably say the same thing, but it shows  
2 that the Planning Board, at least, was looking at  
3 this from all angles; and you were aware of this at  
4 the time you made your decision, too, so --

5 MR. TREMBLAY: That was the only comment I had.  
6 Thank you.

7 MR. FELICE: Thank you. My only comments are  
8 that I think it was well thought out and put  
9 together. It touches upon the critical areas that  
10 we're seriously concerned with, that being water  
11 quantity and quality, as previously mentioned by Tom.  
12 It notes specific situations with regard to the  
13 Comp. Plan and how this does or does not fit and also  
14 addresses the conditions of the noise.  
15 I'm comfortable with all of the information compiled  
16 here in this advisory. Thank you.

17 MR. FERREIRA: I'm comfortable with the  
18 statement also. It addresses the point that it's  
19 dealing with this particular parcel of land and the  
20 surrounding area, what the surrounding area  
21 represents. As far as the PUD's information, the  
22 Planning Board would under normal process accept and  
23 entertain information from all sources throughout the  
24 Town, our experts, as well as the base support for  
25 the Town. So, I have no problem with that; and,

1           actually, I think we did a good job.

2           MR. LUPIS: Mr. Chairman, I think it's fine the  
3 way it's written. It reflects everything we have  
4 gone through, cites everything that's supposed to be  
5 said, so I have no recommendations for any changes at  
6 all.

7           MR. PARTINGTON: Very good. Thank you very  
8 much. Okay, so, it appears that we don't have any  
9 specific changes for you. So, we would be looking to  
10 vote on this in its entirety. So, should we do the  
11 noise first and then the opinion?

12           MR. McELROY: Yes.

13           MR. PARTINGTON: All right. So, gentlemen,  
14 we're going to do a vote, if you will, on the noise;  
15 and the first will be on the low octave band.  
16 If that is successful, then I would go to the entire  
17 recommendation, too; and this is a recommendation to  
18 the Zoning Board that they grant the motion -- that  
19 the Zoning Board will grant the special use permit  
20 that they're looking for for the Noise Ordinance.

21           MR. DESJARDINS: Mr. Chairman, how would we do  
22 that, if we don't have an assurance about the 43 dBA  
23 that we're talking about? That's the one --

24           MR. PARTINGTON: Our expert has testified.  
25 Mr. Hessler has testified that he is comfortable with

1 the fact that, with proper lagging, that it is  
2 possible to meet that standard. So, with the  
3 assumption that that can be met, and it's his opinion  
4 that it can be met, then it is possible to grant or  
5 to make an advisory -- I'm sorry, to make the  
6 recommendation to the Zoning Board that, as long as  
7 it can be met, that they could issue. Whether you're  
8 comfortable with that or not is a separate issue, and  
9 that's what you're voting for. Whether you're  
10 comfortable with that or not is a separate issue, and  
11 that's what your vote would be. So, if you feel you  
12 have enough information to make that recommendation,  
13 then you vote yes. If you're not comfortable, then  
14 you would vote no. Hold on, hold on.

15 MR. KRAVITZ: Mr. Chairman, just to focus here,  
16 if you look at Page 18 in your opinion, the second to  
17 last paragraph, that's where Mr. McElroy had  
18 explained that it's the Planning Board that would  
19 issue the advisory to both the EFSB and the Zoning  
20 Board regarding the requested octave band noise  
21 waiver/special use permit. Then it carries over onto  
22 Page 19. The way that this is written up here, the  
23 second paragraph, "Accordingly, it is our opinion  
24 that the CREC, the Clear River Energy Center  
25 facility, will be able to comply with the Noise

1 Ordinance, provided the Zoning Board of Review grants  
2 Invenergy a waiver/special use permit exempting the  
3 CREC from the octave band limits of the Noise  
4 Ordinance." So that's how this reads now. So,  
5 that's what you're essentially advising the Zoning  
6 Board as to whether or not you wish to ask them to  
7 grant the waiver of the octave band. That's going on  
8 Mr. Hessler's email review that states that it's  
9 Spectra that is creating impacts right now and that  
10 he feels that Invenergy's facility will not add to  
11 that. That's what he's maintained throughout. So,  
12 that's what you're voting on.

13 MR. DESJARDINS: Well, have we ever suggested  
14 waivers but with contingencies attached to them?

15 MR. PARTINGTON: I believe we have.

16 MR. DESJARDINS: And that's where my direction  
17 is going. Like, I don't mind granting a waiver, as  
18 long as we have some sort of recourse if that's not  
19 met.

20 MR. PARTINGTON: Correct.

21 MR. DESJARDINS: In the event that can't be in  
22 place, then that's a different story.

23 MR. PARTINGTON: Correct, but the Town's  
24 ordinance is what you're basing it on. So, if they  
25 can't meet that ordinance, then there should be

1 penalties in place. So, when I -- in my original  
2 opinion, I said the Council should probably come up  
3 with something that would be more punitive than is  
4 currently in place, in case they don't meet it.  
5 Also, if they -- I believe there is a discussion in  
6 the emails about Invenenergy putting up a bond also to  
7 ensure that they meet that. So, Mr. Hessler has  
8 stated that is possible for them to meet it, if it's  
9 constructed correctly. So, we could mitigate what  
10 we're doing by having them set a bond amount or ask  
11 the Zoning Board to. Can zoning set up a bond?

12 MR. KRAVITZ: I wanted to mention -- I was just  
13 talking to Michael about that. They, correct me if  
14 I'm wrong, rejected our request to set a bond. So,  
15 you should know that.

16 MR. PARTINGTON: Okay. We can still ask for it.

17 MR. KRAVITZ: Right.

18 MR. DESJARDINS: So, would that be part of a  
19 motion, if we --

20 MR. PARTINGTON: Yeah, it absolutely could be.  
21 I mean Invenenergy so far has rejected that. I don't  
22 see where it is unreasonable for us to come up with a  
23 dollar figure on what it would be to mitigate noise,  
24 based on the lagging and what's already in our  
25 opinion here.

1           WOMAN FROM THE AUDIENCE: But that won't stop  
2 it, though.

3           MR. McELROY: Mr. Chairman, could I weigh in?

4           MR. PARTINGTON: Yes, sure.

5           MR. McELROY: On Page 20, if you look at the  
6 second bullet, these are the -- the bullets are  
7 recommendations to the EFSB, and these  
8 recommendations are actually requested conditions of  
9 the EFSB approval. This means that, if the EFSB  
10 agrees to these conditions, any violation of these  
11 conditions would bring down the power of the EFSB on  
12 the project. So, if you read the second bullet, what  
13 we're recommending to the EFSB is the following  
14 condition regarding the noise: "There should be  
15 continuous monitoring and reporting of noise levels  
16 by Invenergy, and compliance with 43 dBA at all times  
17 should be an explicit condition of the EFSB license,  
18 so that all violations are penalized with fines, a  
19 cease and desist order, and possible revocation of  
20 the operating license." And we go on to say,  
21 "The Town has also requested that Invenergy post a  
22 performance bond or other financial assurance for the  
23 benefit of the Town to ensure that this condition is  
24 satisfied and that Town residents who are adversely  
25 affected by noise violations are compensated."

