

Daniel Zevon, et al. v. Ronald Rossi, et al., C.A. No. PC-2019-6129 (May 27, 2022)  
<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/19-6129.pdf>

**Holding:**

Rhode Island Superior Court remanded the case (an approved Master Plan for the Natick Solar Project) to the Cranston City Plan Commission to reopen public comment in accordance with the proper notice requirements. The Court denied the Appellant’s request for the Court to disqualify a member of the Plan Commission for bias.

**Key Takeaways:**

1. The Cranston City Plan Commission was required to reopen public comment before voting on the Solar Project Master Plan application because it chose to accept additional evidence following the close of public comment.
2. *“The applicable ordinance guarantees the Appellants the right to review and comment on that evidence, and that right cannot be denied by dismissing the submissions as insignificant.”*

**Facts:**

On November 9, 2018 Southern Sky Renewable Energy (Defendants) submitted an application to the City of Cranston to build a ~30-acre solar farm in Western Cranston. The project is a permitted use under the City’s Zoning Ordinance.

The Plan Commission held public informational meetings on December 8, 2018, January 8, 2019, and February 5, 2019.

At the end of the January 8<sup>th</sup>, 2019 Plan Commission Meeting, the Commission voted to close public comment and voted to continue the solar project master plan application to February 5<sup>th</sup>.

At the February 5<sup>th</sup>, 2019 meeting, a revised site plan by the applicant was entered into the record. The City Plan Commission added additional recommendations to its memo to the Plan Commission based on a site visit to the property and the revised site plan. The Plan Commission approved the Master plan with a 5-4 vote.

Appellants (neighbors to the proposed solar project) appealed the Plan Commission’s decision approving the master plan to the Cranston Zoning Board of Review on the grounds they were not allowed the opportunity for public comment on the revised site plan at the February 5<sup>th</sup> meeting.

On May 8<sup>th</sup>, 2019, the Cranston Zoning Board of Review (also Defendants) upheld the Plan Commission Decision.

Appellants appealed the decision to Superior Court.

**Analysis:**

### **1. Post-public-comment submissions**

Appellants argued they were not given an opportunity to review and comment on the revised site plan submitted to the Plan Commission after the Commission closed public comment in which the solar developer relocated 500 solar panels. Appellants also argued they did not have the opportunity to review and comment on the addendum and additional data submitted by the City staff to the Plan Commission.

Defendants Southern Sky Renewable Energy and the Plan Commission's Counsel argued the application is a Master Plan, and therefore the revisions to the plan did not affect the concept. Defendants Counsel also argued the Plan Commission had the right to close public comment, the Commission followed the correct procedures and made the required findings of fact, noting the public attended a site visit to the property, and the vote occurred following multiple public hearings and public comments, and that additional materials were minor and no prejudicial error occurred.

The Court cited the City of Cranston's Subdivision and Land Development Regulations language on informational meetings, deciding the regulation is clear; the Planning Board is precluded from voting on an application until the public is given the opportunity to submit oral and written comments on the application. Because the Cranston City Plan Commission chose to accept additional evidence following the close of public comment, it was required to reopen public comment before voting on the Master Plan Application.

*“The applicable ordinance guarantees the Appellants the right to review and comment on that evidence, and that right cannot be denied by dismissing the submissions as insignificant.”*

### **2. Bias**

Appellants argued one of the Commissioners was *“biased and was predisposed to voting in favor of the Application based on his personal focus on climate change”* because he *“improperly conducted private research on the issue”*. The Commissioner shared a Providence Journal Article discussing climate change and the Natick Solar Project with City Staff, stating his concern over *“dire consequences that have been and will be affecting us locally – unless we do our very best to reduce the carbon footprint. That’s the basic premise underlying my decision on the matter.”*

The Court determined the Commissioner's research materials and communications with the Planning Department staff were *ex parte* communications prohibited by § 42-35-13.

The Court decided the Commissioner's previous *ex parte* communications do not warrant his disqualification from voting on the matter when it is remanded back to the City Plan Commission.

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