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September 9, 2016

Todd Bianco
Coordinator
Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

In Re: Application of Invenergy Thermal Development LLC – Clear River Energy Center
Docket No. SB-2015-06

Dear Mr. Bianco:

I am an Assistant Solicitor for the Town of Burrillville.

Attached are an original and ten (10) copies of the Advisory Opinion of Joseph Raymond, the Burrillville Building Inspector, to the Energy Facility Siting Board.

Mr. Raymond will be made available at the EFSB hearings to answer questions regarding his advisory opinion.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

cc: Service List

SB-2015-06 Invenenergy CREC Service List as of 08/26/2016

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IN RE: APPLICATION OF
INVENERGY THERMAL DEVELOPMENT, LLC.;
(CLEAR RIVER ENERGY CENTER) and
ALGONQUIN GAS TRANSMISSION, LLC.
WALLUM LAKE ROAD (R.I. ROUTE 100)
BURRILLVILLE, RHODE ISLAND
ASSESSOR'S PLAT 120
LOT 7, PLAT 135 LOT 2, PLAT 137
LOTS 1, 2, 3, and 21, and
PLAT 153, LOTS 1 and 2

SB-2015-06

ADVISORY OPINION TO THE ENERGY FACILITY SITING BOARD
FROM THE BURRILLVILLE BUILDING INSPECTOR

INTRODUCTION

On October 29th, 2015, Invenergy Thermal Development, LLC (Invenergy), filed an application with the Energy Facility Siting Board to construct and operate the Clear River Energy Center (CREC), a major energy facility capable of a nominal power output at baseload of up to one thousand megawatts of power while firing natural gas. The facility is proposed to be constructed on property presently owned by Algonquin Gas Transmission, LLC and located in the village of Pascoag, within the Town of Burrillville, RI. The property will be accessed from Wallum Lake Road, RI Route 100.

Invenergy states in their application to the EFSB that the facility will be configured as a two unit, one-on-one, combined cycle generation station. Each unit will consist of a combustion turbine, with a heat recovery steam generator, steam turbine and an air cooled condenser. Each gas turbine will fire natural gas as a primary fuel and ultra-low sulfur diesel (ULSD) fuel as a backup when gas is unavailable. The facility will be located on land that is part of a larger parcel that already includes both gas pipelines and electric transmission lines which are proposed to be utilized for the project.

In Subsection VII of the Preliminary Decision and Order dated March 10th, 2016, The Energy Facility Siting Board has directed the Burrillville Building Inspector to render an opinion as to:

(i) whether the work proposed in Burrillville as part of the Facility's construction and operation is subject to Burrillville's Erosion and Sediment Control Ordinance and, if so, whether Invenergy's Erosion and Sediment Control Plan would conform to the Ordinance, and:

(ii) whether the Facility would meet the requirements of other Municipal Ordinances.

For the benefit of the members of the Energy Facility Siting Board, I wish to qualify myself. My name is Joseph Raymond. I was appointed to the position of Building/Zoning Official and Minimum Housing Inspector by the Burrillville Town Council in May 1995 and I have continued working for the Town in this position to the present. As Building/Zoning Official, I am also responsible for other administrative roles in the Town, the ones most pertinent to your requests being the Building Inspector and the Soil Erosion and Sediment Control Administrator. From my work experience these past twenty one years, I believe that I am qualified to respond to your directives and would be pleased to submit any further proof of such, if requested to do so.

FIRST ADVISORY OPINION

Whether the Work Proposed in Burrillville as Part of the Facility's Construction and Operation is Subject to Burrillville's Erosion and Sediment Control Ordinance and, if so, whether Invenergy's Erosion and Sediment Control Plan Would Conform to the Ordinance.

The Town of Burrillville's Erosion and Sediment Control Ordinance is located in the Revised General Ordinances of the Town of Burrillville as Article II, section 12-31 to 12-73. Under Section 12-33, when a land disturbing project is proposed, a determination of applicability must first be made by the Building Official, based on criteria outlined in section 12-61, to determine if the ordinance is applicable to the land disturbing proposal. The applicant is required to provide information describing the location, nature character and time schedule of the proposed land disturbing activity in sufficient detail to allow the building official, or his designee, to determine the potential for soil erosion and sedimentation resulting from the proposed project. The building official shall consider site topography, drainage patterns, soils, proximity to watercourses, and other such information as deemed appropriate.