1           Now, in response to our request regarding that  
2           bond, they have said no, they don't believe they can  
3           do that. On the other hand, what that means is that  
4           the EFSB could go along with this and say continuous  
5           monitoring, continuous reporting, continuous  
6           requirements of the 43 dBA, penalize with fines which  
7           the EFSB has the authority to do, penalize with a  
8           cease and desist order, which they have the authority  
9           to do, and even possible revocation of the operating  
10          license. They can go on to say as a condition, if  
11          they choose to do so, that we won't give you a  
12          license unless you post some financial assurances.  
13          So, that's all possible. We've asked for all of that  
14          in this, and I think it covers it.

15                 MR. DESJARDINS: Okay, thank you.

16                 MR. PICK: What I'd like to say about this is  
17                 that, as a Board, we voted unanimously, you know,  
18                 against, you know, an advisory opinion against the  
19                 plans. To now discuss any type of waivers, whatever  
20                 it may be, --

21                 MR. PARTINGTON: If I could correct you, sir, we  
22                 voted unanimously that we didn't believe it was in  
23                 compliance with the Comprehensive Plan.

24                 MR. PICK: Correct. Thank you, Mr. Chairman.  
25                 So, to discuss a waiver which is, in fact, part of

1 the Comprehensive Plan I think shows a lot of  
2 inconsistency on our part. (Applause.) And I just  
3 don't think that, you know, if we're granting a  
4 waiver, then we are essentially -- or if we're  
5 recommending the waiver, I should say, right, I think  
6 we are going against what we voted on.

7 MR. PARTINGTON: Okay.

8 MR. FERREIRA: I'm still looking for the point  
9 where it has anything to do with the low octave band  
10 in our regulations.

11 MR. KRAVITZ: Can you repeat that?

12 MR. FERREIRA: I'm still looking for the point  
13 in our regulations where it calls for any information  
14 at all on the low octave band. I've seen the 43  
15 decibel, but I haven't found anything on low octave  
16 noise limits -- or low octave noise levels, sorry.

17 MR. PARTINGTON: Okay. So, the applicant is  
18 saying that they're going to meet 43 dBA.

19 MR. FERREIRA: Correct.

20 MR. PARTINGTON: What they're -- what we've been  
21 told is that that low band is not something that is  
22 possible.

23 MR. FERREIRA: Do we have anything in our  
24 regulations, building, Town regs., zoning, anything  
25 that addresses low octave noise levels? Because I

1 can't find it.

2 MR. PARTINGTON: I don't believe we do.

3 MR. FERREIRA: Then how can we request a waiver  
4 from something we don't have in our regulations?

5 MR. McELROY: No, it's in the ordinance.

6 MR. FERREIRA: I haven't found it.

7 MR. McELROY: The ordinance is a little  
8 difficult to read because the ordinance has two  
9 levels mixed into one chart, and the chart has an  
10 overall dBA limit. That limit they've committed to  
11 me. They've committed under oath that they're going  
12 to meet that. The problem is the ordinance has a  
13 whole lot of these frequency limits that tie into  
14 octave bands, and those are the ones that even our  
15 own expert has told us are virtually impossible to  
16 meet. So, Invenergy has said you've created a bar  
17 that is too high for anybody to jump over. We don't  
18 think it's reasonable for you to require us, and our  
19 own expert agrees with that; but it is in the  
20 ordinance, and there is also a provision in the  
21 ordinance that specifically allows for the Zoning  
22 Board to waive it. So, that's -- we're making two  
23 recommendations. One is to the EFSB, and there are  
24 two questions to the EFSB: Does it comply with the  
25 Comp. Plan? And you have all unanimously voted it

1 does not. That's what this opinion says.

2 The second question that we haven't voted on yet  
3 is: Is Invenergy able to meet the Noise Ordinance?  
4 And what I'm proposing is that the decision would say  
5 they are able to meet the Noise Ordinance, if the  
6 Zoning Board, not us, if the Zoning Board grants them  
7 a waiver from the octave band limits, which basically  
8 cannot be met according to our expert.

9 MR. FERREIRA: Okay. From all the information  
10 we've been -- they have been gathering from our  
11 experts and everyone else available, the low octave  
12 band has no -- has zero negative effect.

13 MR. McELROY: No, it has no negative effect at  
14 all. The low frequency that is out there in the  
15 area, that's being generated right now by Spectra;  
16 and any low frequency that this new facility would  
17 generate would be significantly less than Spectra;  
18 therefore, there would be no increase in the low  
19 frequency noise at all.

20 MR. FERREIRA: Okay. So, just as we are making  
21 a recommendation to the EFSB on what we would like to  
22 see happen, if the EFSB should decide to trash this  
23 and just go on what they want to do, do we still need  
24 to come up with something that says a waiver of some  
25 kind from somewhere?

1 MR. McELROY: No, the EFSB is the final  
2 licensing body. So, whatever they say goes. We  
3 don't have the opportunity to jump back in.

4 MR. FERREIRA: So, essentially, our waiver means  
5 nothing.

6 MR. McELROY: Essentially, our advisory opinion  
7 means nothing. It's simply an advisory opinion. The  
8 EFSB can take it, they take it in part, or they can  
9 reject it.

10 MR. FERREIRA: Thank you.

11 MR. LUPIS: All right. So, what I've read and  
12 what I'm hearing is we have asked them for a  
13 performance bond in this, and they've said no.

14 MR. McELROY: Correct.

15 MR. LUPIS: Tom, has there ever been a situation  
16 before when someone before us has refused to post a  
17 performance bond?

18 MR. PARTINGTON: I can't remember any.

19 MR. KRAVITZ: No.

20 MR. LUPIS: All right, so that raises a big red  
21 flag on my end. (Applause.) If they're so confident  
22 that they can meet it, if they're so confident  
23 there's not going to be an issue or they can meet it,  
24 why wouldn't they just post the bond? So, I'm sorry,  
25 I have no faith in it where they're refusing to do

1           that. Thank you.

2           MR. FELICE: Mr. Chairman, I just want to take a  
3 moment to echo those comments. We've had scenarios  
4 where construction projects, we've asked them to put  
5 up performance bonds, guaranty bonds for such and  
6 such a phase of the project; and almost all --  
7 always, I will correct myself, always they have met  
8 those bonds. We've held those moneys in escrow until  
9 such work and guaranties have been met. If we would  
10 have had a developer come up and we asked for a  
11 performance bond or this type of money in escrow and  
12 they say we refuse to do that, we would not allow the  
13 project to go through. So, I think we have to give  
14 some serious thought to that portion of it. Thank  
15 you.

