

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

IN RE: INVENERGY THERMAL DEVELOPMENT LLC's :
APPLICATION TO CONSTRUCT THE : DOCKET No. SB-2015-06
CLEAR RIVER ENERGY CENTER IN :
BURRILLVILLE, RHODE ISLAND :

PRE-FILED SURREBUTTAL TESTIMONY OF
JOSEPH RAYMOND
ON BEHALF OF THE TOWN OF BURRILLVILLE

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Q: What is your name and what positions do you hold with the Town of Burrillville?

A: My name is Joseph Raymond. I am the Building Inspector, Building Official, and Zoning Official for the Town of Burrillville.

Q: What is the purpose of this surrebuttal testimony?

A: I am responding to the pre-filed Rebuttal Testimony of Edward PIMENTEL and Richard Lipsitz.

EDWARD PIMENTEL

Q: Have you read and reviewed the pre-filed Rebuttal Testimony of Edward Pimentel?

A: I have.

Q: Do you take issue with Mr. Pimentel’s pre-filed Rebuttal Testimony?

A: Yes, primarily because some of the facts he alleged and the conclusions he reached are wrong.

Q: What do you specifically take issue with in regard to Mr. Pimentel’s testimony?

Creation of a Lot

A: Regarding my request that Invenergy create a lot on which to construct the Clear River Energy Center, so that the application and the associated parcel of land could be realistically reviewed by the Town and this Board, Mr. Pimentel claims that:

“ . . . It is preposterous to assert, much less demand, that a lot be first physically created, prior to engaging in the procedural review process

1 **necessary to realize its eventual intended development purpose.” (at p.**
2 **2).**

3 Mr. Pimentel is totally missing the point. In in order to properly review a parcel of land to
4 be utilized for a particular land use, the parcel of land must first be specifically identified.
5 There are numerous reasons for this. Identifying site issues, access to the property, wetland
6 issues, zoning issues and more all must be determined during the initial review process.
7 Having no definite parcel of land to review from the outset regarding these issues makes
8 no sense at all. In this instance, the parcel proposed for the CREC site has only been
9 surveyed and put on a deficient proposed administrative subdivision plan in the past few
10 months; almost two years after the siting process began. This would never be allowed to
11 be the case in any ordinary zoning or planning application process because such process
12 and procedure would require that a defined plot of land be identified in order to undertake
13 any review by permitting authorities.

14 It is ridiculous to suggest that a portion of a very large existing seven hundred plus acre
15 tract of land that had not been specifically identified as a parcel at that point in time was
16 all that was necessary for the regulatory agencies to adequately review this parcel and
17 provide Advisory Opinions to the Energy Facility Siting Board (the Board), such as the
18 Burrillville Planning and Zoning Boards, the Building Inspector and the Department of
19 Environmental Management. Mr. Pimentel has to admit that either the representations of
20 the proposed site were inadequate, or that he chose not to review the parcel at all. Having
21 a substantial background in planning and zoning, I would assume that the required
22 information that he needed was not readily attainable at the time for him to review.

1 Required Information Not Provided

2 As in most communities, there are a number of required positions that must be addressed
3 by a limited number of people. Besides being the Building Inspector in Burrillville, I am
4 also the Building Official and the Zoning Enforcement Officer (the Zoning Official). I
5 take these positions seriously and recognize the fact that not everyone, even people in the
6 construction trades who are expected to know, actually understands the concepts. In my
7 twenty years of experience in the building trades prior to becoming the Building Official
8 in my home town twenty two years ago, I learned of the importance of communication;
9 with my clients, with my subcontractors and with the community I was working in. When
10 the Board requested an Advisory Opinion from me, I reviewed the existing available
11 information and found it wholly lacking based upon my experience and expertise in the
12 areas of building and zoning. I requested information on a number of occasions and I was
13 promised by Invenergy, through its attorneys, that the information would be supplied. That
14 information never came in a timely fashion to meet the deadlines of the Board's order, as
15 was noted in my Advisory Opinion of September 2016.

16 Notwithstanding, the proceedings went on and during that same period of time. There were
17 hearings in front of the Burrillville Planning and Zoning Boards as ordered by the Siting
18 Board. Mr. Pimentel testified at a Zoning Board hearing on July 12, 2016 as an expert
19 witness in the field of land use planning. During his testimony, he noted that he presently
20 was a Zoning Official in the State.

21 **“I’ve been a municipal planner and zoning officer working for**
22 **municipal government for my entire 25 years in the field, also started a**

1 consulting business approximately 15 years ago. I wear both hats.
2 Currently, on the municipal side I'm a zoning officer interpreting
3 zoning codes and comprehensive plans and doing enforcement." (7-12-
4 2016 Zoning hearing transcript, page 18, lines 19-25)

5 Required Variances

6 Mr. Pimentel gave his opinion as to what would be required from the zoning board to
7 construct the Clear River Energy Center (CREC) absent the Act:

8 "So, I first reviewed the Zoning Ordinance because I had to determine
9 how the use was classified within the ordinance and then what would
10 be the applicable description of the appropriateness of that use
11 pursuant to your code; and, when I reviewed the code, I concluded that
12 it is a use permitted by special use in the pertinent residential district,
13 residential F-5 district." (7-12-16 trans. Pg. 20, lines 19-25)

14 "So, really, the only dimensional deviation that I determined was in
15 regards to the height." (7-12-16 trans. Pg. 28, lines 20-21)

16 Mr. Pimentel ended his testimony by stating that all that was required of the Zoning Board
17 was a special use permit to site the project and dimensional relief for some of the structures;
18 one of which, the smoke stacks, he noted for an example.