Once it has been determined that an Erosion and Sediment Control Plan is applicable, an applicant shall file an erosion and sediment control plan, signed by the owner of the property, or authorized agent, designating the land disturbing activity thereon which the proposed work, subject to approval, is to be undertaken. Where any portion of the proposed development requires approval under the Rhode Island Freshwater Wetlands Act (RIGL 2-1-18 et seq.), and where the approval contains provisions for soil erosion and sediment controls, that approved plan shall be a component of the overall soil erosion and sediment control plan for the entire development (12-63 a.).

An Erosion and Sediment Control Plan is to be prepared by a registered engineer, landscape architect or a Soil and Water Conservation Society certified soil and sediment control specialist. Five sets of plans are to be submitted to the Building Official. Plans requiring planning Board approval shall follow the rules as contained in the subdivision and land development regulations (12-64. a.).

The Erosion and Sediment Control Plan shall include sufficient information about the proposed activities and land parcels to form a clear basis for discussion and review and to ensure compliance with

all applicable requirements of this article. The plan shall be consistent with the data collection, data analysis, and plan preparation guidelines in the current "Rhode Island Soil Erosion and Sediment Control Handbook", and shall, at a minimum contain the following:

- (1) A narrative describing the proposed land disturbance activity and the soil erosion and sediment control measures and storm water management measures to be installed to control erosion that could result from the proposed activity.
- (2) Construction drawings illustrating in detail existing and proposed contours, drainage features and vegetation; limits of clearing and grading, the location of soil erosion and sediment control and storm water management measures, detail drawings of measures; stock piles and borrow areas; sequence and staging of land disturbing activities; and other such information needed for construction.
- (3) Other information or construction plans and details as deemed necessary by the Building Official for thorough review of the plan prior to action being taken as prescribed in this chapter. Withholding or delay of such information may be reasons for the building official or his designee to judge the application as incomplete and grounds for disapproval. (12-64.(b))

In the Ordinance, it states that the contents of the Erosion and Sediment Control Plan shall clearly demonstrate how the principles outlined in this section have been met in the design and are to be accomplished by the proposed development project. The Ordinance then outlines thirteen specific principles to address, such as natural drainage characteristics/slopes, avoidance of steep slopes, pre and post development rates, drainage facilities and temporary vegetation/mulching to name a few. (12-65.)

I first met with representatives of Invenergy at a meeting in the Burrillville Town Hall on March 24, 2016, to discuss, among other things, what I would require from the applicants to render an advisory opinion. At that time, I was told that the plan was being worked on. I have had numerous occasions to remind the applicants this spring and summer as I have attended a number of hearings and meetings in Town. I last spoke with a representative of Invenergy at a Planning Board meeting on August 15, 2016. I was told that I should have something soon.

To date, I have not received anything from Invenergy in the form of plans, narratives or construction drawings to meet any of the requirements of the Town of Burrillville's Soil Erosion and Sediment Control Ordinance.

CONCLUSIONS

Under the Town of Burrillville Soil Erosion and Sediment Ordinance, the Building Official or his designee must make a determination of applicability for any proposed project that may disturb any existing vegetation, grades and contours of land in a manner which may increase the potential for soil erosion.

No plans, narratives or construction drawings have been submitted to my Department by Invenergy that would assist in a determination of applicability. Also, no Erosion and Sediment Control Plan has been filed.

Based on the nature of the proposal and what has been presented to the Town Planning Board and Zoning Board, and, as the project does not fall under any of the exempt activities listed in Section 12-61. Determination of Applicability (b), it is clear that the proposed project is a land disturbing activity that is subject to the Town's Ordinance.

In accordance with RIGL Subsection 42-98-9 (a), The Energy Facility Siting Board has designated the Burrillville Building Inspector the Designated Agency which shall act at the direction of the Board to render an advisory opinion, to the extent possible, pursuant to the procedures that would be followed absent the Act, as to whether the proposed work in Burrillville as part of the construction and operation of the CREC is subject to the Burrillville Erosion and Sediment Control Ordinance.