16           MR. PICK: I just wanted to make sure I  
17 understood what Mr. Hessler's comments were, and that  
18 was that he had -- I believe he had said that he had  
19 never seen a power plant be able to maintain that dBA  
20 level, either at start-up or at shutdown, especially  
21 without all the lagging and maybe the additional  
22 building requirements surrounding the air ducts,  
23 so --

24           MR. PARTINGTON: However, he said he believed it  
25 could be designed that way.

1 MR. PICK: Correct, correct.

2 VOICE FROM THE FLOOR: Could be, could be.

3 MR. PARTINGTON: I'm saying what the gentleman  
4 said.

5 MR. PICK: Thank you, Mr. Chairman. So, if we  
6 were voting based on that, I would say that would be  
7 fine; but we've had no indication from Invenergy  
8 that they have plans on, you know, constructing  
9 or -- (Applause.) I said Invenergy never had given  
10 any indication that they were adding those to the  
11 construction plans.

12 MR. McELROY: They have been. They've done a  
13 data response under oath that they would, in fact, do  
14 that.

15 MR. PICK: Okay, thank you.

16 MR. PARTINGTON: One of the weaknesses of this  
17 entire thing is that we haven't seen plans. So, that  
18 obviously folds into it. So, we are running a bit  
19 blind in most of this process.

20 So, gentlemen, we'll take the Noise Ordinance  
21 piece first, okay. So, I'm going to make a motion  
22 that we make a positive recommendation to the --

23 VOICE FROM THE FLOOR: No.

24 MR. PARTINGTON: Ladies and gentlemen, I'm going  
25 to make it; we're going to vote it, okay. So, it has

1 to be done one way or the other. I'm going to make  
2 it positive. If they vote it down, they vote it  
3 down. So, just stick with us, please.

4 I'm going to make a positive recommendation  
5 based on our advisory opinion that's here, okay, that  
6 we make a positive recommendation to the Zoning Board  
7 that they grant the special use permit for the noise  
8 for the plant. Okay.

9 MR. TREMBLAY: To include --

10 MR. PARTINGTON: To include -- yes, go ahead.

11 MR. TREMBLAY: Can I amend that?

12 MR. PARTINGTON: Absolutely. Tell me the  
13 amendment, sir.

14 MR. TREMBLAY: To include the waiver for the low  
15 level range of noises --

16 MR. PARTINGTON: Yes.

17 MR. TREMBLAY: -- that we've been told are  
18 impossible to meet in any case.

19 MR. PARTINGTON: Okay. And with the conditions  
20 that were set forth in our advisory opinion here,  
21 which is continuous monitoring and reporting of noise  
22 levels by Invenergy, and compliance with the 43 dBA  
23 at all times should be an explicit condition of the  
24 license. All violations are penalized with fines, a  
25 cease and desist order, possible revocation of the

1 operating license; also, that it should contain a  
2 performance bond or other financial assurance to the  
3 Town; and compensation for Town residents who are  
4 adversely affected by the noises.

5 MR. FERREIRA: I'll second it.

6 MR. PARTINGTON: Thank you. I have a motion and  
7 a second. Any discussion? (Pause and no response.)  
8 So, the motion was for a positive recommendation,  
9 okay. I'm going to go by voice vote, please, okay.  
10 So, all those in favor, say, "Aye".

11 MR. TREMBLAY: Aye.

12 MR. FELICE: Aye.

13 MR. FERREIRA: Aye.

14 MR. PARTINGTON: Aye. All those --

15 THE CLERK: I didn't hear everybody.

16 MR. PARTINGTON: There are four so far. All  
17 those against, say, "Nay".

18 MR. PICK: Nay.

19 MR. LUPIS: Nay.

20 MR. DESJARDINS: Nay.

21 MR. PARTINGTON: One, two, three. Mr. Tremblay  
22 Mr. Felice, Mr. Ferreira and myself, okay; and the  
23 "Nays" are Chris, Mike and Dov. So, motion carries  
24 4-3.

25 MR. McELROY: Mr. Chairman, could we take a

1 little recess. Mr. Chairman, I think maybe you  
2 should take a short recess because I need to look  
3 something up.

4 MR. PARTINGTON: Okay, so we'll recess for five  
5 minutes.

6 (Recess.)

7 MR. McELROY: Thank you, Mr. Chairman.

8 MR. PARTINGTON: All right, gentlemen, we're  
9 back in. Yes, go ahead.

10 MR. McELROY: Under Rhode Island GL 45-23-63(d),  
11 it says, "All votes of the Planning Board shall be  
12 made part of the permanent record and show the  
13 members present and their votes. A decision by the  
14 Planning Board to approve any land development or  
15 subdivision application requires a vote for approval  
16 by a majority of the current Planning Board  
17 membership." And I believe the phrase, "current  
18 Planning Board membership" means exactly that.  
19 It means you currently have all the spots filled.  
20 Even though you have one recusal and one absent,  
21 I believe the current membership is, therefore, nine;  
22 and, therefore, it would require five affirmative  
23 votes to pass. This does not prevent you from  
24 reconsidering and re-voting. On the other hand, if  
25 the vote stays as it is, it would end up not passing.

1 MR. TREMBLAY: Can you re-read that.

2 MR. McELROY: Yes, I'd be glad to. "A decision  
3 by the Planning Board to approve any land development  
4 or subdivision application requires a vote for  
5 approval by a majority of the current Planning Board  
6 membership."

7 MR. TREMBLAY: But we're not voting on or  
8 approving any kind of subdivision development. This  
9 is a vote, a general vote by the Board; but it's not  
10 for that degree of an application. Is there a  
11 difference there?

12 MR. McELROY: That is certainly an argument.  
13 If you want my thinking on that, my thinking is that,  
14 while you could make that argument and we might be  
15 able to squeak by under that, I think it's more  
16 likely that, if this ended up in court, the way a  
17 court would read it is they would say they have filed  
18 an application with us under the land development or  
19 subdivision regulations, and that application is  
20 before us; and, although we cannot approve or deny  
21 the application because the EFSB has that final  
22 approval or denial authority, we are making an  
23 advisory to the EFSB; and, therefore, because the  
24 EFSB rules specifically say that you need to follow  
25 your usual procedures, and that's in the statute, I

1 believe that that means we need to follow the  
2 statute.

3 (Applause.)

4 MR. PARTINGTON: If that's the case, sir, then  
5 the motion would have failed.

6 MR. McELROY: That's correct.

7 MR. PARTINGTON: Okay.

8 MR. FERREIRA: So, what do we do?

9 MR. PARTINGTON: Unless we do something, --

10 MR. FERREIRA: I like all the data that was put  
11 into it.

12 MR. PARTINGTON: Hold on.

13 MR. FERREIRA: I was just going to say that I  
14 like all the data that was put into -- all the  
15 wording that was put into the motion. I think we  
16 need to go back over the motion and take a second  
17 vote, just to see if all the information was picked  
18 up on by everyone.

19 MR. McELROY: Mr. Chairman, the way that would  
20 have to work in Roberts Rules is that one of the  
21 prevailing voters would have to make a motion to  
22 reconsider. That would be the first thing. There  
23 would have to be a motion to reconsider, there would  
24 have to be a second, and then that would be open for  
25 discussion. If the motion to reconsider is granted,

1 then you could have a re-vote on your motion.