19 "I don't think there is any other variances required, at least in my
20 professional opinion; and I believe we meet all of the standards for the
21 granting of a special use permit." (7-12-16 trans. Pg.28, lines 21-25)

1 It is important to note that Mr. Pimentel proffered in his testimony his expert opinion as to
2 the difference between a special use permit and a use variance.

3 **“What has been determined in regard to the special use by case law is**
4 **that a conditionally-permitted land use is a determination by the**
5 **municipality that the use is, in fact, permissible, subject to reasonable**
6 **conditions of approval. So, we have to go through the uses that are**
7 **found, and they’re laid out here; and, if it’s concluded that they meet**
8 **those, it’s deemed conditionally permitted. It is a permissible land use;**
9 **distinctive difference than when you’re seeking a variance, whether it**
10 **be use or dimensional;, you’re departing from the regs.” (7-12-16 trans.**
11 **Pg. 21, lines 21-25 and Pg. 22, lines 1-7)**

12 **“If this use was treated like a use variance, I’d have a different opinion**
13 **right now, but it isn’t. It’s a conditionally-permitted land use.” (7-12-**
14 **16 trans. Pg. 24, lines 22-24)**

15 While the proposed site for the CREC was unclear, I felt it was important for the Board, as
16 well as the Town and the applicant, to have as good an understanding as possible of the
17 constraints of the location from a building and zoning perspective. As information was
18 being presented to the State and local agencies, troubling constraints to construction of the
19 CREC were becoming clearer, even from the limited information we had received at that
20 time.

1 Aquifer Overlay District

2 Invenergy hired Waterman Engineering Co., to perform a class I boundary survey of the
3 Algonquin Gas Transmission Co. property, a more than seven hundred acre property upon
4 which sits a gas compressor station and pipeline. The site work was undertaken in the
5 spring of 2015 and the final survey was signed by the surveyor, Richard S. Lipsitz, on
6 December 31, 2015. This plan was submitted to the Burrillville Planning Department on
7 July 21, 2016. Included with the five page survey, were a number of general notes and
8 plan references. On the survey plat were a number of easements, restrictions and deed
9 references drawn onto the property.

10 In the general notes on page one of the survey, there is a statement that: “Portions of A.P.
11 153, Lot 2 are situated in the A-80 Aquifer Overlay District per the Town of Burrillville
12 Aquifer Overlay Zoning Map. Following this statement is a list of the dimensional
13 requirements, such as minimum lot area, frontage, yard setbacks etc. While many other
14 easements and restrictions were drawn onto the survey plan, the portion of the Aquifer A-
15 80 Zoning district was not delineated.

16 It is clear that Invenergy had this document in its possession (or should have had it) at the
17 time this project was being reviewed by Mr. Pimentel. Being a zoning official, as noted
18 before, I am certain that he would have noted in his review of the Burrillville Zoning
19 Ordinance how this would affect the project. Instead, nothing was mentioned and he stated
20 to the Zoning Board that no other variances were required.

21 In Mr. Pimentel’s pre-filed testimony of June 30, 2017, almost a year after he testified in
22 front of the Zoning Board, his cavalier response was as follows:

1 **“The initial proposal did appear to be slightly encumbered by the A-80**
2 **Overlay District (hereinafter “Overlay”), which would have incurred**
3 **additional Zoning Ordinance relief, possibly even the need for a use**
4 **variance. Given the vast surrounding acreage, it was my determination**
5 **that property reconfiguration could very well avert any interference**
6 **with the Overlay. I have been provided a revised Administrative**
7 **Subdivision Plan, prepared by Waterman Engineering, that avoids any**
8 **intrusion into the Overlay, rendering moot the argument that a use**
9 **variance may be necessary. It is my professional opinion that the**
10 **Burrillville Building Inspector is simply wrong. Any attempt to suggest**
11 **that the proposed development necessitates a use variance is**
12 **erroneous.” (Pre-filed direct testimony of Ed Pimentel, 6-30-17, page**
13 **19, lines 17-24)**

14 Burrillville Zoning Ordinance 30-202.Aquifer Zoning subsection (f) prohibited uses, (1)
15 thru (7) which I addressed in both of my Advisory Opinions, would, absent the Act, render
16 it impossible to construct the CREC on this property. Mr. Pimentel’s rationalizing this as
17 a “slight encumbrance” which would have “incurred additional zoning relief, possibly even
18 the need for a use variance” is an extreme understatement. Also, while it may be true that
19 “property reconfiguration” might help, it is not Mr. Pimentel’s position to make
20 determinations of this sort. There is nothing to verify that Algonquin Gas Transmission
21 will agree to what very well may be required to meet this reconfiguration, as the proposal
22 he is referencing, placing the site a few feet away from the boundary line and downsizing
23 the air-cooled condensers by removing fifteen percent of the fans, may not be feasible.

