

1984

**A LEGISLATIVE APPROACH TO REGULATING SOLAR ACCESS:  
AMENDMENTS TO THE PROPOSED RHODE ISLAND ZONING  
ENABLING ACT OF 1984**

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MASTER OF COMMUNITY PLANNING  
RESEARCH PROJECT  
OF  
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REGULATING SOLAR ACCESS:  
AMENDMENTS TO THE PROPOSED  
RHODE ISLAND ZONING ENABLING  
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BY

AMY ABRAMSON-DENHOFF

A RESEARCH PROJECT SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE AND MASTER OF  
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UNIVERSITY OF RHODE ISLAND

1984

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CHAPTER 1  
BASICS OF SOLAR ENERGY  
FOR THE  
LAND USE PLANNER

The use of solar energy as a viable means of heating and cooling buildings has greatly increased within the past ten years. In 1974, Congress stated in the Solar Energy Research, Development and Demonstration Act that ". . . it is in the Nation's best interest to expedite the long-term development of renewable and non-polluting energy resources, such as solar energy. . . ." <sup>1</sup> The realization that fossil fuels are becoming increasingly scarce, coupled with the political ramifications of our dependence upon such fuels has led to greater public acceptance and Congressional recognition of the importance in seeking alternative energy sources. Both technological advancement and increased economic feasibility, have also led to the growth and development of solar technology. This growth will continue if the use of this solar technology is assured access to the sun. There are certain land use tools which the planner can utilize to insure that access to sunlight is assured for the current and future solar energy user.

In order that the land use planner facilitate the full use of solar energy, he must understand at least two basic principles which are relevant to solar energy. The following discussion centers on these two principles: solar energy systems and solar access.

A solar energy system is a device used to capture the sun's radiation and transform it into usable heat. <sup>2</sup> Solar energy systems usually consist of four separate components: a solar



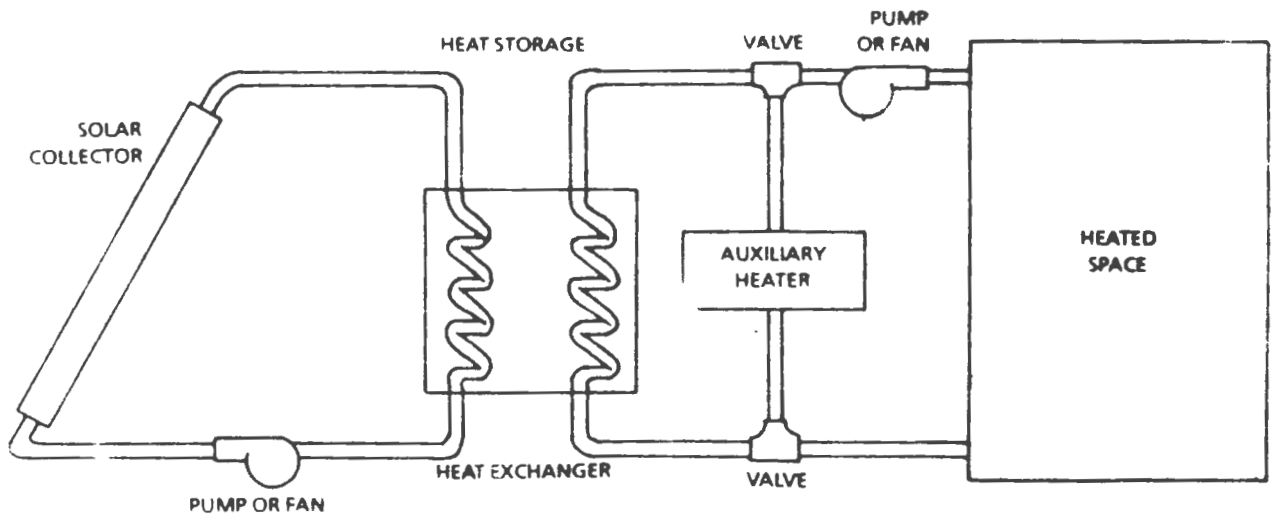
collector; a transfer system; a storage system; and a control system. For solar access purposes, the planner need only be concerned with the collector because it is here that solar radiation enters the system.<sup>3</sup>

Solar energy systems are divided into two categories: active and passive. In an active system, heat generated by the solar collector is moved by fans and pumps from the collector to storage or to the place where usable heat is needed<sup>4</sup>. (see figure 1) The most well-known type of collector is the "flat-plate collector", which is a glass covered insulated box containing an absorber plate. These collectors are usually located either on a building utilizing solar energy or an adjacent building such as a garage or storage shed. In New England, it would be more advantageous to install an active system, because of the potential to store the energy for use at another time, when it may be cloudy, raining or snowing.

A passive system is often referred to as a direct system because the heat is used at the place where it is generated. (see figure 2) In the usual passive system, solar energy is "collected" through south-facing glass, absorbed in the mass of the building (or in special storage elements), and distributed to adjacent areas by radiation and convection.<sup>5</sup> A building that is heated through passive solar energy often appears to be similar to a home that is heated by oil, wood, or coal. This is because the passive system usually operates without any moving parts.

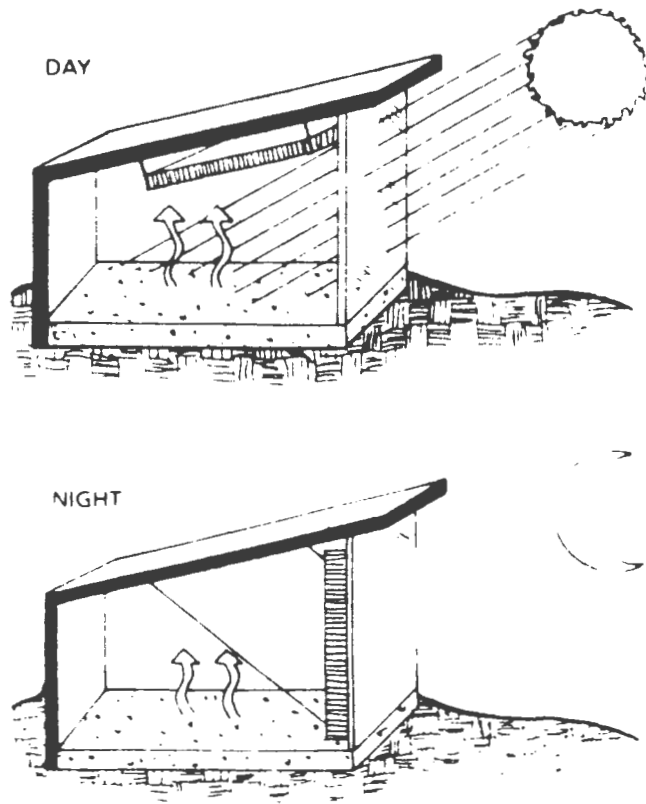
Solar access refers to the availability of sunlight to solar energy systems. Protecting this access implies preventing shadows from vegetation, buildings or other obstructions from

Figure 1. A Typical Active Solar Energy System



Source: H.U.D. Publication: "Protecting Solar Access for Residential Development: A Handbook for Planning Officials."

Figure 2. A Typical Passive Heating System



A passive space heating system south-facing glass is the collector, a concrete floor slab acts as storage, the heat radiates naturally.

Source: H.U.D. Publication: "Protecting Solar Access for Residential Development: A Guidebook for Planning Officials."

shading the solar system. Several factors influence the amount of sunlight that falls onto a particular site. These factors also influence the ease or difficulty of protecting access to that sunlight. Some of these factors include 1) the sun's relationship with the earth; which influences 2) the latitude of the site of the structure; and 3) the topography of the site.

The first factor of solar access involves the relationship between the earth and the sun. The earth revolves around the sun and rotates on its axis once a day. This gives the impression of sun travel.<sup>7</sup> Unfortunately for solar access, only at the equator does the sun travel directly overhead; everywhere else it moves at an angle to the earth's surface. In the northeastern United States, the sun is lower than it is in southern states, thereby creating longer shadows. As the year progresses from winter to summer, the maximum altitude of the sun increases daily until it reaches its highest point on the summer solstice (usually June 21).<sup>8</sup> After June 21, the altitude begins to drop until it reaches its lowest point on December 21, the winter solstice, the day with the longest shadows.<sup>9</sup> The sun's relationship with the earth provides us with a cyclical problem: in the Northeastern U.S., one would be more apt to want to utilize a solar energy system to heat his home because the winters are cold and long. Yet in the Northeastern U.S., the shadows created from buildings, and vegetation are longer, creating greater difficulty in assuring solar access for the solar energy system. The problem is that the reason the winters are cold and long is because of the latitude of Northeastern U.S. region.