2 MR. PICK: Would it be advisable just to wait  
3 until we have, you know, our full complement of the  
4 Board to do it, even if we did it not in a public --

5 MR. PARTINGTON: No, you'd --

6 MR. McELROY: Well, you have to do it in public.

7 MR. PICK: But we could do it in a private  
8 session.

9 MR. McELROY: Well, you can do it in discussion.

10 MR. PICK: I don't mean private.

11 MR. McELROY: It has to be public. We are under  
12 some time pressure. The Zoning Board needs our  
13 recommendation before the 30th, I believe, and today  
14 is the 22nd.

15 MR. PICK: That gives us eight full days.

16 MR. McELROY: I understand. So, I guess that's  
17 a possibility.

18 MR. FERREIRA: We need a motion to reopen?

19 MR. PARTINGTON: Well, we can do that, or we can  
20 come up with something more neutral, which is what  
21 I'm trying to think of at the moment. Why don't we  
22 do the motion to reopen, and then we can re-vote or  
23 discuss it or withdraw it or what have you.

24 MR. FERREIRA: Make a motion to reopen.

25 MR. McELROY: Reconsider.

1 MR. PARTINGTON: Motion to reconsider I have.  
2 Do I have a second?

3 MR. PICK: Second.

4 MR. PARTINGTON: I have a second. All those in  
5 favor?

6 (Whereupon all the Members of the Board responded by  
7 saying, "Aye.")

8 MR. PARTINGTON: Any opposed?

9 (Whereupon none of the Members of the Board  
10 responded.)

11 MR. PARTINGTON: Okay. So, we can now speak on  
12 the motion. There are -- if I can start, I think one  
13 of the issues might be that no one is comfortable  
14 with the waiver of the low octave band. I could be  
15 wrong.

16 MR. TREMBLAY: May I?

17 MR. PARTINGTON: The mike.

18 MR. TREMBLAY: I'm not sure if it's the waiver  
19 of the low octave bands that's the issue.

20 MR. PARTINGTON: Okay.

21 MR. TREMBLAY: The language in the motion calls  
22 for a positive recommendation to the Zoning Board  
23 concerning the Noise Ordinance in general; and I  
24 don't know perhaps if we were to divide the motion  
25 into two parts so that the first part of the motion

1 deals strictly with the low octave band part, which I  
2 think we all understand isn't possible for anybody.

3 MR. PARTINGTON: Agreed.

4 MR. TREMBLAY: And then maybe if we jump that  
5 rope, then we can move to the more specific motion  
6 about whether or not we provide a positive or  
7 negative recommendation to the Zoning Board  
8 concerning the Noise Ordinance.

9 MR. McELROY: I think that's an excellent  
10 recommendation, but I think it's flipped. The  
11 recommendation you're making to the Zoning Board is  
12 whether or not they should grant a special use permit  
13 on the low octave band only. The recommendation  
14 you're making to the EFSB is whether or not they  
15 would comply with the overall Noise Ordinance.

16 MR. TREMBLAY: So, as far as the Zoning Board is  
17 concerned, our only business with them right now is  
18 whether or not they should grant a waiver for the low  
19 octave noise bands.

20 MR. McELROY: Actually, you have two pieces of  
21 business with them, but the only one that's in  
22 dispute or under discussion is the low octave band  
23 waiver. You've also given them a negative advisory  
24 as to whether or not they should grant the overall  
25 special use permit for the project. That's already

1 done.

2 MR. TREMBLAY: That's already in the larger --

3 MR. McELROY: That's already done. You have  
4 told the EFSB and the Zoning Board that you believe  
5 this does not comply with the Comprehensive Plan;  
6 and, therefore, they should not grant that.

7 MR. PARTINGTON: Under the assumption that we  
8 vote this opinion in tonight.

9 MR. McELROY: Yes.

10 MR. PARTINGTON: Okay.

11 MR. TREMBLAY: We haven't done the final.

12 MR. PARTINGTON: Correct.

13 MR. McELROY: No. So, then you have these two  
14 little pieces that are -- it's Number 2 in the  
15 directives you have been given by the EFSB.  
16 Will they be able to comply with the Noise Ordinance?  
17 And what I had suggested is they will be able to  
18 comply, if the Zoning Board and, ultimately, the EFSB  
19 gives them an octave band waiver, okay. That would  
20 be the EFSB. But, before we get to the EFSB, you  
21 have got to make a recommendation to the Zoning Board  
22 as to whether or not they should grant the octave  
23 band waiver.

24 MR. TREMBLAY: So, that's the discussion. The  
25 first motion should be do we provide a positive or

1 negative recommendation to the Zoning Board in  
2 regards to the waiver from the low octave noise  
3 requirement of our Noise Ordinance? And I would like  
4 to make a motion, unless anybody else has anything to  
5 say in that regard before I jump the gun.

6 MR. PARTINGTON: I think you're on the right  
7 track.

8 MR. TREMBLAY: I'd like to make a motion that we  
9 make a positive recommendation to the Zoning Board  
10 that the waiver for the low octave noise levels in  
11 our Noise Ordinance can be waived.

12 MR. PARTINGTON: So, it's a positive?

13 MR. TREMBLAY: Yes.

14 MR. PARTINGTON: So, I have a motion for a  
15 positive recommendation that the Zoning Board should  
16 grant the waiver of the low octave.

17 MR. TREMBLAY: Assuming it gets to them,  
18 correct, but that's the --

19 MR. FERREIRA: He did say with --

20 MR. PARTINGTON: Hold on. I have a motion. Do  
21 I have a second?

22 MR. FERREIRA: Second.

23 MR. PARTINGTON: Discussion?

24 MR. FERREIRA: With the additional information  
25 you had in the first motion as regards to the

1 performance bond and securing --

2 MR. TREMBLAY: That's not -- that's a separate  
3 issue.

4 MR. PARTINGTON: No, on this one they can never  
5 comply because it --

6 MR. FERREIRA: No one can comply on that.

7 MR. PARTINGTON: Correct. So, this is simply  
8 the low octave band, whether or not we should do  
9 that, okay. So, we're back to --

10 MR. FERREIRA: Back to just only the low octave  
11 band.

12 MR. PARTINGTON: Correct. So, we're voting on  
13 just the low octave band, whether the Zoning Board  
14 should grant the low octave band waiver. Everybody  
15 with that? Okay, any more discussion?

16 MR. PICK: I've said it before, I just want to  
17 remind everyone. We have given an opinion. We've  
18 given an advisory opinion that the building of the  
19 plant is not in compliance with the Town's ordinance.  
20 Now we are discussing a waiver on such an ordinance.