1 Moreover, the attempted reconfiguration of the now proposed lot is such that it is
2 completely in conflict with the goals, recommendations and requirements of the
3 subdivision regulations because the lot created is haphazardly drawn in such a manner as
4 to make it shaped like a jigsaw puzzle piece and in no way uniform to other lots in the area.
5 In fact, from the outset, it has been apparent that the owners of the property
6 (Algonquin/Spectra) have refused to agree to simple, obvious changes to the site such as
7 shared access to the property over the existing road, which everyone involved in this
8 process, other than Algonquin/Spectra, believes to be reasonable due to the extreme
9 amount of wetlands on the proposed site and the adverse impacts on wetlands and
10 biodiversity that will occur if a new access road is created.

11 **Wetlands Delineation**

12 Another issue that has been glossed over again in regards to the siting of this project is the
13 wetlands delineation on the site. Mr. Pimentel is convinced that there is no issue regarding
14 wetlands on the site and compliance with the Town Zoning Ordinance 30-153. Lots
15 containing wetlands. In Mr. Pimentel's pre-filed testimony of June 30, 2017, his position
16 is that he has received information from ESS Group, Inc., that demonstrates compliance
17 with that section of the Ordinance.

18 The Town has recently received information in a September 12, 2017 data response from
19 Invenergy referencing freshwater wetlands edge delineation for the subject property. The
20 letter was sent to Algonquin Gas Transmission, LLC on January 28, 2016. The DEM noted
21 that wetland edges that were delineated on the site are accurate. However, the letter also
22 states that:

1 **Please note that our inspection of the subject property has revealed the**
2 **presence of other freshwater wetlands not specifically delineated by**
3 **you. Therefore, you should not infer that any verification of wetland**
4 **edges carried out by this Department to date represents a**
5 **determination that this is the extent of all wetlands on your property.**
6 **The Department has verified only those requested edges delineated and**
7 **shown by you on-site and on site plans submitted with your application**
8 **and as qualified in this letter. Should you wish to verify the edge of**
9 **these additional wetlands, an additional application will be required.**
10 **Please note that an ASSF (not depicted) flows down the woods path into**
11 **Wetland 2 near flag 2-74.**

12 Thus, it is clear that there are additional wetlands on the subject property that have not been
13 delineated by the applicant and which have not been factored into any review thus far. We
14 only received a plan for a surveyed parcel for the CREC site in July 2017. We have yet to
15 see the wetlands verified on the parcel by DEM. We have yet to see the identification of
16 the other wetlands on the site that have not been delineated by the applicant but which have
17 been said to be present by DEM. Absent the Act, it would be impossible to create this lot
18 being proposed in the Town of Burrillville. The only reason to create this absurdly shaped
19 subject parcel of land as depicted is to attempt to remove enough wetlands from the parcel
20 in order to avoid having to address the requirements in the Town Zoning Ordinance
21 regarding the same, as well as to attempt to move the proposed parcel a few feet away from
22 the delineated A-80 line on the survey.

23

1 **Implications of Failure to Properly Address the Aquifer Overlay and Wetlands**

2 Both of these issues, the restrictions noted in the Burrillville Zoning Ordinance sections
3 30-202 (Aquifer zoning) and 30-153 (Lots containing wetlands), were never addressed by
4 Mr. Pimentel in his testimony in front of the Burrillville Planning and Zoning Boards at
5 their hearings in 2016. In fact, as the application to the Zoning Board represents, Invenergy
6 never properly identified the relief it would have to request from the Zoning Board absent
7 the Act. Mr. Pimentel’s stated position is:

8 **“I can professionally attest to the fact that, in my experience, all**
9 **developments that have also entailed an Administrative Subdivision,**
10 **have been conditionally approved based on the physical boundaries**
11 **being altered as authorized upon receipt of final project approval. It**
12 **makes no rational sense to create a lot at the outset, without first**
13 **achieving all requisite approvals for the final intended use.”**

14 Mr. Pimentel is either misunderstanding or attempting to obfuscate the issue at hand.
15 Again, as has been stated numerous times, a parcel of land needs to be identified first and
16 only then can the site related issues be reviewed. This identification and approval of this
17 site must be done **PRIOR** to obtaining any other permits or approvals. To suggest
18 otherwise is ludicrous and would render any review in the absence of such identification
19 fraught with potential error and meaningless.