As Building Official and Inspector of the Town of Burrillville, it is my opinion that Construction and Operation of the CREC is subject to the Town's Erosion and Sediment Control Ordinance.

Based on the lack of information, under the Town's Erosion and Sediment Control Ordinance, I would have to judge the application as incomplete and consider the delay, or withholding, grounds for disapproval (12-64 (b),(3)).

RECOMMENDATIONS

The Energy Facility Siting Board is the licensing and permitting authority for all licenses, permits, assents, or variances which, under any statute of the state or ordinance of any political subdivision of the state, would be required for siting, construction or alteration of a major energy facility in the state. At the direction of the Board, I have issued an opinion as to whether the construction and operation of the Clear River Energy Center is subject to the Town of Burrillville's Soil Erosion and Sediment Control Ordinance. It is my opinion that the construction and operation of the CREC is subject to our Ordinance. Based on the information available to me at this time, I can make no recommendation to the Energy Facility Siting Board with regards to the request of the first advisory opinion except to recommend if the EFSB issues a decision granting a license to Invenergy for the CREC, they add conditions to the license that an Erosion and Sediment Control Plan be submitted to the EFSB. Said plan shall include, at a minimum, the requirements of the Town of Burrillville Soil Erosion and Sediment Control Ordinance as listed under section 12-64 Plan Preparation Contents, and 12-65 Performance Principles. It would be my opinion that said plan should be reviewed and approved by the EFSB, seeking the expert opinion of a registered engineer of their choice, with a background in soil and water conservation and sediment control, who should be a disinterested party in this matter, to review and approve the plan and oversee the site work prior to and during construction.

SECOND ADVISORY OPINION

Whether the Clear River Energy Center would meet the requirements of other municipal ordinances.

Like all communities, The Town of Burrillville has a number of General Ordinances created to assist the members of our Community in enjoyment of all the rights, powers and privileges afforded to us as citizens of our Town, State and Country. Many of these general ordinances are being addressed in the advisory opinions requested by the Energy Facility Siting Board in assisting the Board in achieving their policy objectives.

I do not feel it necessary advising the Energy Facility Siting Board as to whether the Clear River Energy Center would comply with the requirements of all of the Town's municipal ordinances as there are some ordinances, such as the Town Noise Ordinance (Article II. Noise. Section 16-31 to 49.), that are being addressed at the direction of the EFSB through other agencies. However, there are a few ordinances, such as the Soil Erosion and Sediment Control Ordinance addressed in my first advisory opinion above, where I am qualified to render an opinion. And, as the Building Official and Zoning Enforcement Officer of the Town of Burrillville, I feel eminently qualified to render an opinion as to whether the CREC would meet the requirements of the Town of Burrillville Zoning Ordinance and will address that question forthwith.

On June 17, 2016, Invenergy Thermal Development, LLC, submitted an application to the Burrillville Zoning Board to apply for a special use permit and a variance to construct the Clear River Energy Center (CREC) on property located off Wallum Lake Road (RI Rte. 100), owned by the Algonquin Gas Transmission Company. To demonstrate that Invenergy had legal standing to present this case in front of the Zoning Board, included in the application package was a portion of a heavily redacted Land Purchase Option Agreement between Invenergy and Algonquin. The option identifies a sixty seven acre parcel of land, Exhibit A, the Property Zone. The Applicant also submitted a survey plan, prepared by Richard S. Lipsitz, PLS, titled "Master Subdivision Plan Clear River Energy Center" showing a "Parcel 2" Invenergy Parcel, which appears to be the area for the proposed site, even though there is no metes and bounds description of the parcel. Enough information can be gleaned between the redactions to see that the agreement to purchase the property is in effect until December 17, 2016.

In the application, Invenergy requested two things from the Burrillville Zoning Board: First, a Special Use Permit to construct an electric generating facility, and second, relief from dimensional requirements in the Burrillville Zoning Ordinance. In the application, Invenergy stated that, **"The proposal conforms to all dimensional requirements except the height of two stacks, several structures and buildings"** (Zoning Application 16-05). The application then listed a number of structures and their heights and noted the following:

"Section 30-03 of the Town of Burrillville Zoning Ordinance excludes "chimneys" (in this case the exhaust stacks) from the definition of "building Height." Nevertheless, as set forth above, Invenergy proposes the above mentioned components to be above 50 feet. Invenergy therefore requests a height variance. The height allowed in the F-5 District is fifty (50) feet. Pursuant to

Section 30-34(e) (4), an applicant can request dimensional relief in conjunction with a special use permit.” (Application 16-05)

The precise articles and sections of the Ordinance authorizing consideration of the variance were listed as **“Section 30-34(d) (4) (a-d) and 4(e) (2) of the Town of Burrillville Zoning Ordinance”** (Application 16-05).