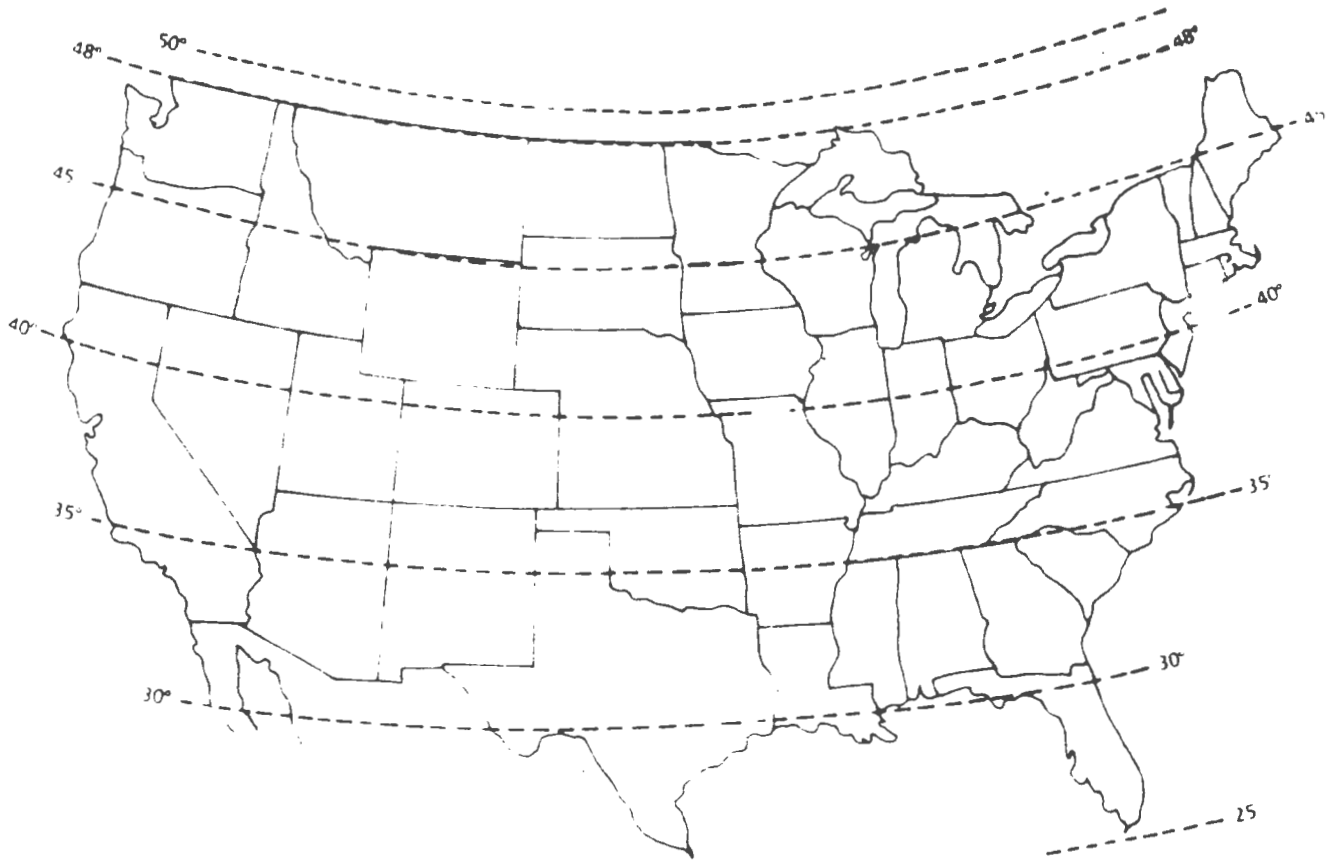
Another factor relevant to solar access involves the

latitude of the site. Latitude is a measure of the angle between the equatorial plane and the zenith of point south on the earth's surface. As can be deduced from Figure 3, the equator is at zero degrees and both the South and North poles are at 90 degrees.

Here it is important that the planner understand the implications of latitude for protecting solar energy systems. The sun's angles vary with latitude because the sun strikes different global points at varying angles. As one travels north in the United States, the angle of the sun is lower, due to the curved surface of the earth near the poles. The higher the earth's latitude, the lower the sun is in the sky, creating longer shadows. These longer shadows make it difficult to protect solar collectors from shade, making solar energy systems less effective. For example, as Figure 3 illustrates, Providence, RI would be at approximately 42 degrees, and Jacksonville, Florida would be at approximately 30 degrees. Therefore, protecting solar energy systems from shade at a site in Providence would be more difficult because it is farther north than Jacksonville and the angle of the sun is lower, creating longer shadows.

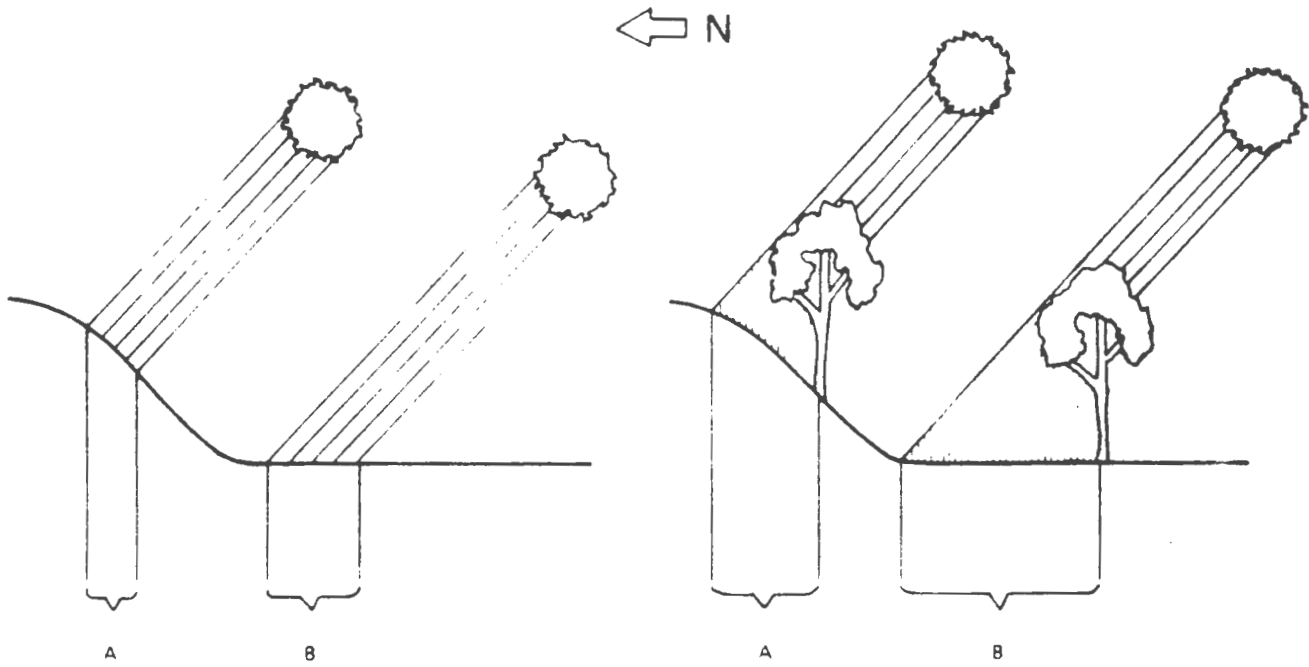
The final solar access factor to be discussed is the topography of a given site. The potential for solar access is often influenced by the slope of the given site. As the degree of slope changes, the angle at which the sun strikes the site also changes. As figure 4 illustrates, more concentration of solar radiation is gained on a south facing slope than on south facing flat land. This figure also illustrates that the shadows are shorter on sloped land than on the flat land. These shorter shadows increase the amount of available sunlight, thereby

Figure 3. Latitudes of the Contiguous States



Source: H.U.D. Publication: "Protecting Solar Access for Residential Development: A Guidebook for Planning Officials."

Figure 4. Radiation and Shadow Length on a South Slope



Area of ground receiving the ray on flat ground, (B) is larger than area on south slope, (A). Thus more energy is received per unit area on the slope.

Shadow cast by tree on flat ground, (B), is longer than the one cast by same tree on south slope, (A).