21 MR. McELROY: May I?

22 MR. PARTINGTON: Yes.

23 MR. McELROY: What you've already -- the work  
24 you've already done, quite successfully, is you have  
25 given the opinion that the proposed facility would

1 not comply with the Comprehensive Plan. The Noise  
2 Ordinance is a separate ordinance in your Town  
3 Ordinances. That's why the EFSB asked you two  
4 questions. They said, Number 1: Does it comply with  
5 the Comprehensive Plan? And, Number 2: Does it  
6 comply with your Town Noise Ordinance? So, they  
7 really are separate questions, totally separate.

8 MR. PARTINGTON: Now, the reason that this is  
9 set up this way -- so, we have a motion on the floor  
10 that we make a positive recommendation to the Zoning  
11 Board, okay. A "yes" vote means that we say it's  
12 okay, you should grant the waiver. A "no" vote means  
13 that they should not grant the waiver, okay. So, in  
14 your vote, -- so, your point is that -- will then be  
15 manifested in your vote of no, if that's the way you  
16 wanted to go. Is everyone clear on how they wish to  
17 vote? Okay, everybody all set? Any other  
18 discussion? Okay, once again, it will be by voice  
19 vote, but we need to say whose who. So, all those in  
20 favor, say, "Aye".

21 MR. TREMBLAY: Aye.

22 MR. FERREIRA: Aye.

23 MR. FELICE: Aye.

24 MR. DESJARDINS: Aye.

25 MR. PARTINGTON: Aye. One, two, three, four,

1 five. So, it's the Chair, Bruce, Leo, Mark and  
2 Chris. All right. All those not in favor say,  
3 "Nay".

4 MR. LUPIS: Nay.

5 MR. PICK: Nay.

6 MR. PARTINGTON: Two "Nay" votes, Mike and Dov,  
7 okay. So, the second piece of this is whether -- is  
8 on the compliance with the Noise Ordinance itself.

9 MR. McELROY: And what I suggested,  
10 Mr. Chairman, -- what I suggested, Mr. Chairman, the  
11 crux of that is the language that I have in the  
12 draft.

13 MR. PARTINGTON: On Page 19.

14 MR. McELROY: Well, those are the conditions.  
15 It's on Page 19, if you want to look at it.  
16 It's right above the "Requested EFSB Conditions of  
17 Approval;" and what I've suggested is the following  
18 language: "Accordingly, it is our opinion that the  
19 CREC facility will be able to comply with our Noise  
20 Ordinance, provided the Zoning Board of Review grants  
21 Invenergy a waiver/special use permit exempting the  
22 CREC from the octave band limits of the ordinance."

23 MR. PARTINGTON: Okay, so, do we need --

24 MR. McELROY: You could make that to a motion.

25 MR. PARTINGTON: Do we need to vote on that, or

1 can it go as part of the advisory opinion?

2 MR. TREMBLAY: Because it's already part of this  
3 advisory opinion.

4 MR. McELROY: It is; but, because the compliance  
5 or lack of compliance with the Comprehensive Plan was  
6 already unanimously voted on, I was able to draft  
7 this. There was, however, a delay on the vote on the  
8 noise at the last meeting. So, this is suggested  
9 language, but it hasn't been voted on yet.

10 MR. FERREIRA: Shouldn't that be the low octave?  
11 We just --

12 MR. McELROY: No, we already voted on the low  
13 octave. Now we're saying, if the Zoning Board gives  
14 them the low octave waiver, then we believe they can  
15 comply with the Noise Ordinance; and we're, of  
16 course, asking for all the conditions that the  
17 Chairman read.

18 MR. PARTINGTON: I agree with you. I don't know  
19 that we have to vote it, but --

20 MR. TREMBLAY: Right.

21 MR. PARTINGTON: Okay.

22 MR. TREMBLAY: It's part of our original motion.

23 MR. PARTINGTON: It was part of my original  
24 motion, yes. Okay, so --

25 MR. McELROY: That motion failed.

1 MR. PARTINGTON: Correct, but we reconsidered  
2 it.

3 MR. McELROY: Okay. I think now you need to  
4 re-make it.

5 MR. PARTINGTON: Okay. So, I make a motion that  
6 it's our opinion that the facility would comply with  
7 the Noise Ordinance, if the special use permit is  
8 granted by our Zoning Board, with the conditions that  
9 there should be continuous monitoring and reporting  
10 of noise levels by Invenergy. Compliance with 43 dBA  
11 at all times should be explicit as a condition of the  
12 license. All violations are penalized with fines, a  
13 cease and desist order and possible revocation of the  
14 operating license, and that Invenergy post  
15 performance bond or other financial assurance for the  
16 benefit of the Town to ensure that this condition is  
17 satisfied; and the Town residents who are adversely  
18 affected by the noise violation are compensated. So,  
19 that's my motion from the Chair.

20 MR. TREMBLAY: I'll second it.

21 MR. PARTINGTON: I have a second. Thank you  
22 very much. Any discussion?

23 MR. TREMBLAY: Mr. Chairman, I'm just thinking  
24 that, despite our opposition to the entire concept  
25 through the Comprehensive Plan, which is what we've

1 attached, that all of the evidence that we were  
2 provided points to the fact that they, yes, they can  
3 meet the Noise Ordinance, of course, depending on  
4 whether or not they get the waiver from the Zoning  
5 Board for the low octave, but yes, they can. So, we  
6 haven't heard anything that says that they can't.

7 MR. PARTINGTON: I agree.

8 MR. TREMBLAY: Anybody else?

9 MR. FERREIRA: And inclusive in this vote will  
10 also be the addition of the performance bond and  
11 securing the fact that CREC will, in fact, meet all  
12 the requirements, should the EFSB approve this site.  
13 That's what the recommendation is about, and I think  
14 they meet it.

15 MR. DESJARDINS: The problem is we've already  
16 had responses that they won't accept the performance  
17 bond, and that's where my issue is. We've already  
18 had the response that they won't. So, how can we  
19 vote for something --

20 MR. PARTINGTON: Okay. Even though they said  
21 they won't, it's what we believe should be a  
22 condition. So, even though they said no, it doesn't  
23 mean that we can't require it anyway. Also, it's not  
24 us that's requiring it. It's the EFSB. So, the  
25 EFSB, who is the all powerful wizard in this case,

1           should be able to require the company to put up this  
2           performance bond. It is our recommendation that they  
3           should be doing these things as a condition of this  
4           particular proposal. So, even though they said no,  
5           it doesn't mean that EFSB should not require it  
6           anyway; and that's our opinion, and that's why we've  
7           written it here.

8           MR. PICK: Mr. Chairman, are we able to include  
9           in the conditions the construction components that  
10          would enable them to potentially get down to the  
11          43 dBA?

12          MR. PARTINGTON: I am always open to a friendly  
13          amendment, sir. So, if you would like to craft one,  
14          then we can consider that.