As Building Official and Zoning Enforcement Officer for the Town of Burrillville, it is my responsibility to review projects proposed in the Town to determine whether the project is in conformance with the Zoning Ordinance, and if not, what relief would be required by an applicant for a proposed project. (See Burrillville Zoning Ordinance 30-32 (b)(2), and RIGL 45-24-54). While reviewing the CREC proposal, notwithstanding what was submitted by Invenergy and what was presented in testimony at the Zoning Board hearing by the applicant’s expert witness, I have determined that some of the information was incorrect and, more importantly, more relief should have been requested by the Applicant.

In regards to the Dimensional relief requested by Invenergy for constructing the CREC, the Town Zoning Ordinance Article IV. Zoning District Dimensional Regulations, Section 30-111 lists a table of dimensional regulations for each Zoning District, the maximum height of a structure is listed in two categories: principal and accessory. The maximum height of a principal structure is fifty (50) feet. The maximum height of an accessory structure is twenty five (25) feet. In the definitions in the Town Zoning Ordinance, 30-03, **Principal Use** is defined as, **“the main or primary purpose for which a building, other structure and/or lot is designed, arranged or intended, or for which they may be used, occupied or maintained.”** In the Town Zoning Ordinance, the definition of an **“Accessory Use”** is as follows: **“a use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building.”**

It could be that every building and structure built as part of the CREC is a principal structure, or it may not be the case. I do not have the information necessary to make that determination. The applicant should determine which structures are which and identify each one as to principal or accessory and list accordingly. If the structure requires a height variance from either the principal or accessory column, it should be noted.

I have been present at a number of hearings in Town these past six months. I was present at the Planning Board hearings of June 20, July 11, and August 22, 2016, as well as the Zoning Board hearings of July 12, and August 30, 2016. I have also reviewed the data requests sent to Invenergy and the responses to them. I have also reviewed the application titled **“Major Source Permit Application Combined Cycle Electric Generating Facility, Clear River Energy Center Burrillville, Rhode Island,”** prepared by ESS Group Inc., dated June 26, 2015.

Based on my review of what has been made available, there are a few areas where I would take issue with the applicant and their land use planning expert, Mr. Edward Pimentel, regarding the application presented to the Zoning Board as to its completeness, as well as conclusions, absent of the

EFSB siting act. The Planning Board would have been more substantive with respect to advising the Zoning Board via Development Plan Review and the Aquifer Overlay District.

In regards to the project site, the drawing in the application is a somewhat "L-shaped" lot located totally within the confines of the Algonquin property with no frontage on Wallum Lake Road. At some point the lot shape and size was modified. With no verification, such as a description of the proposed site by metes and bounds, I am being asked to assume that the proposed property being purchased by Invenergy from Algonquin to construct the CREC is the lot shown on the site plan dated May 06, 2016, titled "Master Subdivision Plan" drawn by Richard S. Lipsitz PLS, Waterman Engineering. The Plan also denotes delineated wetlands on the property. It is clear that the parcel titled "Parcel two Invenergy Parcel," was designed in a manner to remove areas of regulated wetlands to remain on property owned by Algonquin, creating a large lot of an odd shape meeting the frontage requirement for the F-5 Zoning District along Wallum Lake Road for access. The reasoning for the configuration in the application is that:

- (1) Parcel will have frontage on Wallum Lake Road.
- (2) There will not be a need to have a new access road that would cross over the pipeline.
- (3) Suitable buffer to nearby residential properties and to AGT compressor station.