Source: H.U.S. publication: "Protecting Solar Access for Residential Development: A Guidebook for Planning Officials."

increasing solar gain. While it is not the ideal situation, it is possible to place a solar collector on a building with a north facing slope, and position the solar collector to the south.

The above discussion has given the planner an overview of the basics of solar energy. Protecting solar access to the solar energy systems depends on many factors including the relationship between the earth and the sun; latitude and topography. It is important that the planner understand these factors if he is to utilize the land use tools available to him to plan and regulate for solar access.

It is also important for the planner to understand the legal framework for regulating solar access. The next chapter will present a review of the evolution of legal thinking on the regulation of solar access, as well as the current legal framework with which the planner will be working.



CHAPTER 2  
LEGAL ASPECTS  
OF  
SOLAR ACCESS

As Chapter 1 illustrated, use of solar energy is dependent upon access to direct sunlight in order to utilize the active or passive collector mechanism. Receiving access to direct sunlight involves a variety of legal issues because as the sun's rays strike the earth, they strike at an angle of less than 90 degrees to our planet and therefore have the potential to bisect another piece of land. As a consequence, a person's solar access may be blocked by his neighbor's structures, vegetation, or land formation. Here a potential conflict may be created. The question arises, that as a matter of right, can the user of solar energy demand access to direct sunlight?

Several categories of law, within English common law, help define solar access. The English Common Law Doctrine of Ancient Lights is the oldest legislative doctrine that is applicable to solar access. The Doctrine of Ancient Lights provides that if a landowner has received light from across his neighbor's land for a certain period of time, he has a right to continue enjoying it.<sup>1</sup>

In the past, most American courts have repeatedly refused to recognize a "right to light". The most prevalent case in this area is the 1958 Miami, Florida case of Fountainbleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.<sup>2</sup> The arguments presented by the Eden Roc Hotel, owned by Forty-Five Twenty-Five, Inc. were based on the theories of the Doctrine of Ancient Lights: the Eden Roc assumed that they were entitled to the free flow of sunlight and air onto its property.

In this case, the Eden Roc Hotel, located north of the Fountainbleau Hotel included an outdoor swimming pool on their southern property line. A few months after the hotel was built, the Fountainbleau began to build a fourteen story high addition which in effect would place the Eden Roc swimming pool in shadow. Eden Roc filed suit, seeking temporary injunction on construction. Eden Roc alleged that the Fountainbleau was acting with malice and interfering with implied "easements of light and air" enjoyed for more than twenty years by the Eden Roc and its predecessors.<sup>3</sup> The trial court granted the temporary injunction. The court stated that one property owner is not entitled to use his property at the expense of injuring a neighboring property owner.

The Fountainbleau Hotel appealed the case and the decision of the trial court was reversed. The Florida Court of Appeals stated that one property owner must not use his property to injure the "lawful rights" of another property owner. The court pointed out that in this country there is no lawful right to free access of light or air. Because the free flow of light or air is not a protected lawful right, Eden Roc had no valid claim against Fountainbleau. As a result Eden Roc had to absorb the loss of not being able to fully enjoy the use of their swimming pool, and therefore, they built a new pool on a different parcel of land. Essentially, the courts stated that one property owner is not entitled to own certain rays of the sun that strike in a specific geographical area.

Both the Doctrine of Ancient Lights and the Fountainbleau Hotel Corp. v. Forty-Five Twenty-Five, Inc. case are based on the theory of prescriptive easement. This prescriptive easement is a right to use the land of another acquired by long continued use of the land in the past which prevents the owner of the servient (used) land from making another use of his land which would interfere with the easement.<sup>4</sup> For solar access purposes, enforcement of an easement means that the end user is allowed to prohibit an adjacent property owner from blocking access to the the sunlight needed to operate his collector.

Even if the courts did accept a "right to light", the Doctrine is unworkable because of two major limitations: amount of time and amount of light.

First, to insure solar access, the length of time necessary for a landowner to validly claim that he has received light from the adjacent land is twenty-seven years.<sup>5</sup> Considering the rampant development of land in America today, this prescription appears unrealistic. Scholars often ask if the 27 year requirement is shortened, what constitutes a reasonable amount of time for a landowner to enjoy or receive light from adjacent land?

The second limitation of the Doctrine of Ancient Lights is the amount of allowable light. The Doctrine states that the amount of light required for solar access should be sufficient to read a book in the center of a room. This is not a useful standard as it would be difficult to relate the light needed to read a book to the amount of light needed for a solar collector.

Modification of the doctrine to establish contemporary solar access rights may be somewhat difficult. This is because

societys' preferences and priorities during the era of the Common Law Doctrine are different from those of today. The Ancient Lights Doctrine is a protection of the individual; insuring his right to sunlight within his home. A solar access policy would have to insure that enough sunlight strikes the collector to maximize the sun's rays. Such a policy would have to apply to both residential and industrial properties, the later requiring more energy than the former. Therefore it would be very difficult to define legally the concept of enough sunlight as well as maximizing the sun's rays.

It is clearly evident that there are difficulties in relating the Doctrine of Ancient Lights/prescriptive easements to the solar access issue. Other common-law approaches have been offered to the courts as a means of solving the solar access problem, one of which is the common law of nuisance.

"To meet the burden of proof, the plaintiff in a nuisance suit must show irreparable damage and demonstrate that the hardship would be greater than would be caused by enjoining the defendant's activity—a standard the solar-energy user probably could not satisfy."<sup>6</sup>

Solar easements are another approach, yet they are limited in use. In 1975, Colorado was the first to enact a statute providing procedural guidelines for express solar easements. Colorado's statute explains procedures for recording easements for light and air that are voluntarily set between neighboring property owners. "As minimal pre-requisites, the recording must contain the vertical and horizontal easement angle, the terms for termination, and the amount of compensation given in return for the granting of the easement."<sup>7</sup> One inherent problem with the

express easement is in the weighing of costs and benefits. In a densely populated city such as Manhattan, the cost of purchasing an easement may far outweigh the personal benefits of utilizing the sun's rays for heating and cooling a building.

In this instance though, the benefits to society in conserving fossil-fuels are prevalent. The user of a solar collector is expending his own money to accrue these societal benefits. For such cases, a solar energy tax incentive may provide the answer.

Another problem with this type of easement is that it rewards the "wrong" individual. It allows the owner of a parcel of land or building to sell an easement to an energy conscious property owner. The individual utilizing the solar energy is not being rewarded, but must pay for the guarantee of solar access.

Restrictive covenants have also been offered as a solution. However, covenants have severe limitations since they offer little help to established neighborhoods or cities with commercial and industrial land.

Realizing that many common-law approaches have not solved the problem of protecting solar access, many states have enacted enabling legislation dealing with the issue of solar access.

Zoning is one of these legislative approaches that is gaining acceptance, as many states realize that it is a viable means of guaranteeing solar access. It is a desirable and legally appropriate tool for creating solar rights and may be easier to administer than the above mentioned approaches. Solar rights must be created in such a way that they are acceptable to society; otherwise, they will not have any practical effect. Acceptability lies in minimizing any inconvenience to a solar

owner's neighbor while, at the same time, guaranteeing the solar user sufficient solar energy. A properly conceived zoning ordinance can reach an acceptable trade-off between the e dual interests." <sup>8</sup> The Rhode Island 1984 Zoning Enabling Legislation clues into these interests in many sections. One of these is in section 45-24-26 Legislative Findings & Intent:

(a) The general assembly finds that the land of Rhode Island is a finite natural resource that must be carefully managed in order to:

(5) meet needs for energy, water and waste disposal

(10) protect valuable natural resources

Under the general purposes of the ordinance, section 45-24-28, the zoning ordinance may:

(c) promote the conservation of energy, open space, natural resources, and significant natural features

(k) provide adequate light and air

Also, under section 45-24-28b, a zoning ordinance may include provisions for:

(3) Regulating the height, number of stories, and size of buildings; and structures and the dimensions, size, building coverage, and layout of lots or development areas and regulating access to sunlight for solar energy systems.

Through the creation of solar rights, America would be reducing its dependence upon foreign countries and could also be reducing its consumption of a depleting resource. In a sense, this reduction would constitute a protection of the public health, safety and welfare of Americans, which in effect, is the general purpose of zoning. Zoning ordinances regulate the height and bulk of buildings and the subdivision ordinances regulate the

street layout and lot line orientation. While these regulations exist for promoting the public health, safety, and welfare, they often impede the utilization and promotion of the sun's rays for heating and cooling a building.