15          MR. PICK: Then I would amend it that, as a  
16          condition of this, that Invenergy be required to  
17          follow all the recommendations that Mr. Hessler has  
18          laid out. I don't want to get any more specific in  
19          terms of going back; but, in terms of the lagging,  
20          enclosing the air ducts. I'm particularly worried  
21          about start-up and shutdown for meeting that dBA, not  
22          so much operational running; but, from what we've  
23          heard, there -- again, I believe Mr. Hessler stated  
24          that there would not -- he has never seen a power  
25          plant meet that type of dBA.

1           MR. PARTINGTON: But he believed that it could  
2 be designed that way was his testimony.

3           MR. PICK: So -- right, so, if it was -- So, I  
4 just want to amend that, if it was designed the  
5 correct way, based on his recommendations.

6           MR. PARTINGTON: So, the amendment is that the  
7 designs are consistent with Mr. Hessler's  
8 recommendations and specifications.

9           MR. PICK: Yes.

10          MR. TREMBLAY: I will second it.

11          MR. PARTINGTON: I have a second on that. Any  
12 further discussion?

13          MR. LUPIS: Yeah, I'll take this one. All  
14 right, so, in this case, where we're saying one of  
15 the conditions would be that they have to post a  
16 performance bond, how would the dollar amount be  
17 evaluated? What would the amount be? Say, if it  
18 does not pass for some reason, something goes wrong,  
19 all right, and they have to build a building over a  
20 building, it could be millions of dollars. So, how  
21 would we have any idea of what that dollar should be?

22          MR. PARTINGTON: The good thing about what Dov  
23 has said is that it would be on the recommendations  
24 of Mr. Hessler, who has seen these things built  
25 before. So, whatever his recommendations would be

1           could simply be -- well, not simply, but could be  
2           costed out to make sure that they comply with what he  
3           believes is the design specification. It would be a  
4           lot like a subdivision where we could determine the  
5           length of road and current cost and things and set a  
6           performance bond based on that construction estimate.  
7           So, it could be done that way.

8           MR. LUPIS: Thank you.

9           MR. PARTINGTON: Okay, any other discussion?  
10          Yes, sir?

11          MR. FELICE: All right, Mr. Chairman, I just  
12          wanted to make a couple of comments here. With  
13          regards to what you just brought up about a  
14          performance bond, and we talked about language about  
15          cease and desist. If the EF -- if the Siting Board  
16          were to accept these terms, correct me if I'm wrong,  
17          could we not then go back and put details to that?  
18          For example, cease and desist would not mean they  
19          would shut down the first time they violated. There  
20          has to be some language to determine: Is it a one,  
21          two, three times? Could you speak to that for a  
22          moment.

23          MR. McELROY: I'd be happy to. There are really  
24          two levels of enforcement. The first level is the  
25          EFSB, and they're given very broad authority in the

1 statute. So, they can decide what is reasonable  
2 under the circumstances. If they hit 44 dBA for five  
3 minutes one day, then the EFSB will do one thing in  
4 all likelihood. If they hit 55 dBA for a week, the  
5 EFSB will do something completely different, much  
6 more severe; and they need to be given that  
7 discretion, and it's given to them in the statute.  
8 However, there is a second level of enforcement that  
9 is not taken away from us by the EFSB, and that's in  
10 our own Zoning Ordinance; and, in our own Zoning  
11 Ordinance, it specifically gives us the three things  
12 that we have been looking at. It gives us the right  
13 to issue a cease and desist order; it gives us a  
14 right to fine them for the first fine -- first  
15 violation, I'm sorry, I'd have to look it up -- I can  
16 look it up, if you'd like, but it's a few hundred  
17 dollars. The second violation after that are more  
18 money; and then the third thing is each violation is  
19 a separate violation requiring them to pay a fine.  
20 So, that's in our Zoning Ordinance. We can continue  
21 to do that. We can continue to monitor, and we would  
22 continue to enforce, including with a cease and  
23 desist order. So, two levels of enforcement, EFSB  
24 and then us.

25 MR. FELICE: All right, okay. I appreciate you

1 clearing that up. So, I just want to put this out  
2 there so everyone is on the same page here. We've  
3 heard from our experts that testified that it could  
4 be done, and "could" is not definitely could be done.  
5 So, this is why we have to have a lot of teeth into  
6 the contingencies of what we just spoke about. It's  
7 one thing to take a valve in a manufacturing facility  
8 in a laboratory and test it under the right  
9 conditions and have it work perfectly, and then to  
10 bring something out into the field under real  
11 conditions is a separate situation. So, I guess my  
12 point is that this is a very, very critical item  
13 right here to talk about and to make sure that it has  
14 the legality and the validity that we need because,  
15 once this starts up and it doesn't seem to do what  
16 it's doing, it's just a matter of paying the fine,  
17 paying the fine, which is basically -- (Applause.).  
18 So, I just want to be clear that we have a legitimate  
19 resource that this just doesn't go on forever, and we  
20 built a plant and here we are. We'll just pay as we  
21 go. Thank you.

22 MR. FERREIRA: I'd like to add that it wasn't  
23 our experts that said they could meet the 43 dBA.  
24 It was Invenenergy's that said they could meet the  
25 43 dBA.

1           MR. McELROY: Actually, Mr. Hessler did say that  
2 he believed they could meet the 43 dBA.

3           MR. FERREIRA: But Invenergy backed them up by  
4 saying they would. At that same meeting, Invenergy  
5 came back with its representatives saying that they  
6 would meet the 43 dBA.

7           MR. McELROY: Yes.

8           MR. PARTINGTON: Okay, go ahead, Dov.

9           MR. PICK: Just one more thing. During some of  
10 that noise discussion, I do recall some of  
11 Invenergy's experts indicating that the noise would  
12 be met just simply due to the guaranty by the  
13 manufacturer and the contractor. I mean is there  
14 anything built into that? Obviously, at that point  
15 the contractors are out of the picture; and, you  
16 know, if they're talking about -- you're talking  
17 about \$200 fines, there's no incentive, obviously, to  
18 be at those type of levels.

19           MR. McELROY: Yeah, I can address that.  
20 The dollar fine, there is no limit with the EFSB like  
21 there is in our Zoning Ordinance. So, they can  
22 impose whatever is appropriate, given the violation;  
23 and that does include a shutdown. They can  
24 absolutely shut the facility down, if it doesn't meet  
25 it. So, I -- well, I think that's again two levels

1 of enforcement, and the EFSB's goes all the way up to  
2 shutdown and significant fines. But with regard to  
3 the EPC guaranty, the EPC guaranty is a big deal.  
4 It's millions of dollars if the contractor doesn't  
5 meet the requirement. So, the contractor is  
6 obligated by the contract to fix it so that it does  
7 meet it.

8 MR. PICK: And I think what my colleague was  
9 saying is that there are no parameters in terms of  
10 where that level is, right. In other words, is it --  
11 you know, is there a way of reproducing that, or is  
12 the statute just, as you say, very rugged and allows  
13 for almost arbitrary type of penalties?