The Town of Burrillville Zoning Ordinance 30-153. Lots containing wetlands. states **"for any lot which has been determined by the RI Department of Environmental Management to contain a wetland, if the wetland area, including wetland buffer, is greater than 40 percent of the total area, the following restrictions shall apply:**

(1) Only Single Family housing will be allowed in all residential zones;"

Based on the configuration of the proposed lot, it appears that the applicant is trying to create a lot in an already agreed upon area on other, existing lots owned by Algonquin, that addresses the restriction noted above. If the lot where the CREC is proposed to be constructed required relief from 30-153(1), absent the Act, it could not be constructed, as only single family residential housing would be allowed. There has been no wetland verification by RIDEM as to the wetlands and setbacks identified on site. Until that has transpired, there is no way of knowing whether the applicant requires relief or not under 30-153 even with the proposed reconfigured lot.

Absent the Act, I would have required the applicant to submit an application to the Burrillville Planning Board for a Development Plan Review as required in Section 30-201 of the Zoning Ordinance for the following types of development:

- (1) Any proposed commercial or industrial development, including additions and expansions of existing development, constructed after the effective date of this section which, in aggregate, exceeds 10,000 square feet or generates greater than 500 vehicle trips per day as defined in the Institute of Transportation Engineers, Trip Generation Manual.

- (2) Any proposed commercial or industrial development, including additions and expansions of existing development, which would result in the use or storage of hazardous materials.
- (3) As defined in the hazardous substance list prepared by the RI Department of Labor, Division of Occupational Safety, or hazardous wastes as defined in section 30-03 of this chapter, in quantities above those normally found in household use. For the purposes of this section, household quantities of hazardous materials or wastes shall mean 675 gallons or less of oil on site at any time to be used for heating of a structure or to supply an emergency generator, or 25 gallons(or the dry weight equivalent) of other hazardous materials or wastes on site at any time.
- (4) All commercial and industrial developments within any of the Town's aquifer overlay districts.
- (5) Any development that proposes to clear, grade or disturb greater than 20,000 square feet of land, except clearing conducted pursuant to a validly issued subdivision approval, building permit, or earth removal permit, or for existing agricultural, forestry or related purposes.
- (6) Any project involving the development of land which is filled to a depth of more than four feet over any area of more than 10,000 square feet or involving the moving and grading of more than 2,000 yards of fill on site.
- (7) Any development involving the filling or alteration of wetlands or wetland buffer area; any development within the 100-year floodplain; any development within 200 feet of rivers, ponds, lakes or vernal pools; and land within 100 feet of other resource areas.
- (8) Any development requiring license pursuant to G.L. 1956 Sub-section 42-98-4, shall submit a development plan in accordance with this section. The Planning Board shall review the proposal involving the siting, construction or alteration of a major energy facility for conformance and shall forward its findings, together with the record supporting its findings and a recommendation for final action, to the siting board established pursuant G.L. 1956 Sub-section 42-98-1 et seq.
- (9) Any other development which may, in the opinion of the Building Official, significantly alter local drainage patterns and may require development of environmentally sensitive areas.

A positive vote of the Planning Board would allow the applicant to submit an application to the Zoning Board for whatever relief was requested. Barring an appeal, a negative vote of the Planning Board would result in the end of the project.

In the early nineteen eighties, the Town of Burrillville having just encountered an issue with hazardous waste contamination resulting in a Super Fund site, partially in Burrillville and partially in North Smithfield, over that portion of the Branch River Basin located in one of its lower villages, Tarkiln, and now facing strains on groundwater sources due to development within the Town, adopted Aquifer Zoning in the Town to protect, preserve and maintain the quality and supply of groundwater reservoirs in Burrillville which the residents depend on for drinking water supply. The Ordinance, 30-202, Aquifer Zoning, states in section (a) purposes;

In order to protect the water resources of the Town of Burrillville, prevent the development or use of land in the groundwater sources and aquifer area in a manner tending to adversely affect the

water quality within the Town of Burrillville, or tending to destroy or have a substantially adverse effect on the environment of the Town by virtue of pollution of the land or water by foreign substances including noxious liquids, gases or solid wastes or any potentially harmful conditions which may endanger the health, safety and general welfare of the citizens of the Town of Burrillville. Through use of the following sections, density and uses will be controlled over and around our groundwater sources and aquifer zones.