Therefore the conflict exists: the land use measures stated in most zoning ordinances do not effectively and fully promote and protect the public health, safety and welfare because they impede utilization of the sun's rays for solar energy purposes.

The next chapter will illustrate how this conflict can be alleviated. The chapter will contain revisions to the Rhode Island Zoning Enabling Act of 1984. These revisions will illustrate how the land use regulations stated in the Act can complement a solar conscious community.



ENDNOTES

- 1 William H. Lawrence and John H. Minan, Legal Aspects of Solar Energy (Lexington: Lexington Books, 1981), p. 27.
- 2 Fountainbleau Hotel Corp. v. Forty-Five Twenty Five, Inc., 114 So.2d 357, 359 (District Court of Appeals, Fla. 1959).
- 3 Minan; Lawrence, Legal Aspects of Solar Energy p.27.
- 4 Ibid., p. 53.
- 5 Ibid., p. 46.
- 6 Minan; Lawrence, Legal Aspects of Solar Energy, p. 45
- 7 "Legislative approach to Solar Access: Transferable Development Rights," New England Law Review, (Spring 1978): 13 p. 864.
- 8 Minan; Lawrence, Legal Aspects of Solar Energy, p. 45.
- 9 Ibid., p. 46.

CHAPTER 3  
AMENDMENTS TO THE  
PROPOSED RHODE ISLAND  
ZONING ENABLING ACT  
OF 1984

Most state zoning enabling acts are variations on the Standard State Zoning Enabling Act, (called the Standard Act) promulgated by the United States Department of Commerce.<sup>1</sup> While some state enabling acts may not be exactly the same as the Standard Act,<sup>2</sup> most reflect the thinking behind the Act.

The Rhode Island Zoning Enabling Act currently in use was enacted in 1956. In 1984, a new Act was introduced into the RI Legislation, yet was not passed. This proposed 1984 Act contained wording that vaguely hinted at protection of solar access. Although this 1984 act is not the official Rhode Island Zoning Enabling Act, it was amended by this author because it contained more emphasis on solar energy than did the 1956 Act. Additions to the proposed Act are noted by underlining, while deleted text is "struck out." Both the additions and deletions are discussed at the end of the chapter.

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 45-24 of the Rhode Island General Laws of 1956, as amended, entitled "Zoning Ordinances" is hereby amended as follows:

45-24-24.- Sections 24 through 53 of Title 45 Chapter 24 of the Rhode Island General Laws shall be known as the "Rhode Island Zoning Enabling Act of 1984".

45-24-25. Continuation of Ordinances-Supersession-Relation to Other Statutes

[No Change]

45-24-26. Legislative Findings & Intent

(a) The general assembly finds that the land of Rhode Island is a finite natural resource that must be carefully managed in order to: (1) accommodate needs for land; (2) recognize the varying capability of land to support development; (3) prevent haphazard scattering of urban growth throughout rural areas, which results in increased service costs and loss of open space; (4) locate development with consideration of the required level and cost of public services; (5) meet needs for energy, water, and waste disposal; (6) forestall preemption of the few sites that are suitable for certain essential facilities by uses with less demanding requirements; (7) mitigate problems in finding acceptable locations for essential facilities with important social, economic or environmental impacts; (8) ensure housing choice; (9) discourage conversion of productive

agricultural land and forests to other uses; (10) protect valuable natural resources; (11) avoid construction in hazardous locations; (12) avert damage to historic, archaeological, and architectural landmarks; (13) give attention to design and visual quality; and (14) reduce the expenditure of effort by communities competing for land uses that pay high property taxes and make few demands on public services; and (15) provide protection of solar access to solar energy systems.

(b) [No Change]

(c) [No Change]

(d) [No Change]

45-24-27 Definitions.- As used in this act and in any zoning ordinance or amendment adopted in accordance with this act, the following words shall have the meanings stated herein.

(a) "Active Solar Energy System". A solar energy system that requires external mechanical power to move the collected heat.<sup>3</sup>

(b) ~~(-a-)~~ "Agricultural Land". Land suitable for agricultural by reason of suitability of soil or other natural characteristics or past use for agricultural purposes. Agricultural land includes that defined as prime farm land or additional farm land of statewide importance for Rhode Island by the soil conservation service of the U.S. Department of Agriculture.

(c) ~~(-b-)~~ "Coastal Ponds and Shoreline Features". Water areas within the boundaries of the territorial sea of the State

of Rhode Island that are directly affected by diurnal tides and associated brackish or freshwater bodies, and landforms contiguous to tidal waters and coastal ponds including coastal beaches and dunes, barrier beaches, coastal wetlands, coastal cliffs and banks, rocky shores, and manmade shorelines.

(d) (~~e~~) "Comprehensive Plan". A Comprehensive plan which has been adopted by the city or town planning board or commission and/or the city or town council pursuant to Chapter 45-22 of the General Laws of Rhode Island or to a home rule or legislative charter.

(e) (~~d~~) "Special Exception". A conditional use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of such use as specified in a city or town zoning ordinance and authorized by the zoning board of review.

(f) (~~e~~) "Excessively Permeable Soils". Soils which have characteristics which, due to a relative fast movement of water in the soil, may cause pollution of groundwater. These include but are not limited to land mapped by the soil conservation service, U.S. Department of Agriculture, as the following soil series: Agawam, Bridgehampton, Deerfield, Enfield, Gloucester-Bridgehampton, Gloucester-Hinckley, Hinckley, Hinckley-Enfield, Lippitt, Merrimac, Ninigret, Quonset, Raypol, Scarborough, Sudbury, Tisbury, and Windsor.

(g) (~~f~~) "Family". (1) One or more persons occupying a single housekeeping unit who are related by blood, marriage, or adoption, or where there is a legal responsibility for custody or

care, and any domestic servants thereof, (2) not more than three adult persons who are not so related occupying a single housekeeping unit, or (3) a community residence licensed by the state for six or fewer retarded children or adults or not more than eight mentally disabled persons.

(h) (~~g~~) "Floodplains" or "Flood Hazard Area". An area that has a one (1) percent or greater chance of inundation in any given year, as delineated by appropriate federal or state agencies, or by the city or town, using accepted hydrologic and engineering practices.

(i) (~~h~~) "Imperfectly Drained Soils". Land for which the estimated seasonal high water table level is less than four (4) feet from the ground surface, including but not limited to the following moderately-well drained, poorly drained, and very poorly drained soil series mapped by the soil conservation service, U.S. Department of Agriculture: Adrian, Birchwood, Carlisle, Deerfield, Ipswich, Leicester, Mansfield, Matunuck, Ninigret, Pittstown, Podunk, Rainbow, Raypol, Ridgebury, Rumney, Scarboro, Scio, Stissing, Sudbury, Sutton, Tisbury, Walpole, Wapping, Whitman, and Woodbridge.

(j) (~~i~~) "Land Development Project". A project in which one or more lots, tracts or parcels of land are to be developed as a coordinated site for a complex of activities, units or structures, including, but not limited to, residential cluster development, and planned development, when permitted by a city or town zoning ordinance and authorized by the planning board or commission.

(k) (-j-) "Mediation". A voluntary negotiating process in which parties in a dispute mutually select a neutral mediator to assist them in jointly exploring and settling their differences, culminating in a written agreement which the parties themselves create and consider acceptable.

(l) (-k-) "Non-Conforming Development". Activities, uses, buildings, structures, lots or improvements lawfully existing at the time of adoption or amendment of a zoning ordinance and not in conformity with the provisions of such ordinance.

(m) (-l-) "Overlay District". A district established in a zoning ordinance that imposes specified requirements in addition to those otherwise applicable in the districts or parts of districts on which the overlay district is superimposed.

(n) "Passive solar energy system." A solar energy system that uses natural and architectural components to collect and store solar energy without using any external mechanical power.

(o) (-m-) "Planned Development". A development where a specified minimum area of land is planned and developed as a single entity. A planned development may accommodate residential, commercial, industrial, and other uses separately or jointly, and may include one or more public or quasi-public common areas.

(p) (-n-) "Residential Cluster Development". A development where a specified minimum area is developed according to a plan at specified densities as a complex of single or multi-family housing types in more than one structure with one or more common open space areas, designed to serve the development.