20 For these reasons alone, it is clear why identifying a specific, finite parcel from the
21 beginning of a permitting and review process is critical. To suggest that what information
22 I have been requesting from Invenergy, whether it is identification of a parcel for the site

1 or plans for the project, is not necessary to properly review this project, is clearly false. I
2 take affront from Mr. Pimentel's statement that what I have been requesting from
3 Invenergy is unlawful. I would suggest that he should be agreeing with me that the
4 pertinent information has not been forthcoming. Otherwise, he needs to explain how, with
5 all this dearth of information that has supposedly been made available, he did not identify
6 the issues I addressed in my Advisory Opinion, notify his client to correct the zoning
7 application prior to the hearing, and prepare testimony to address what would need to be
8 requested at the hearing, even though the approval or denial would be advisory.

9 **Wetlands Determination is not yet possible**

10 Mr. Pimentel's position is that the applicant has created a parcel for the CREC that does
11 not fall under the restrictions of 30-153 in the Town zoning ordinance. As the wetland
12 delineation of the parcel proposed to be created has not been completed by DEM to date,
13 it is impossible to determine the limits of wetlands and jurisdictional wetlands (buffer)
14 located on the parcel at this time. If the wetlands area, including wetlands buffer, exceeds
15 more than forty (40) percent of the parcel area, the applicant will be required to apply for
16 a use variance to construct the CREC. Therefore, it is clear that Mr. Pimentel cannot make
17 any determination regarding Section 30-153 at this time because complete identification
18 and delineation of wetlands has not been done, and this is something that would have to be
19 factored into any such opinion.

1 **Aquifer Determination is not yet Possible; Test Drilling is Necessary.**

2 Moreover, the redefinition of the proposed parcel and its reference to the Aquifer Overlay
3 District, and placing the property line within a few feet of the aquifer line while stating that
4 this will guarantee that the CREC will not be sited over the adjacent stratified drift aquifer
5 is simply not reasonable.

6 The basis for Burrillville’s aquifer zoning is the study, “Availability of ground water in the
7 Branch River Basin, Providence County, Rhode Island” by H.E. Johnston and
8 D.C.Dickerman, December 1974. The map noted in our Ordinance, the “Geohydrologic
9 map of the Branch River basin” Plate one, Water-resources investigations 18-74, is adopted
10 by reference and declared to be a part of this ordinance. (Zoning 30-202 (b) (1)).

11 In the narrative the authors write that:

12 **“The transmissivity of the stratified-drift aquifer was estimated from**
13 **lithologic logs of 103 wells and borings and from specific-capacity data**
14 **for 5 wells. These estimates were used as control points in constructing**
15 **a transmissivity map of the aquifer (plate 1). Each layer in lithologic**
16 **logs was assigned a value of hydraulic conductivity which was**
17 **multiplied by saturated thickness of the layer to get transmissivity.**
18 **Transmissivities of individual layers were then summed to get the**
19 **transmissivity of the part of the aquifer described in the log.”**

20 On the map, under the transmissivity table listed below the basin, it is noted that:

1 **“Map values of saturated thickness and transmissivity may be used in**
2 **conjunction with above table to estimate range of potential yields**
3 **obtainable from a well at a proposed site. The table is intended only as**
4 **a guide and should not be used as a substitute for exploratory test**
5 **drilling.”**

6 The Town recognizes the less than exact science of designating the stratified drift line on
7 the map and addresses it in the ordinance by stating that in: “Parcels containing more than
8 one “A” zone, or if any part of a parcel lies within an “A” zone, the most restrictive zone
9 shall take precedence.” (30-202 (b) (4)).

10 Clearly, moving the parcel line on a plat map does not remove the parcel from the Aquifer
11 District in the same manner one would remove a portion of a parcel from a traditional
12 zoning district where the district is defined by property lines of existing parcels of land,
13 physical boundaries such as streets and rivers or even lines parallel from a street.

14 Mr. Pimentel states that there is no dispute as to the limits of the Aquifer Overlay zone in
15 that area because Invenergy is not questioning the Overlay Map. Therefore, according to
16 him, the bounds of the Aquifer Zone are not in doubt or dispute. I would proffer that it
17 takes two opinions to create a dispute in this manner. Invenergy has one opinion. It is my
18 determination, as Zoning Official, that the bounds of the Aquifer Zone adjacent to the
19 proposed lot for the CREC are in doubt because we do not agree. Therefore, there is a
20 dispute and exploratory test drilling is necessary to resolve the dispute.

21 Because it is Invenergy’s intention to carve out a lot where they are proposing to do so, it
22 is their burden to prove that they are outside of the Aquifer A-80 District adjacent to that

1 proposed parcel. Test wells and borings must be undertaken to determine whether the
2 proposed lot to be created does in fact lie outside of an Aquifer Zone. Electricity can be
3 generated anywhere, but the same cannot be said for potable water. As such, it is critical
4 to protect the existing aquifers because they are not something that can be recreated
5 elsewhere. This is implicitly recognized and prioritized by the Burrillville Zoning
6 Ordinance and subdivision regulations.