The Aquifer Zones and Wellhead Protection areas were established as an overlay zone duplicated from the US Geological Survey Water Resources Investigation Map 18-74, originally prepared for the Rhode Island Water Resources Board, and titled "Geohydrologic Map of the Branch River Basin, Rhode Island," and superimposed it over the Town of Burrillville Zoning Map.

While reviewing the Town Aquifer Overlay Map, it is clear that parcel 153-002, a sixteen plus acre parcel owned by Algonquin Gas Transmission, LLC. is in the A-80 Aquifer Zoning District. In fact the applicant made note of the A-80 Aquifer District designation for the parcel on the first page of the Application to the Zoning Board. When reviewing the proposed "Parcel 2" on the Master Subdivision Plan, Clear River Energy Center, drawn by Richard S. Lipsitz, PLS, it is also clear that portions of the CREC are within the A-80 Aquifer Overlay District. Although Mr. Lipsitz failed to identify where the overlay district is situated on the parcel, it is not necessary to go further in this regard, as 30-202(b), (4), Multiple Zone Parcels, states the following.

Parcels containing more than one "A" Zone, or if any part of a parcel lies within an "A" Zone, the most restrictive zone shall take precedence.

It appears that the location for the two, one million gallon oil tanks and the containment berm are well within the A-80 Aquifer Zone.

Under 30-202 (f) Prohibited Uses, it states the following:

The following uses are prohibited in aquifer zones and wellhead protection areas:

- (1) Storage and/or loading of road salt or deicing chemicals.**
- (2) Incinerators, sanitary landfill sites, solid waste transfer stations and wastewater treatment plants, except publicly owned sewage treatment facilities.**
- (3) Septage disposal inconsistent with the requirements of this section.**
- (4) All uses which involve the use or storage of hazardous substances designated under 40 CFR 116, pursuant to section 311 of the Federal Clean Water Act and subsequent amendments thereto or other toxic pollutant as defined under G.L. 1956 Sub-section 46-13.1-3, as amended. Provided, however, that minor or insignificant quantities of such substances for office use may be used or stored on the premises if, in the opinion of the zoning enforcement officer and building official, the presence of such substance does not constitute a potential for degradation of surface water or groundwater resources in the area and such substance is contained in a suitable storage area. Insignificant quantities of hazardous substance may be constructed as that which is necessary for the operation of an office or business including the operation of equipment, vehicles or other mechanical systems necessary for the operation of a permitted**

use. All uses which involve the use or storage of hazardous wastes or materials required for water or wastewater treatment such as storage of chemical products required by statute, rule or regulation are prohibited; such storage in freestanding, above-ground containers with enclosed and covered, full secondary containment are excluded from these criteria.

- (5) Storage or piping of petroleum or refined petroleum products, except within buildings in which said petroleum products will provide heat when burned. Storage of liquid fuel for said heating purpose in excess of 300 gallons is prohibited except for storage of said liquid fuel which conforms with the regulations of the Rhode Island Department of Environmental Management (DEM); provided, however, that the department of environmental management has promulgated regulations for said storage. Underground storage of petroleum fuel or refined petroleum products in any quantity is prohibited.
- (6) The alteration of any natural site features or topography including but not limited to the cutting or removal of trees or other vegetation, or dumping, filling, excavation, grading, transferring or removal of any gravel, sand, loam or other soft material, rock or ledge, prior to obtaining all permits and approvals for final development plans, including where the use of land is for the primary purpose of agriculture. Where such alteration is less than one-half acre in area or 100 cubic yards in volume and is incidental to a permitted use and performed in the normal course of maintenance or operation of such permitted use, this paragraph shall not apply.
- (7) All uses not specifically permitted in the aquifer zones and wellhead protection areas (this section) are prohibited.

Based on the language in the previous section, it is my determination that the proposed use of the CREC is not a permitted use in the A-80 Aquifer Overlay Zone. I have also determined that a special use permit would not be allowed for the following reasons:

Having reviewed the use table in the Zoning Ordinance, I would note that, under Section 4. Public and Semipublic Use, Number thirteen (13), "Electric generating facility," is allowed by Special use permit in the F-5 Farming/residential Zone. In 30-03. Definitions. The definition of a special use is as follows:

"means a regulated use which is permitted pursuant to a special use permit issued by the authorized governmental entity, pursuant to G.L. 1956 Sub-section 45-24-42, or section 30-34(d) of this chapter. Formally referred to as a special exception."