14 MR. McELROY: Yeah, on our end it has the limits  
15 that we discussed, but it also has the authority in  
16 the Town to issue a cease and desist order. On the  
17 EFSB end, they again can issue a cease and desist  
18 order; and then, as I explained, they have the  
19 authority to issue any fine they feel is appropriate  
20 under the facts and circumstances of the violation.  
21 So, if the violation is severe, they could issue a  
22 million dollar fine. If the violation is not severe,  
23 they could issue a thousand dollar fine.

24 MR. PICK: But there's no structure. There is  
25 no parameters. In other words, what constitutes a

1 severe violation? What constitutes a mild violation?

2 MR. McELROY: That would be determined after a  
3 hearing by the EFSB.

4 MR. PICK: Okay.

5 MR. KRAVITZ: I want to mention one thing, Dov,  
6 that you started this when you referenced the noise.  
7 On Page 19 in our opinion, we reference that this  
8 opinion is based primarily on testimony and  
9 recommendations in the Town's expert consultant  
10 letters/reports. And then you go to Page 21 there in  
11 the bullet, second to the bottom, of course, we list  
12 a bunch of those reports, but we go back to Page 20  
13 on noise. We don't actually list anything with  
14 Hessler's name on it. Do we want to do that? Is  
15 that what Dov was getting to? I'm just saying I just  
16 noticed now that Hessler's reports are not referenced  
17 explicitly. Is that okay? Does it imply that  
18 they're all going to be attached to this? I guess  
19 that's a question for you, too, Mike.

20 MR. PARTINGTON: Personal opinion is I think  
21 it's critical.

22 MR. KRAVITZ: Well, yeah, the reason I ask is  
23 because, of course, Hessler clearly did say that  
24 lagging and insulation of the building is really the  
25 only way to do it. So, if it's not explicitly listed

1 that way, should we do that? And that's picking up,  
2 I think, on your very first point, Dov, right?

3 MR. PARTINGTON: And I agree.

4 MR. McELROY: That's easy enough to do.

5 MR. PARTINGTON: Okay. Any other discussion?

6 (Pause and no response.) Okay, all set? All right,  
7 so motion on the floor was, with conditions, to send  
8 a recommendation to the Zoning Board, okay? No, not  
9 the low octave. We already took care of the low  
10 octave. Everybody good? So "yes" vote is positive.  
11 A "no" vote would be negative. Okay, all those in  
12 favor?

13 MR. PARTINGTON: Aye.

14 MR. FERREIRA: Aye.

15 MR. FELICE: Aye.

16 MR. TREMBLAY: Aye.

17 MR. PARTINGTON: One, two, three, four. All  
18 those not in favor?

19 MR. PICK: Nay.

20 MR. LUPIS: Nay.

21 MR. DESJARDINS: Nay.

22 MR. PARTINGTON: Okay. So, Chair is in favor;  
23 Bruce is in favor; Leo is in favor; Marc is in favor.  
24 Chris is not; Dov is not; Mike is not. So motion,  
25 according to your reading, Mr. McElroy, fails. So,

1           okay.

2           MR. FERREIRA: We'll leave it up to the Zoning  
3 Board to decide.

4           MR. PARTINGTON: I guess we'll leave it up to  
5 the Zoning Board to decide, because that's the way  
6 it's going to go, so --

7           MR. TREMBLAY: It's just a recommendation.

8           MR. PARTINGTON: Right. Okay, so, motion fails.

9           MAN FROM THE FLOOR: How about you vote it the  
10 other way.

11          MR. PARTINGTON: Okay, let's do it that way  
12 then. Okay, ladies and gentlemen, I make a motion to  
13 send an unfavorable opinion to the Zoning Board. All  
14 those -- I'm sorry, do I get a second?

15          MR. PICK: Second.

16          MR. PARTINGTON: All those in favor?

17          MR. PICK: Nay.

18          MR. LUPIS: Nay.

19          MR. DESJARDINS: Nay.

20          MR. PARTINGTON: Dov, Chris, Mike. All those  
21 opposed? Aye.

22          MR. FERREIRA: Aye.

23          MR. FELICE: Aye.

24          MR. TREMBLAY: Aye.

25          MR. PARTINGTON: Marc, Leo, Bruce, Chair.

1 Motion fails. We don't have it.

2 MR. TREMBLAY: You're talking a null set.

3 MR. PARTINGTON: Okay, just so it's there.  
4 Okay, everybody good? Okay, last piece of business,  
5 hopefully, this evening is certification -- not  
6 certification, but acceptance of the advisory  
7 opinion, acceptance of the advisory opinion with the  
8 addition of the data from Mr. Hessler.

9 MR. TREMBLAY: And the removal of the reference  
10 that we just -- and the removal of the reference that  
11 we just discussed about this middle paragraph on  
12 Page 19. "Accordingly, it's our opinion . . .", that  
13 whole paragraph needs to be struck. Are we --  
14 because we just voted against it. Isn't that right,  
15 Mr. McElroy?

16 MR. McELROY: I believe you're correct.  
17 I believe I would have to take that one sentence out.

18 MR. TREMBLAY: Correct.

19 MR. McELROY: And I believe it would have to be  
20 substituted with something along the lines of,  
21 "The Planning Board was unable to reach a consensus  
22 as to whether or not the facility would comply with  
23 our Noise Ordinance."

24 MR. TREMBLAY: Correct.

25 MR. PARTINGTON: And where --

1 MR. TREMBLAY: Page 19 just above, "Requested  
2 EFSB Conditions."

3 MR. PARTINGTON: Okay. So, the conditions can  
4 remain on Page 20.

5 MR. TREMBLAY: Yes.

6 MR. PARTINGTON: Yeah. So, on Page 19 it says,  
7 "Accordingly, it is our opinion that the CREC  
8 facility will be able to . . ." meet -- I'm sorry,  
9 ". . . be able to comply with our Noise Ordinance,  
10 provided the Zoning Board of Review grants Invenergy  
11 a waiver/special use permit exempting CREC from the  
12 octave band limits of the ordinance." So, our  
13 revision would be that we were unable to come to an  
14 opinion that they would meet -- that the CREC  
15 facility would be able to comply with our Noise  
16 Ordinance, provided the Zoning Board of Review grants  
17 Invenergy a special use permit exempting CREC --  
18 okay, so, we're still okay. All right, so, it's our  
19 opinion -- or, we were unable to come to an opinion.  
20 Are we all set with that?

21 MR. McELROY: Yes.

22 MR. PARTINGTON: Okay, yes. The microphone.

23 MR. FELICE: I just want to address this to  
24 Mr. McElroy just to get an opinion. On Page 7, I'll  
25 wait for you. "Finally, the draft advisory concluded

1 that 'A long-term pumping test of Well Number 3 is  
2 recommended to evaluate . . .'; can we change that  
3 to recommended to --

4 MR. TREMBLAY: That's not our words.

5 MR. McELROY: Could you help me? You're on  
6 Page 7, which paragraph?

7 MR. TREMBLAY: Top.

8 MR. McELROY: Top paragraph?

9 MR. FELICE: Where it says, "recommended to  
10 evaluate."

11 MR. McELROY: That's in a quote. I can't change  
12 what's in a quote.

13 MR. FELICE: Okay, all right. Secondly, on  
14 Page 23.

15 MR. McELROY: Okay.

16 MR. FELICE: Second paragraph, it says, "This  
17 one facility would consume a tremendous of the Town's  
18 groundwater. . .".