7 **A Use Variance is Required Because Two Single Shaft Generating Facilities are Being**
8 **Proposed.**

9 I also take issue with Mr. Pimentel's assertion that only one "facility" is being proposed to
10 be constructed on the site. It has been my position from the beginning that Invenergy is
11 proposing to construct two distinct single shaft power plants to generate electricity on their
12 proposed parcel. I have already noted the singularity of the term "electric generating
13 facility" and have included its definition in my Advisory Opinion and Supplemental
14 Advisory Opinion. I have previously explained the concept of "principal structure" vs.
15 "accessory structure." Nothing that I have heard to date changes my determination.

16 In his pre-filed rebuttal testimony, Mr. Pimentel has stated that I am expanding the
17 definition of an electric generating facility. It is his position that whether this is true or
18 false, it doesn't matter because as long as what you are doing produces more than one
19 hundred and eighty megawatts of electricity, it is an electric generating facility. Therefore,
20 following in Mr. Pimentel's logic, he would conclude that you can have two, five, even
21 fifty power plants and, as long as you call it a facility, and it produces more than one

1 hundred and eighty MW of electricity, it meets the definition of an electric generating
2 facility. Such a conclusion is patently absurd.

3 In the Merriam Webster dictionary, the definition of “facility”, as it relates to this use is as
4 follows:

5 **Facility: something (such as a hospital) that is built installed or**
6 **established to service a particular purpose.**

7 In the Burrillville Zoning Ordinance, 30-3 Definitions, the definition of “electric generating
8 facility” is:

9 **Electric generating facility means any generating facility designed to**
10 **generate electric energy in excess of 180 megawatts (“MW”) annually.**

11 It is quite clear that the language in the ordinance is singular. If the language read, “any
12 generating facility, or multiple facilities...” or, “one or more generating facilities...” or,
13 “any amount of generating facilities...”, I would have to accept that this was the intent of
14 the language in the ordinance. However it simply does not say this. Taking Mr. Pimentel’s
15 argument to the extreme, one could say that his generating facility could utilize one
16 hundred thousand natural gas turbines to produce 50,000,000 MW of electricity and be in
17 compliance with our ordinance definition of electric generating facility.

18 I have to agree with Mr. Pimentel that **“definitional language must be interpreted**
19 **literally”**. What is a more clear or literal interpretation of a word than its definition?
20 “Facility” is a singular noun. It has an associative plural noun, “facilities”.

1 One thing that can be logically inferred from the definition of “electric generating facility”
2 is that if the “generating facility” generates energy in excess of 180 megawatts annually, it
3 meets the definition. If it doesn’t, it is not an electric generating facility.

4 How Mr. Pimentel can argue that this expands on the definition of electrical generating
5 facility is confusing. If a natural gas turbine generates energy in excess of 180 megawatts,
6 it is an electric generating facility. If multiple natural gas turbines each generate energy in
7 excess of 180 megawatts, they are all electric generating facilities. The language is plain
8 and clear.

9 Notwithstanding the other issues addressed regarding wetlands and location, it is my
10 determination that CREC is not an electric generating facility under the Town Zoning
11 Ordinance. Rather, it is two electric generating facilities and to be constructed would
12 require a use variance to be created as in the F-5 Farming /Residential Zoning District, per
13 zoning 30-152, multiple structures on one lot: “Only one principal structure shall be
14 permitted on any lot in the F-5, F-2, R-40, R-20, R-12 zones as well as the aquifer overlay
15 zone.”

16 **RICHARD LIPSITZ**

17 **Q: Have you read and reviewed the pre-filed Rebuttal Testimony of Richard Lipsitz?**

18 A: Yes, I found some of the facts he alleged and the conclusions he reached are wrong.

19 **Q: What do you specifically take issue with in regard to Mr. Lipsitz’s testimony.**

20 A: The main thing I take issue with is his implication that the parcel now being sought to be
21 the site for the CREC has long been identified in a specific plan and that there will be no

1 problem with intrusion into wetlands and the aquifer. In Mr. Lipsitz's testimony he states
2 that he met and presented the proposed site plan to then Town Planner Tom Kravitz almost
3 two years ago.

4 **“When the initial draft plan was developed in November 2015,**
5 **we met with Tom Kravitz, the Burrillville Town Planner at that**
6 **time, to discuss the parcel to eventually be acquired by**
7 **Invenergy. It was determined that the Administrative**
8 **Subdivision was the correct procedure (as confirmed by Ray**
9 **Goff, the current planner in his memo dated 8/10/2017).... This**
10 **plan was presented to the Town's Planning and Zoning Boards**
11 **at a master plan meeting in June 2016 and at various public**
12 **hearings since the Project was first proposed, including the**
13 **Town's Planning Board and Zoning Board advisory process.”**

14 I attended a meeting in late March 2016 with representatives of Invenergy, Special Town
15 Counsel Michael McElroy, and then Town Planner, Tom Kravitz. At that meeting we were
16 presented with a plan showing a parcel representing the area proposed to be purchased by
17 Invenergy from the Algonquin Gas Transmission property. This parcel was drawn on a
18 preliminary plan titled “single shaft construction facilities and terminal point location plan”
19 dated November 02, 2015. The fact that the plan produced by Invenergy itself describes
20 the “single shaft construction facilities and terminal point location plan” significantly
21 underscores my previously made point in response to the Pimentel testimony that the
22 project itself consists of more than one electrical generating facility thereby requiring a

1 variance for a lot containing more than one principal structure under Burrillville Ordinance
2 Section 30-152.