(q) (-e-) "Rocky Soils". Land having more than one (1) percent of the surface area made up of exposed bedrock or soils too thin over bedrock for use: these include but are not limited to land mapped by the Soil Conservation Service, U.S. Department of Agriculture as Canton and Charlton fine sandy loams, very rocky; Canton-Charleton-Rock outcrop complex; or rock outcrop-Canton complex or rock outcrop.

(r) (-p-) "Slowly Permeable Soils". Land characteristically having fragipan substratum layer whose estimated permeability rate is less than two-tenths (0.2) inches per hour, including but not limited to land mapped by the soil conservation service of the U.S. Department of Agriculture as soil series Birchwood, Broadbrook, Mansfield, Newport, Paxton, Pittstown, Poquonock, Rainbow, Ridgebury, Stissing, Whitman, and Woodbridge.

(s) "Solar Access". The availability of solar radiation to a solar collector; protecting this access implies preventing shadows from vegetation, buildings or other obstructions from shading the solar system.<sup>5</sup>

(t) "Solar Collector". A device, or combination of devices, structure, or part of a device or structure that uses incident solar radiation (solar energy falling upon a given surface area) into thermal, mechanical, chemical, or electrical energy.<sup>6</sup>

(u) "Solar energy". Radiant energy (direct, diffuse, and reflected) received from sun.<sup>7</sup>

(v) "Solar energy system". A complete design or assembly consisting of a solar energy collector, an energy storage facility (where used), and components for the distrib-

ution of transformed energy (to the extent that they cannot be used jointly with a conventional energy system).

8

(w) (-q-) "Steep Slopes". Land for which the average slope exceeds ten (10) percent, that is, a change of ten (10) feet vertically per one hundred (100) feet horizontally, or such grade as is specified in a zoning ordinance.

(x) "Structure." Anything constructed or installed or portable that requires for normal use a location on a parcel of land. This includes any movable structure located on land which can be used either temporarily or permanently for housing, business, commercial, agricultural, or office purposes. It also includes fences, billboards, poles, pipelines, transmission lines, and advertising signs.

9

(y) (-r-) "Transfer of Development Rights". The transfer of development potential or development density from one parcel of land to another. The development right, one of many property rights, is severed from the first or "sending" parcel and attached to the second or "recipient" or "receiving" parcel. Land owners in sending areas give up their development rights and are compensated by land owners in the "receiving" areas who benefit from a density bonus. The parcels of land may or may not be contiguous and the sending and receiving land owners may or may not be the same person or persons.

(z) (-s-) "Unnecessary hardship". An exceptional physical condition that is unique to a parcel of land or a structure and not generally characteristic of the district or surrounding area, that is not the result of any action or failure to act by an appellant or any current or prior owner of the land or structure,

and which would cause total deprivation of all beneficial use of the land or structure if the provisions of the zoning ordinance applicable thereto were strictly enforced.

(aa) (-e-) "Variance". Permission to depart from the literal requirements and provisions of a zoning ordinance adopted in accordance with the provisions of this chapter.

(ab) (-u-) "Wetland, Coastal." A salt marsh bordering on the tidal waters of this state and contiguous uplands extending no more than fifty yards inland therefrom as defined in Section 2-1-14 of the General Laws.

(ac) (-v-) "Wetland Freshwater". A marsh, swamp, bog, pond, river or stream flood plain or bank, area subject to flooding or storm flowage, emergent or submergent plant community in any body of fresh water, or area within fifty feet of the edge of a bog, marsh, swamp, or pond, as defined in Section 2-1-20 of the General Laws.

(ad) (-w-) "Zoning District Map". A map or maps, and such written description, which delineates the boundaries of zoning districts and are part of the zoning ordinance.

(ae) (-x-) "Zoning Ordinance". A city or town ordinance which sets forth regulations and standards relating to the nature and extent of the uses and/or dimensions of land and of buildings and other structures thereon adopted in accordance with the provisions of this chapter.

45-24-28. General Purposes of Ordinance.- For the purposes of promoting the public health safety, morals, and general welfare, a zoning ordinance shall provide for the implementation of

land use and development policies, goals, and patterns contained in the city or town comprehensive plan. In order to accomplish these purposes, a zoning ordinance may:

(a) provide sufficient space in appropriate locations for a range of uses and intensities of use appropriate to the character and needs of the city or town;

(b) relate the use of land to its physical characteristics and capabilities and to the availability of public facilities and services;

(c) promote the conservation of energy, open space, natural resources, and significant natural features;

(d) control air, water, groundwater and noise pollution, soil erosion, and sedimentation; provided that nothing contained herein shall supersede the statutory authority of agencies of state government pertaining to these matters.

(e) enhance the cultural and historic character of the city or town;

(f) preserve agricultural land;

(g) facilitate the adequate and economic provision of and/or protect substantial public investment in transportation, water, sewage disposal, schools, recreation, open space, and other public requirements;

(h) promote a choice of housing opportunities for all economic social groups;

(i) secure safety from fire, flood, and other dangers from natural or man-made disaster;

(k) provide adequate light and air; and

(l) promote the establishment of population densities and

concentrations that will contribute to the well-being of persons, families and neighborhoods and prevent the overcrowding and/or underutilization of land.;

9

(m) encourage the use of renewable resources.

(n) promote energy efficient patterns of land development.<sup>10</sup>

(o) protect solar access for solar energy systems.

45-24-29. Contents of Ordinance.

(a) [No Change]

(b) A Zoning ordinance may include provisions for:

(1) Limiting and restricting buildings and other structures to specified zoning districts and regulating said buildings and other structures according to their type and the nature and extent of their use and regulating the nature and extent of the use of land for housing, business, commerce, industry, open space, or other use.

(2) Restricting buildings, structures, land uses, and other development by performance standards or other requirements related to air and water and groundwater pollution, noise and glare, soil erosion and sedimentation, and/or availability and capacity of existing or planned public services.

(3) Regulating the height, number of stories, and size of buildings and structures and the dimensions, size, of buildings and structures and the dimensions, size, building coverage, and layout of lots or development areas.

and regulating access to sunlight for solar energy systems.

(4) Specifying floor area ratios and other ratios and techniques governing the intensity of use and the provision of adequate light and air.

(5) Designating requirements for open space, yards, courts and the density of population.

(6) Designating flood plains or flood hazard areas and significant natural areas, and controlling development in these areas.

(7) Providing standards for and requiring the provision of adequate and properly designed physical improvements including off-street parking areas, off-street loading areas, lighting, fencing, landscaping and others in connection with any use of land, building or structure.

(8) Restricting and limiting development and land use in areas where such development is deemed to create a hazard to the public health or safety.

(9) Controlling extractive industries and earth removal activities, and requiring restoration of land after such activities.

(10) Regulating sanitary landfill.

(11) Regulating signs and billboards, and other outdoor advertising devices.

(12) Designating airport hazard zones under the provisions of Chapter 1-3 of the general laws of Rhode Island, 1956, as amended, entitled "Airport Zoning", and

enforcement of said hazard zones under the provisions established in said general laws.

(13) Designating areas of historic, archaeological, or architectural value and regulating development in such areas under the provisions of Chapter 45-24.1 of the general laws of Rhode Island, entitled "Historic Area Zoning".

(14) Providing standards and requirements for the regulation, review, and approval of any site plan in connection with any use of land, building, or structure designated in a zoning ordinance.

(15) Authorizing increases in the permissible density of population or intensity of use as a condition for increased open space, housing for low and moderate income persons, traffic and pedestrian improvements, public facilities and other amenities. Such provisions in the zoning ordinance shall be specific as to maximum allowable densities of population or intensities of use and shall state specific improvements and amenities.

(16) Establishing a system for transfer of development rights within or between zoning districts designated in a zoning ordinance.

(17) Consolidating public hearings when more than one hearing would otherwise be required in considering a proposed amendment or development.

(18) Regulate solar collectors as accessory uses.

45-24-30. Power of Council to Adopt-Conformity to Plan.

No Change

45-24-31. Notice and Hearing Requirement.

(a) [No Change]

(b) [No Change]

(c) [No Change]

(d) [No Change]

45-24-32. Procedure for Adoption.

[No Change]

45-24-33. Review by Planning Board or Commission-Requirements.

(a) [No Change]

(b) May include, as appropriate, a demonstration of recognition and consideration of:

(1) potential soil erosion problems;

(2) potential problems of building on steep slopes;

(3) the hazards of flooding;

(4) the difficulty of development in rocky soils or imperfectly drained and slowly permeable soils;

(5) the values and dynamic nature of coastal ponds and shoreline features and the impact thereon of the proposed ordinance or amendment;

(6) the values of retaining forest land or agricultural land.