Under the Town of Burrillville Zoning Ordinance, Chapter 30-03 Definitions, the definition of a permitted use is, **'a use by right which is specifically authorized in a particular zoning district.'**

Clearly, a use allowed as a special use does not fall into the category of a permitted use. To construct the CREC at the proposed site, the applicant would be required to obtain a Use Variance. The definition of a use variance is also located in 30-03, Definitions.

Variance means permission to depart from the literal requirements of a Zoning Ordinance for authorization for the construction or maintenance of a building or structure, or for the establishment or

maintenance of a use of land which is prohibited by a zoning ordinance. There shall be only two categories of variance, a use variance or a dimensional variance.

- (1) **Use Variance.** Permission to depart from the literal requirements of a zoning ordinance where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the zoning chapter.
- (2) **Dimensional variance.** Permission to depart from the dimensional requirements of a zoning ordinance, there[where] the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

Absent the Act, it would be my determination that Invenergy would have to obtain a use variance to construct the CREC. As the owner of the property, Algonquin Gas Transmission, LLC, already has a beneficial use of the property, a Gas Compressor Station that has been in existence since, at least, the 1960's.

In the Town of Burrillville Zoning Ordinance Article V. Special Regulations, Section 30-152. Multiple structures on one lot. the ordinance states: **"Only one principal structure shall be permitted on any lot in the F-5, F-2, R-40, R-20, R-12 zones as well as the Aquifer overlay zone."**

Having read the description of the Clear River Energy Center in the application, it is apparent that this generating facility is in effect two distinct power plants that can stand alone, or work together, to generate electricity. This would constitute more than one principal use on the property.

The three dimensional drawing of the CREC demonstrates the same. Also, two of the drawings in the Zoning package submitted by Invenergy, titled, "Single shaft site arrangement" and "Single shaft plot plan," show only one of the two power plants being utilized. A plan showing the "single shaft general arrangement" shows the same configuration with areas on the drawing noting: "Future Equipment Note 1." Note 1 states that "the two units at this facility will be installed in phases. The first unit (unit 1) shall be installed in phase 1 and the second unit shall be installed in phase 2. The common BOP systems shall be designed for both units and installed in phase 1."

In the Noise Level Evaluation for the CREC in the application to the EFSB, it is stated that **"CREC will generate up to 1,000 megawatts(MWs) of electrical power(nominal), utilizing two H Class natural gas-fired combustion turbines(CTs); two heat recovery steam generators(HRSG), and two steam turbines(STs). Each CT and ST pair will share a common generator and be enclosed within separate buildings."**

In Invenergy's response to the Town of Burrillville's 7th Set of Data Requests, dated May 17, 2016, Michael Feinblatt, of ESS Group, Inc., in his response to the Town's Request number 7-3, clarifying

the proposed permit operation limit(s) for the combustion turbines when using Ultra Low Sulphur Distillate (ULSD) fuel, stated that **“Invenergy is not proposing an annual limit on the number of days of combustion turbine ULSD usage per year nor is Invenergy proposing individual ULSD usage limits for each turbine. Invenergy is proposing to limit total ULSD usage by both combustion turbines to the equivalent usage of 60 days at base load.”**

Based on the information above, even without actual plans and construction drawings, it is clear that the CREC proposal envisions utilizing two distinct plants that can generate electricity separately or together. Each plant is capable of generating up to 450-500 Megawatts of electricity each.

The Town of Burrillville Zoning Ordinance has a definition for “electric generating facility” in section 30-03 of the Ordinance where it is defined as, **any generating facility designed to generate electric energy in excess of 180 megawatts(“MW”) annually.**

Chapter 30-71, Zoning District Uses, under section 4, number 13, electric generating facility, notes that the use is allowed by Special Use Permit in the F-5 Farming/Residential District.

It is clear that the use in the Ordinance is written in the singular. As each plant can produce approximately three times the minimum capacity to meet the definition requirements of an electric generating facility, absent the Act it would be my determination that a use variance would be required to construct two generating plants on the same parcel of land.

Also, as noted earlier in my advisory opinion, absent the Act, the Planning Board review would have been more substantive with respect to advising the Zoning Board via Development Plan Review and the Aquifer Overlay District Review as to the requested Special Use Permit.