3
4 This parcel showed an ell-shaped property, basically a back lot, with frontage on Wallum
5 Lake Road through an approximate sixty foot by five to six hundred foot area of the parcel
6 dedicated to create a new access road to the site. (See Exhibit 2) This parcel is what I am
7 assuming Mr. Lipsitz is speaking about in his rebuttal testimony as mentioned above
8 because it appears to be similar in shape to the site plans in Invenergy's application to the
9 Energy Facility Siting Board from that same time period.

10 Although this drawing is in the same general area that Invenergy is proposing to construct
11 the CREC, this "initial draft Administrative Subdivision plan" is not the same plan that
12 was submitted to the Burrillville Planning Board during its advisory hearings in June of
13 2016. That plan, titled Conceptual Subdivision Plan, dated March 30, 2016, denotes a four
14 parcel subdivision with a description of Invenergy's proposed parcel as "Parcel Two"
15 (Invenergy Parcel) which was a portion of a drawing package that was presented to the
16 Planning Board. If that plan had existed two years ago, I believe that proposed parcel would
17 have been the one presented to the Planner back when he met with Mr. Lipsitz as stated, as
18 well as the meeting I attended in March 2016. I would assume also that the parcel would
19 also have looked quite different in the CREC application to the EFSB.

20 As noted in a memorandum, (see Exhibit 3) from the Town Planner, Ray Goff, dated
21 September 13, 2017,

1 **“Administrative Subdivisions can be conditionally approved with**
2 **specific boundaries and may have “minor” changes to lot lines due to**
3 **conditions that are identified with the subsequent approvals. In this**
4 **case, the subdivision information was inadequate and lacked enough**
5 **specificity to make a determination of conditional approval.”**

6 This plan that was submitted for the Town to review for the advisory opinions in 2016 was
7 lacking in critical information, as noted in the Planning Board’s Advisory Opinion on page
8 four:

9 **“Mr. Presbrey felt that the survey was still not in conformance with the 1994**
10 **regulations, noting that the dimensions and bearings cannot be read and no**
11 **calculations can be done because it is unreadable.”**

12 As Zoning Official, I was unable to be clearer in my Advisory Opinion to the EFSB, citing
13 lack of wetland information in relation to the proposed lot as well as the location of the
14 parcel within the Aquifer A-80 overlay district. Under the Town’s Zoning Ordinance, both
15 of these areas are critical in reviewing this particular use being located on this particular
16 site. Moreover, because the plan upon which the advisory opinions given by the Planning
17 Board and Zoning Board has changed, the EFSB should have the applicant resubmit the
18 new subdivision plan to both of these boards for a proper advisory opinion review, once
19 all of the wetland and aquifer data has been compiled and inserted into a proper plan.

20 Since the time of the original review by the Planning and Zoning Boards, Mr. Lipsitz has
21 submitted an administrative subdivision plan dated June 13, 2017. While this plan does not
22 reference the wetlands on the proposed parcel, he has drawn the Aquifer A-80 district line

1 on his plan. In his opinion regarding my concerns with the lack of information submitted
2 to review, his position is as follows:

3 **“The Building Inspector indicated in his opinion that it is a “new” parcel, yet**
4 **it has been depicted on accurate survey plans as directed by the previous Town**
5 **Planner for almost two years, and on the plans prepared for the design and**
6 **permitting of this project by the other members of Invenergy’s professional**
7 **team.”**

8 This is not the case. To characterize the changes that have been submitted from the
9 preliminary rectangular lot with a leg out to Wallum Lake Road to create a driveway, to
10 the proposed parcel submitted two months ago (see Pre-filed Testimony of Richard Lipsitz,
11 September 1, 2017, Exhibit RL Rebuttal-1), as “minor revisions” is not the case . Also, the
12 wetlands located on this parcel have not been completely and properly identified, and their
13 limits approved, by RIDEM and the limit of the Aquifer A-80 overlay district over this
14 parcel is in doubt and disputed.

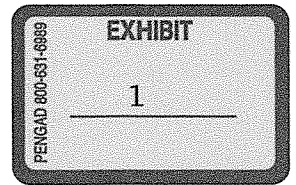
15 While I am not questioning Mr. Lipsitz’s quality of work on this project as a Professional
16 Land Surveyor, I am questioning his scientific and land use statements. There has been no
17 qualification of Mr. Lipsitz made known that would render him competent to make such
18 statements and conclusions and they contradict the established facts and the record.