19 MR. McELROY: Thank you, that's a typo. I'll  
20 fix that.

21 MR. FELICE: Amount.

22 MR. McELROY: Amount. I'll fix that.

23 MR. FELICE: All right, that's all. Thank you.

24 MR. PARTINGTON: Okay. So, do I have a motion  
25 on the floor?

1 THE CLERK: Yes, you do.

2 MR. PARTINGTON: Okay. I have a motion and a  
3 second. We're under discussion, and the motion was  
4 to accept the advisory opinion with the changes on  
5 Page 19 and the addition of Mr. Hessler's opinions in  
6 the conditions on Page --

7 MR. TREMBLAY: 20, second bullet.

8 MR. PARTINGTON: Okay. So, I have a motion and  
9 a second. Any discussion?

10 MR. McELROY: Mr. Chairman, could I ask, based  
11 on the vote that's already been taken with regard to  
12 the octave band waiver, I would need to add that  
13 language to the Zoning Board advisory, and I will do  
14 that.

15 MR. PARTINGTON: Okay. I believe it's still on  
16 Page 19. That still exists.

17 MR. McELROY: The Zoning Board advisory begins  
18 on Page 22.

19 MR. PARTINGTON: Oh, I'm sorry.

20 MR. McELROY: Because we hadn't voted on it, I  
21 didn't put anything in the draft opinion regarding  
22 your advisory to the Zoning Board on the octave band  
23 waiver; so, I will add that pursuant to the vote.

24 MR. PARTINGTON: Okay. So, three conditions.  
25 Anyone else?

1 MR. FERREIRA: The motion I made --

2 MR. PARTINGTON: Hold on.

3 MR. FERREIRA: The motion I made concerning that  
4 the EFSB draft or accept the Burrillville Planning  
5 Board as part of the review process, will that be  
6 attached to this?

7 MR. McELROY: It's already included, Bullet  
8 Number 5. It's on Page 22. It's at the top, the  
9 third bullet, and it currently reads, "Pursuant to  
10 EFSB Rule 1.14(b), we respectfully request that the  
11 EFSB consider delegating to our Board the authority,  
12 during the construction period, the period of plant  
13 start-up and the reporting period to follow 'to visit  
14 the plant and plant site to determine if  
15 construction, construction practices, . . .'"  
16 operational, "' . . . operation or operational  
17 practices are in compliance with the terms of the  
18 Board's license.'"

19 MR. FERREIRA: Thank you.

20 MR. PARTINGTON: Go ahead.

21 MR. PICK: Just to confirm, we're going to  
22 include what Tom recommended, and that is all of  
23 Mr. Hessler's construction recommendations.

24 MR. PARTINGTON: Yes. So, it is acceptance of  
25 the advisory opinion as written with the changes on

1 Page 19 to reflect the vote that we just took, all of  
2 Mr. Hessler's recommendations and the change to the  
3 zoning opinion pages based on our vote. Everyone all  
4 set?

5 MR. FERREIRA: Almost. I don't see anything in  
6 here referring to the Blackstone Valley Corridor.

7 MR. McELROY: I did not put anything in there  
8 about that.

9 MR. FERREIRA: Okay, I think that should be,  
10 because the Blackstone Valley Corridor was  
11 established and funded by the Federal Government, and  
12 I believe the requirement of the Federal Government  
13 in not applying financial compensation to anything,  
14 that would work against something that they have  
15 already financed.

16 MR. TREMBLAY: There is no Federal financing for  
17 this project.

18 MR. FERREIRA: Not that we know of.

19 MR. TREMBLAY: You're talking about an  
20 Environmental Impact Statement I think is what he's  
21 referring to. So, I think there is language in there  
22 about asking the EFSB to include -- to subject the  
23 project to, as well as other projects in the region,  
24 to this Environmental Impact Statement.

25 MR. McELROY: That's correct.

1 MR. TREMBLAY: Is that correct?

2 MR. FERREIRA: No. What I was referring to was  
3 that the Blackstone Valley Corridor was established  
4 using Federal funds; and, should Invenergy apply for  
5 Federal funds to supplement the cost of construction  
6 or operation, I don't believe the Federal funds would  
7 be available because Federal funds have already  
8 assisted the Blackstone Valley Corridor in getting  
9 itself established.

10 MR. KRAVITZ: The tough part about that is that  
11 we don't have anything specific in the Comp. Plan  
12 that talks about it. I mean there is a national park  
13 now. If this thing undergoes an EIS, I'm falling  
14 back on what Marc says. I would assume that they  
15 would have to get the review through Section 1080 and  
16 maybe pull that in like a historic review that a  
17 facility like this is now being located within a  
18 national -- the national -- the watershed of a  
19 national park. So, I would assume it's going to get  
20 review there. It's not spoken to that specifically  
21 in our Comp. Plan.

22 MR. FERREIRA: So, if that's not in our Comp.  
23 Plan, we really can't address it then. Thank you.

24 MR. PARTINGTON: Okay, anyone else? So, motion  
25 before you, everyone clear on the motion? Okay, the

1 motion has been made and seconded. All those in  
2 favor?

3 (Whereupon all the Members of the Board responded by  
4 saying, "Aye.")

5 MR. PARTINGTON: Any opposed?

6 (Whereupon none of the Members of the Board  
7 responded.)

8 MR. PARTINGTON: Okay. Motion carries  
9 unanimously to accept the advisory opinion with  
10 revisions. Okay.

11 MR. PARTINGTON: Tom, any more business this  
12 evening?

13 MR. KRAVITZ: No.

14 MR. PARTINGTON: We're all set. Okay, Bruce.

15 MR. FERREIRA: Motion to adjourn.

16 MR. TREMBLAY: Second.

17 MR. PARTINGTON: All those in favor?

18 (Whereupon all the Members of the Board responded by  
19 saying, "Aye.")

20 MR. PARTINGTON: Any opposed?.

21 (Whereupon none of the Members of the Board  
22 responded.)

23 MR. PARTINGTON: Thank you very much.

24 (Meeting Adjourned at 7:20 p.m.)

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C E R T I F I C A T I O N

I do hereby certify the foregoing pages to  
be a complete, true and accurate transcript,  
according to my stenographic notes, of the hearing  
IN RE: MAJOR SUBDIVISION/LAND DEVELOPMENT ON  
INVENERGY THERMAL DEVELOPMENT, LLC's Clear River  
Energy Center, heard before the Burrillville Planning  
Board at the Burrillville High School Auditorium,  
425 East Avenue, Harrisville, Rhode Island, on  
August 22, 2016 at 6:00 p.m.

Andrew J. D'Angelo  
Andrew J. D'Angelo  
Court Reporter

(Signed Electronically)