CONCLUSIONS

On June 17, 2016, Invenergy Thermal Development, LLC, submitted an application to the Burrillville Zoning Board requesting a special use permit to construct an electric generating facility and a dimensional variance seeking relief from the height restrictions of 30-111, Table of Dimensional Regulations to construct the facility.

As Building Official/Zoning Enforcement Officer for the Town of Burrillville part of my responsibilities are to review projects requiring Zoning relief to determine conformance with the Zoning Ordinance.

After reviewing the Zoning Application presented by Invenergy and after attending the Zoning Hearings on July 12, 2016 and August 30, 2016, it is my opinion that the relief requested by the applicant is incorrect.

As mentioned above in my advisory opinion to the Board, the applicant should have been more specific in its requests for dimensional variances for relief from 30-111 the Table of Dimensional Regulations, listing all structures, both principal and accessory, that require relief from the fifty feet height requirement for principal structures and twenty five feet for accessory structures.

As mentioned above in my advisory opinion to the Board, absent the Act, the applicant's project would have been subject to review by the Planning Board prior to applying to the Zoning Board.

There was not enough information presented by the applicant to determine if the subject lot complies with 30-153, Lots containing wetlands. If it does not, absent the Act, to construct such a facility would require a use variance.

A portion of the Algonquin parcel 153-002 is located within an A-80 Aquifer Overlay District. A sizable portion of the Clear River Energy Center is also situated on this parcel and, at the least, the two, one million gallon oil tanks for ULSD storage are in the regulated area. Under 30-202 (f) Prohibited Uses, all uses not specifically permitted in the aquifer zones are prohibited. Construction of an electric generating facility is not a permitted use in the Aquifer Overlay Districts. Absent the Act, to construct such a facility would require a use variance.

Under the town of Burrillville Zoning Ordinance, electric generating facility is a use allowed in the F-5 Farming/Residential Zone by special use permit. The proposal for the CREC includes plans to construct two electric generating facilities on the property. Section 30-152 of the Town Zoning Ordinance prohibits more than one principal use on a lot in the F-5 Zone. Absent the Act, to construct two electric generating facilities would require a use variance.

RECOMMENDATIONS

After reviewing the Town of Burrillville Zoning Ordinance, which includes the Zoning Map and the Aquifer Overlay Map, it is clear that siting an electric generating facility in the F-5 Farming/Residential Zoning District is allowed by Special Use Permit. However, referencing this parcel of land, absent the Act, it would be impossible to be utilized for this use for the reasons I have already noted.

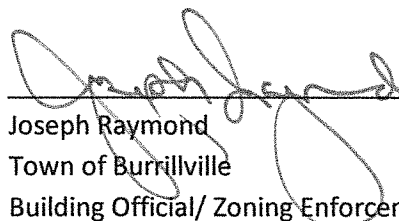
From the beginning, I have been unable to get pertinent information needed to make the advisory opinions you have requested. I believe the major obstacle is two years ago, Invenergy identified a parcel of land, did what they had to do to get control the site, and has now put themselves into the position of having to defend why this parcel was determined by Invenergy to be the ideal site for the CREC when more and more it appears not to be, at least speaking as the Zoning Official.

Based on my review of this use, on this parcel of land, utilizing what I have available to review, I would have to recommend that this is a poor choice of a site for constructing the Clear River Energy Center. It appears that the Energy Facility Siting Board has a daunting task in making this decision as to whether the CREC should be constructed, or, if constructed, should be constructed on this site. I do not envy you having to make this decision.

In your deliberations, if you determine this project should be constructed on this parcel of land, I would strongly recommend that you at least consider approving a smaller project. For example, approving only the first phase of this project being constructed on this site would still result in an electric generating facility of the magnitude of 450-500 megawatt capacity. Scaling the project down by half might allow the applicant to reconfigure the site to be outside of the A-80 Aquifer Overlay District. This could result in a plan that might also address the oil storage on the site, which would now be of a lesser volume.

In closing, I thank you for your considering my advisory opinions in rendering your final opinion in regards to this matter.

Dated: 9/07/16



Joseph Raymond
Town of Burrillville
Building Official/ Zoning Enforcement Officer