(7) the potential for groundwater pollution from certain types of development in excessively permeable soils;

(8) the values of fresh water wetlands systems;



(9) the values of compatible land uses, stability of land uses, and harmony with neighboring uses; and

(10) the availability and adequacy of public facilities and services affected by or required to serve the proposed development and the area in which it may be located.; and

(11) the value of protecting and providing solar access for the purpose of utilizing solar energy.

45-24-34 Land Development Projects.

(a) [No Change]

(b) [No Change]

(c) In regulating land development projects, an ordinance adopted pursuant to this chapter may include, but is not limited to, regulations governing the following:

(1) A minimum area or site for a land development project;

(2) Uses to be permitted within such a development;

(3) Ratios of residential to non-residential uses where applicable;

(4) Maximum density per lot and maximum density for the entire development with provisions for adjustment of applicable lot density and dimensional standards where open space is to be permanently set aside for public or common use; where the physical characteristics, location, and/or size of the site require such adjustment or where the location, size and type of housing units, commercial, indus-

trial or other uses require such adjustment;

(5) Roads, driveways, utilities, parking and other facilities, and may distinguish between those intended to remain in private ownership or to be dedicated to the public, provided that any such facilities which are intended to be dedicated to the public shall meet applicable requirements of any ordinance and regulations adopted pursuant to Chapter 45-23 (Subdivision of Land) of the General Laws of Rhode Island.

(6) protect solar access for proposed or potential solar energy systems in the development.

45-24-35. Non-Conforming Development.

[No Change]

45-24-36. Modification of Non-Conforming Development.

[No Change]

45-24-37. Elimination of Non-Conforming Development by Amortization.

[No Change]

45-24-38. Enforcement of Zoning Ordinance.

[No Change]

45-24-39. Zoning Board of Review-Establishment.

[No Change]

45-24-40. Powers of Board of Review.

(a) [No Change]

(b) [No Change]

(c) [No Change]

(d) [No Change]

(e) [No Change]

(f) In granting a variance under subsection (c) of this section, or in permitting a special exception under subsection (b) of this section, the zoning board review may apply such special conditions to the grant that may in the opinion of the board, be required to maintain harmony with neighboring uses and promote the objectives of the comprehensive plan and zoning ordinance. Such special conditions may include, but are not limited to, provisions for:

(1) minimizing adverse impact of the development upon other land, including the type, intensity, and performance of activities;

(2) controlling the sequence of development, including when it must be commenced and completed;

(3) controlling the duration of use or development and the time within which any temporary structure must be removed;

(4) assuring satisfactory installation and maintenance of required public improvements;

(5) designating the exact location and nature of development; and

(6) establishing detailed records by submission of drawings, maps, plats, or specifications; and

(7) providing protection of solar access for all solar energy systems and structures.

45-24-41. Expenses of Zoning Board of Review-Fees.

[No Change]

45-24-42. Appeals and Applications to Zoning Board of Review.

[No Change]

45-24-43. Stay of Proceedings on Appeal to Zoning Board of Review.

[No Change]

45-24-44. Public Hearing by Zoning Board of Review.

[No Change]

45-24-45. Records of Board.

[No Change]

45-24-46. Mediation Option.

[No Change]

45-24-47. Appeals to Superior Court.

[No Change]

45-24-48. Priority in Judicial Proceedings.

[No Change]

45-24-49. Penalty for Violation.

[No Change]

45-24-50. Judicial Aid in Enforcement.

[No Change]

45-24-51. Reimbursement to City or Town.

[No Change]

45-24-52. Creation of Vested Rights or Encumbrances.

[No Change]

45-24-53. Severability.

[No Change]

## Explanation of Amendments

The Legislative Findings and Intent section of The State Zoning Enabling Act is a statement of policy and goals set forth by the legislature. It can provide guidelines to the communities within the state on a policy for encouraging the use of solar energy in their zoning ordinance. Therefore, item (15) "to provide protection of solar access to solar energy systems" has been added in order to set forth the goal of protection of solar access in the Act. With this new section (15) added to the Act, a policy of providing solar access to solar energy systems has been set forth for the communities to follow. The section also provides the intent of the Act for purposes of judicial review.

Seven definitions have been added to Section 45-24-27. These definitions are needed by communities that are developing either solar energy resolutions or solar access ordinances because these definitions refer to concepts and items that are paramount to any discussion of solar energy. These new definitions narrow the scope of the Act by specifying for each community exactly what the meaning and implications are of protecting solar access. These new definitions also broaden the scope of the Act by adding the "world" of solar energy. The substance of these definitions are discussed in detail in Chapter One: "Basics of Solar Energy for the Land Use Planner."

The General Purpose of Ordinance section (45-24-28) provides possible land use policies which may be included in the zoning ordinance. Amending the purpose of the ordinance to include

specific reference to solar energy is an important step to promoting and encouraging the use of solar energy systems. Item (k), as with traditional zoning ordinances, states: "to provide adequate light and air." This provision merely hints at protection of solar access. Three additional items have been added to carry forth further the concept of providing protection of solar access. Items (m) "encourage the use of renewable resources;" and (n) "promote energy efficient patterns of land development", have been added to this section for the purpose of extending the perceived meaning of item (k). Item (o) "protect solar access for solar energy systems" specifically focuses on the protection of solar access which has been described as a purpose of the ordinance in items (m) and (n).

The Contents of Ordinance section (45-24-29) states exactly what may be provided for in the local ordinance. While many active and passive systems maybe included within a building, some energy systems may consist of detached collectors. Unless these detached collectors are allowed as a permitted accessory use, they will be prohibited. In order to promote the use of solar energy systems, item (18) allows for these detached collectors to be a permitted accessory use.

In the Review by the Planning Board or Commissions Requirements section (45-24-33), item (11) has been added to reinforce the importance of solar energy and the protection of solar access. The protection of solar access is viewed by this author to be of the same magnitude of importance as the previous ten items in this section, which include wetland protection;

the problems of soil erosion; and the hazards of flooding.

The Land Development Projects section (45-24-34) is concerned with large-scale developments and the issues related to such a project. Land development projects are phased projects that in the future, as fossil fuels become increasingly scarce, will need to depend on solar energy. This is an ideal forum to assure that solar access is protected because it involves new development on "virgin" land. It is much easier to provide protection of solar access when there are no large, tall, older buildings to contend with. Also, in a land development project, issues such as density, driveway and road location are regulated. These are issues which can effect the protection of solar access, and can be regulated in such a manner that they complement solar access protection.

The Power of Board of Review section (45-24-40) states the provisions for special conditions which the zoning board of review may apply to granting a variance or permitting a special exception. It states that these special conditions may be applied in order to ". . . maintain harmony with neighboring uses and promote the objectives of the comprehensive plan and zoning ordinance." Amended objectives of the zoning ordinance (45-24-29) include encouraging the use of renewable resource; promoting energy efficient patterns of land development and protection of solar access for solar energy systems. Therefore item (7) "providing protection of solar access for all solar energy systems and structures," has been added as a special condition which may be applied by the zoning board of review because it

conforms to the amended objectives of the zoning ordinance. It also reinforces the importance of providing protection of solar access in new developments.

### Conclusion

The first step toward assuring a sound solar energy policy is to amend the state Zoning Enabling Act to include provisions for protection of solar access. As this is accomplished at the state level, it sets forth guidelines, regulations and incentives to "trickle-down" to the local level of government. This "trickling-down" can appear in various forms in different methodology. All of these methods can be implemented simultaneously, and are not exclusive of each other. Their meaning and intent of a sound solar energy policy is strengthened if they are used to complement each other.

One method is to revise the local zoning ordinance to include provisions for protecting solar access. The revised local zoning ordinance can include provisions similar to those in the amended State Zoning Enabling Act in Chapter Three. Appendix II contains revisions to the zoning ordinance of Foster, Rhode Island, to include provisions for solar access protection.<sup>11</sup>

Appendix III contains a second method which can be complementary to an amended zoning ordinance: A Town Energy Resolution. This resolution is a policy which supports a community's efforts to encourage solar energy use.<sup>12</sup> According to its author, it



. . . sets forth a general policy goal of "protecting future potential for solar energy use" and directs both the planning board and the building inspector's office to incorporate solar considerations into their respective duties.<sup>13</sup>

This resolution suggests that the planning board amend its comprehensive plan to encourage energy efficiency.