19 **Q. Does that conclude your testimony?**

20 A. Yes.

21

Joseph R. Raymond
Building/Zoning Official
Town of Burrillville
144 Harrisville Main Street
Harrisville, RI 02830
401-568-4300



EDUCATION

- 1992 – 1996 **Rhode Island College**
Enrolled in the career and technical education program, working towards a Bachelor of Science degree
- 1972 – 1974 **Rhode Island College**
Elementary education major with a concentration in special education
- 1968 - 1972 **LaSalle Academy**
Graduated

WORK EXPERIENCE

- 1995 – PRESENT **Building/Zoning Official/Minimum Housing Inspector for the Town of Burrillville**
- 1986 – 1995 **Raymond Remodeling**
Self-employed remodeling contractor
Range of work from small commercial to large residential including additions, interior remodeling/renovations, kitchens, baths and finish carpentry.
- 1985 – 1986 **D'Angelo Building Artisans**
New Hartford, Connecticut
Commercial and residential work
Upscale projects in the greater Hartford area.
- 1983 – 1985 **Lu Lavallee Home Repairs**
Cumberland, Rhode Island
Residential remodeling and additions, fancy finish work and stair construction.

1981 – 1983

ACS Industries

Woonsocket, Rhode Island

Mill carpenter – responsible for replacing existing mill windows, additions to the plant to house an extrusion process and design and construct a quality control room.

1974 – 1981

Lu Lavallee Home Repairs

Cumberland, Rhode Island

Started as a rough carpenter doing framing, siding and roofing. Was introduced to interior and exterior remodeling, kitchen and bath work and church renovation work in the greater Woonsocket area.

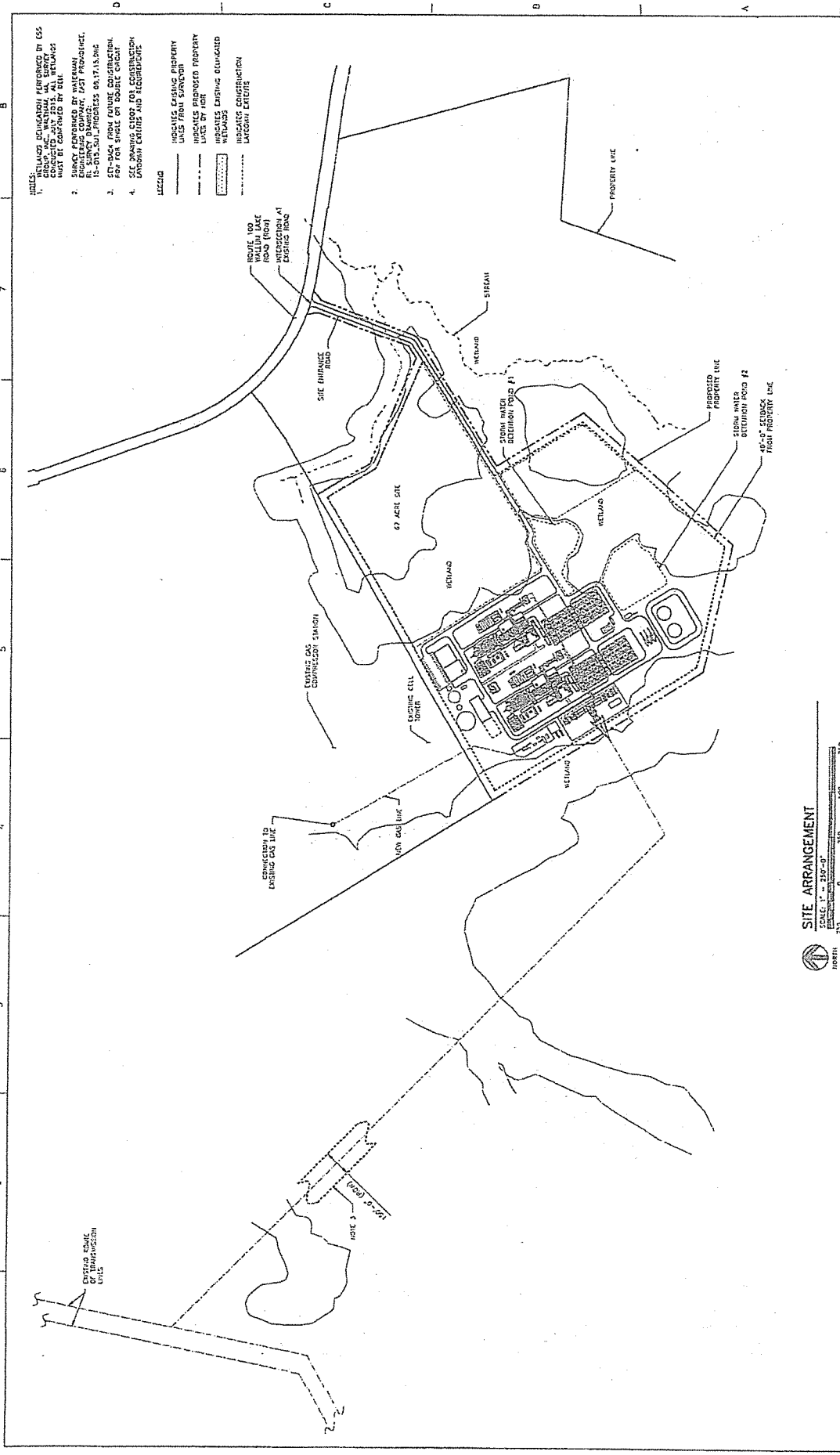
1972 – 1974

Rhode Island College Records Office

Duties included clerical work, oversight of the student ID program and coordinating student registration.