This suggestion leads to a third type of methodology which could strengthen a sound energy policy in a town. Appendix IV contains the table of contents and list of tables for an energy management plan for the town of Foster, Rhode Island. Plans for nine Rhode Island cities and towns have been completed as the product of a grant from the U.S. Department of Energy and The Farmers Home Administration through a consortium including the Rhode Island League of Cities and Towns; New England Innovation Group; and the Department of Community Planning at The University of Rhode Island.

These plans contain an inventory of each town's energy use in the municipal; residential; industrial and commercial sectors.. It also contains scenarios for the future if present energy usage is constant. An inventory such as the one utilized in the energy management plan is a useful means of developing the long and short term goals for promoting energy efficiency in all towns.

A fourth method is illustrated in Appendix V. This is An Ordinance Declaring Solar Rights, for Taos, New Mexico. This ordinance, which is separate from the zoning ordinance, designates the specific hours of the day in which solar access is to be protected. This ordinance, complemented with a zoning ordinance that provides protection of solar access would provide

the backbone for a sound solar energy policy in a town.

In conclusion, it has been illustrated that solar energy is becoming a viable, economically sound method of heating and cooling buildings. If its use is to flourish and continue, the land use policies in our country must promote and encourage the use of solar energy. As planners, we are given the opportunity to remove the impediments and barriers. We must take hold of this opportunity by fully utilizing the land use tools available to us.

ENDNOTES

- 1 Department of Commerce, Standard State Zoning Enabling Act (1926); Anderson, supra note 36 301.01.
- 2 William H. L. rence and John H. Minan, Legal Aspects of Solar Energy (Lexington: Lexington Books, 1981), p. 54.
- 3 American Planning Association, Protecting Solar Access for Residential Development: A Guidebook for Planning Officials, (Washington: U.S. Government Printing Office, 1980), p. 47.
- 4 ibid.
- 5 Cynthia Collins and Lori Heise, Community Land Use Tools for Encouraging the Use of Solar Energy: A Tool Kit for Nine Rural Towns, (Providence: RI League of Cities and Towns, 1982) p. 7.
- 6 City of Ashland, Chapter 18.70 "Solar Access" 1982.
- 7 ibid.
- 8 ibid.
- 9 ibid.
- 10 Collins; Cynthia, Community Land Use Tools for Encouraging the Use of Solar Energy: A Tool Kit for Nine Rural Towns,p. A-2.
- 11 ibid. p. A-11 - A-12.
- 12 ibid.A-1.
- 13 ibid.

APPENDIX I

84-S 424

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1984

AN ACT

RELATING TO ZONING

Introduced By: SENator Gannon, Forte and Bevilacqua

Date Introduced: February 28, 1984

Referred To: Committee on Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 45-24 of the General Laws entitled "Zoning  
2 Ordinances" is hereby amended by adding thereto the following sec-  
3 tions:

4 45-24-24. Title. -- Sections 45-24-24 through 45-24-53 of the  
5 Rhode Island general laws shall be known as the Rhode Island zoning  
6 enabling act of 1984.

7 45-24-25. Continuation of ordinances - Supercession - Relation  
8 to other statutes. -- (a) All lawfully adopted zoning ordinances shall  
9 be brought into conformance with this chapter by July 1, 1987. Each  
10 city and town shall review the zoning ordinances and make such amend-  
11 ments or revisions as are necessary to bring it into conformance with  
12 this chapter.

13 (b) Sections 45-24-1 through 45-24-23 of this chapter and all  
14 special zoning enabling acts are repealed effective July 1, 1987. All  
15 provisions of zoning ordinances adopted under authority of the provi-

1 sions of sections 45-24-1 through 45-24-23 or of any special act  
2 repealed hereby shall become null and void as of July 1, 1987 unless  
3 amended so as to conform to the provisions of this chapter.

4 (c) All zoning ordinances adopted under authority of sections  
5 45-24-1 through 45-24-23 of this chapter or any special zoning enabl-  
6 ing act that is in effect on the date of enactment of this act shall  
7 remain in full force and effect until the date specified in subsection  
(b) of this section, unless earlier amended or repealed.

9 (d) Title 45, chapter 24.1 of the general laws of Rhode Island,  
10 entitled "historic area zoning", and title 1, chapter 3 of the general  
11 laws of Rhode Island, entitled "airport zoning" shall not be super-  
12 seded by this chapter. Provided however, any appeal to the superior  
13 court pursuant to title 1 chapter 3 of the general laws of Rhode  
14 Island, entitled "airport zoning", shall be taken in the manner pro-  
15 vided in section 45-24-47 of the general laws.

16 45-24-26 Legislative findings and intent. -- (a) The general  
17 assembly finds that the land of Rhode Island is a finite natural  
18 resource that must be carefully managed in order to: (1) accommodate  
19 needs for land; (2) recognize the varying capability of land to sup-  
20 port development; (3) prevent haphazard scattering of urban growth  
21 throughout rural areas, which results in increased service costs and  
22 loss of open space; (4) locate development with consideration of the  
23 required level and cost of public services; (5) meet needs for energy,  
24 water, and waste disposal; (6) forestall preemption of the few sites  
25 that are suitable for certain essential facilities by uses with less  
26 demanding requirements; (7) mitigate problems in finding acceptable  
27 locations for essential facilities with important social, economic or  
28 environmental impacts; (8) ensure housing choice; (9) discourage con-  
29 version of productive agricultural land and forests to other uses;  
30 (10) protect valuable natural resources; (11) avoid construction in  
31 hazardous locations; (12) avert damage to historic, archaeological,  
32 and architectural landmarks; (13) give attention to design and visual

1 quality; and (14) reduce expenditure of effort by communities compet-  
2 ing for land uses that pay high property taxes and make few demands on  
3 public services.

4 (b) The general assembly further finds that: (1) the present  
5 zoning enabling statutes were largely enacted in 1921; (2) the charac-  
6 ter of land development and related public policies have changed sub-  
7 stantially in the intervening years; (3) many cities and towns have  
8 found that the current zoning enabling statutes are no longer an ade-  
9 quate basis for regulating the use of land and providing for modern  
10 land development practices; (4) present zoning enabling statutes ante-  
11 date, and thus do not take into account the requirement that cities  
12 and towns adopt a comprehensive plan pursuant to chapter 45-22 of the  
13 general laws; and (5) a substantial updating and revision of the stat-  
14 utory zoning enabling authority is required to meet these changed con-  
15 ditions.

16 (c) It is therefore found that preparation and implementation of  
17 comprehensive plans and zoning ordinances that address these problems  
18 and needs is necessary in order to protect the public health, safety,  
19 and general welfare and in order to secure the rights of the people of  
20 Rhode Island to the use and enjoyment of the natural resources of the  
21 state; to allow the general assembly to fulfill its duty to provide  
22 for the conservation of the natural resources of the state; and to  
23 provide for balanced economic growth in the state.

24 (d) Therefore, it is the intent of the general assembly:

25 (1) That the zoning enabling authority contained herein provide  
26 all cities and towns with adequate opportunity to address current and  
27 future community and statewide needs;

28 (2) That the zoning enabling authority contained herein provide  
29 cities and towns with a clear definition of the relationship between  
30 and the respective functions of their planning and zoning activities;

31 (3) That the zoning enabling authority contained herein empower  
32 cities and towns with the capability to establish and enforce stan-

1 dards and procedure for the proper management of land as a natural  
2 resource and to employ contemporary concepts, methods, and criteria in  
3 regulating the type, intensity, and arrangement of land use, and pro-  
4 vide authority to employ new concepts as they may become available and  
5 feasible;

6 (4) That these be provided for in a manner which will provide  
7 maximum continuity for, and the least disruption to, current zoning  
8 ordinances, and allow for the adoption of a zoning ordinance pursuant  
9 to this chapter, during which time existing zoning ordinances adopted  
10 pursuant to the general or public laws may be continued in full force  
11 and effect until July 1, 1987; and

12 (5) That every city and town amend their zoning ordinance so as  
13 to comply with the terms of this chapter.

14 45-24-27. Definitions. -- As used in this chapter and in any  
15 zoning ordinance or amendment adopted in accordance with this chapter,  
16 the following words shall have the meanings stated herein.

17 "Agricultural land". Land suitable for agriculture by reason of  
18 suitability of soil or other natural characteristics or past use for  
19 agricultural purposes. Agricultural land includes that defined as  
20 prime farm land or additional farm land of statewide importance for  
21 Rhode Island by the soil conservation service of the United States  
22 department of agriculture.