CERTIFICATION - PROFESSIONAL EXPERIENCE - LEADERSHIP INVOLVEMENT

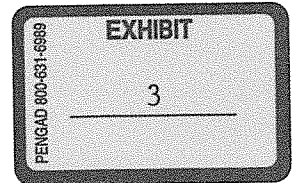
- State of RI Building Code Standard Committee Certified Building Official 1995 - present
- Secretary of the RI Building Officials Association 1996 – 2000
- Secretary of the RI Minimum Housing Inspector's Association 1996 – 2001
- Secretary of the New England Building Officials Education Association 2010 – present
- RI Housing Resources Commission 2010 – present
- Registered Contractor in Rhode Island
- Licensed Construction Supervisor and Registered Contractor in Massachusetts





TOWN OF BURRILLVILLE

Planning and Economic Development Town Hall Annex
144 Harrisville Main Street
Harrisville, RI 02830-1499



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RI Relay 1-800-745-5555

TO: Joe Raymond, Building/Zoning Official

FROM: Ray Goff, Planning Director

RE: Invenergy September 1, 2017-Prefiled Rebuttal of Richard Lipsitz and Ed Pimental

DATE: September 13, 2017

CC: Michael Wood, Town Manager

At your request I have prepared comments regarding the rebuttal of Edward Pimental and Richard Lipsitz on the Invenergy proposed power plant. The following comments are separated by the separate testimonies and identifies pages and lines of the rebuttal.

Comments on the "Pre-filed Rebuttal Testimony of Edward Pimental" September 1, 2017

Page 2 Line 9 through 13 – Each project that is run through the Land Development Project procedure is unique to most towns who review them. Regarding a proposed power plant, this is more than unique in that most town Planning Boards do not review power plants on a regular basis, in fact, most Planning Boards's may never receive an application of this type during their tenure.

Page 2 Line 13 - Administrative Subdivisions can be conditionally approved with specific boundaries and may have "minor" changes to lot lines due to conditions that are identified with the subsequent approvals. In this case, the subdivision information was inadequate and lacked enough specificity to make a determination of conditional approval.

Page 2 Line 19 – Changes to the Boundary lines were made as part of a very basic review of the towns Aquifer Overlay Zone and again when considering State Wetland Regulations. This very basic preparation should have been done by the applicant prior to submitting any application to the EFSB or the town.

Page 2 Line 25-26 and Pg 3 Line 1-6 - A Major Land Development Project is only vested at Master Plan stage after an approval of said Master Plan. The Planning Board did not have enough information to approve the Master Plan, merely provided an opinion to the EFSB. Therefore, the subject plan is not vested. Information requested by the Building Official did not ask for more information than Master Plan. In fact the building official, just like the Planning Board in order to better understand the project, has requested information which would be specifically requested at the Master Plan stage of review.

Page 3 Line 12-15 sometimes zoning is not identified on a lot by lot basis. Especially when dealing with Aquifer Overlay Zones. The science of Geohydrology does not lend itself well to lot by lot thinking as it relates to zoning. The best a community can try to attain is getting close on the area of influence of an aquifer overlay district boundary. The Burrillville Zoning Ordinance attempts to address this by identifying the A 80 and A 100 Zones and stating that it is up to the applicant to prove that they are not in the more restrictive zone. The application to EFSB does

nothing to consider this district and decides to merely snakes the lot lines a mere 25 feet from the depicted boundary

Comments on the "Pre-filed Rebutal Testimony of Richard Lipsitz" September 1, 2017.

Page 2, Line 13-14 - The initial submission to the Planning Board was a plan which depicted an Administrative Subdivision of exactly 67.085 acres. This plan later changed as the applicant realized they did not adequately research the subject property and identified RIDEM jurisdictional wetlands on part of the property. This revised plan has not been submitted to the Planning Board. After this realization they move the boundary lines to cut out approximately 6.5 Acres to create a 67.085 acre parcel. After this feat, they realized that they were going to be subject to the Town's aquifer overlay zone because part of their parcel was within the A-80 zone. At this time they reshaped their lot to skirt this zone by 25 feet and created a 67.085 ac parcel. This is how they have proceeded to avoid any areas where there is an impact on the proposed power plant.

Page 2, Line 20 - speaks of two occasions where the Administrative Subdivision plan was amended. The first was to avoid wetlands and the second was to avoid the Aquifer Overlay District. By working the lot lines around these constraints, the plan now resembles a jigsaw puzzle piece rather than a lot for development. Many communities including Burrillville work with applicants to avoid