23 "Coastal ponds and shoreline features". Water areas within the  
24 boundaries of the territorial sea of the state of Rhode Island that  
25 are directly affected by diurnal tides and associated brackish or  
26 freshwater bodies, and landforms contiguous to tidal waters and  
27 coastal ponds including coastal beaches and dunes, barrier beaches,  
28 coastal wetlands, coastal cliffs and banks, rocky shores, and manmade  
29 shorelines.

30 (c) "Comprehensive plan". A comprehensive plan which has been  
31 adopted by the city or town planning board or commission and/or the  
32 city or town council pursuant to chapter 45-22 of the general laws of  
33 Rhode Island or to a home rule or legislative charter.



1 (d) "Special exception". A conditional use permitted in a par-  
2 ticular zoning district only upon showing that such use in a specified  
3 location will comply with all the conditions and standards for the  
4 location or operation of such use as specified in a city or town  
5 zoning ordinance and authorized by the zoning board of review.

6 (e) "Excessively permeable soils". Soils which have characteris-  
7 tics which, due to a relative fast movement of water in the soil, may  
8 cause pollution of groundwater. These include but are not limited to  
9 land mapped by the soil conservation service, United States department  
10 of agriculture, as the following soil series: Agawam, Bridgehampton,  
11 Deerfield, Enfield, Gloucester-Bridgehampton, Gloucester-Hinckley,  
12 Hinckley, Hinckley-Enfield, Lippitt, Merrimac, Ninigret, Quonset,  
13 Raypol, Scarborough, Sudbury, Tisbury, and Windsor.

14 (f) "Family". (1) One or more persons occupying a single house-  
15 keeping unit who are related by blood, marriage, or adoption, or where  
16 there is a legal responsibility for custody or care, and any domestic  
17 servants thereof, (2) not more than three adult persons who are not so  
18 related occupying a single housekeeping unit or (3) a community resi-  
19 dence licensed by the state for six or fewer retarded children or  
20 adults or not more than eight mentally disabled persons.

(g) "Floodplains" or "flood hazard area". An area that has a one  
22 (1) percent or greater change of inundation in any given year, as  
23 delineated by appropriate federal or state agencies, or by the city or  
24 town, using accepted hydrologic and engineering practices.

25 (h) "Imperfectly drained soils". Land for which the estimated  
26 seasonal high water table level is less than four (4) feet from the  
27 ground surface, including but not limited to the following  
28 moderately-well drained, poorly drained, and very poorly drained soil  
29 series mapped by the soil conservation service, United States depart-  
30 ment of agriculture-Adrian, Birchwood, Carlisle, Deerfield, Ipswich,  
31 Leicester, Mansfield, Matunuck, Ninigret, Pittstown, Podunk, Rainbow,  
32 Raypol, Ridgebury, Rumney, Scarborough, Scio, Stissing, Sudbury, Sutton,  
33 Tisbury, Walpole, Wapping, Whitman, and Woodbridge.

1 (i) "Land development project". A project in which one or more  
2 lots, tracts or parcels of land are to be developed as a coordinated  
3 site for a complex of activities, units or structures, including, but  
4 not limited to, residential cluster development, and planned develop-  
5 ment, when permitted by a city or town zoning ordinance and authorized  
6 by the planning board or commission.

7 (j) "Mediation". A voluntary negotiating process in which par-  
8 ties in a dispute mutually select a neutral mediator to assist them in  
9 jointly exploring and settling their differences, culminating in a  
10 written agreement which the parties themselves create and consider ac-  
11 ceptable.

12 (k) "Non-conforming development". Activities, uses, buildings,  
13 structures, lots or improvements lawfully existing at the time of  
14 adoption or amendment of a zoning ordinance and not in conformity with  
15 the provisions of such ordinance.

16 (l) "Overlay district". A district established in a zoning ordi-  
17 nance that imposes specified requirements in addition to those other-  
18 wise applicable in the districts or parts of districts on which the  
19 overlay district is superimposed.

20 (m) "Planned development". A development where a specified mini-  
21 mum area of land is planned and developed as a single entity. A  
22 planned development may accommodate residential, commercial, indus-  
23 trial, and other uses separately or jointly, and may include one or  
24 more public or quasi-public common areas.

25 (n) "Residential cluster development". A development where a  
26 specified minimum area is developed according to a plan at specified  
27 densities as a complex of single or multi-family housing units or a  
28 combination of housing types in more than one structure with one or  
29 more common open space areas, designed to serve the development.

30 (o) "Rocky soils". Land having more than one (1) percent of the  
31 surface area made up of exposed bedrock or soils too thin over bedrock  
32 for use: these include but are not limited to land mapped by the soil

1 conservation service, United States department of agriculture as  
2 Canton and Charlton fine sandy loams, very rocky,  
3 Canton-Charleton-Rock outcrop complex; or rock outcrop-Canton complex  
4 or rock outcrop.

5 (p) "Slowly permeable soils". Land characteristically having a  
6 fragipan substratum layer whose estimated permeability rate is less  
7 than two-tenths (0.2) inches per hour, including but not limited to  
8 land mapped by the soil conservation service of the United States  
9 department of agriculture as soil series Birchwood, Broadbrook,  
10 Mansfield, Newport, Paxton, Pittstown, Poquonock, Rainbow, Ridgebury,  
11 Stissing, Whitman, and Woodbridge.

12 (q) "Steep slopes". Land for which the average slope exceeds ten  
13 (10) percent, that is, a change of ten (10) feet vertically per one  
14 hundred (100) feet horizontally, or such grade as is specified in a  
15 zoning ordinance.

16 (r) "Transfer of development rights". The transfer of develop-  
17 ment potential or development density from one parcel of land to  
18 another. The development right, one of many property rights, is  
19 severed from the first or "sending" parcel and attached to the second  
20 or "recipient" or "receiving" parcel. Land owners in sending areas  
21 give up their development rights and are compensated by land owners in  
22 the "receiving" areas who benefit from a density bonus. The parcels  
23 of land may or may not be contiguous and the sending and receiving  
24 land owners may or may not be the same person or persons.

25 (s) "Unnecessary hardship". An exceptional physical condition  
26 that is unique to a parcel of land or a structure and not generally  
27 characteristic of the district or surrounding area, that is not the  
28 result of any action or failure to act by an appellant or any current  
29 or prior owner of the land or structure, and which would cause total  
30 deprivation of all beneficial use of the land or structure if the  
31 provisions of the zoning ordinance applicable thereto were strictly  
32 enforced.

1 . . . (t) "Variance". Permission to depart from the literal require-  
2 ments and provisions of a zoning ordinance adopted in accordance with  
3 the provisions of this chapter.

4 (u) "Wetland coastal". A salt marsh bordering on the tidal  
5 waters of this state and contiguous uplands extending no more than  
6 fifty (50) yards inland therefrom as defined in section 2-1-14 of the  
7 general laws.

8 (v) "Wetland, freshwater". A marsh, swamp, bog, pond, river,  
9 river or stream flood plain or back area subject to flooding or storm  
10 flowage, emergent or submergent plant community in any body of fresh  
11 water, or area within fifty feet of the edge of a bog, marsh, swamp,  
12 or pond, as defined in section 2-1-20 of the general laws.

13 (w) "Zoning district map". A map or maps, and such written de-  
14 scription, which delineates the boundaries of zoning districts and are  
15 part of the zoning ordinance.

16 (x) "Zoning ordinance". A city or town ordinance which sets  
17 forth regulations and standards relating to the nature and extent of  
18 the uses and dimensions of land and of buildings and other struc-  
19 tures thereon adopted in accordance with the provisions of this chap-  
20 ter.

21 45-24-28. General purposes of ordinance. -- For the purposes of  
22 promoting the public health, safety, morals, and general welfare, a  
23 zoning ordinance shall provide for the implementation of land use and  
24 development policies, goals, and patterns contained in the city or  
25 town comprehensive plan. In order to accomplish these purposes, a  
26 zoning ordinance may:

27 (a) provide sufficient space in appropriate locations for a range  
28 of uses and intensities of use appropriate to the character and needs  
29 of the city or town;

30 (b) relate the use of land to its physical characteristics and  
31 capabilities and to the availability of public facilities and ser-  
32 vices;

1 (c) promote the conservation of energy, open space, natural  
2 resources, and significant natural features;

3 (d) control air, water, groundwater and noise pollution, soil  
4 erosion, and sedimentation; provided that nothing contained herein  
5 shall supersede the statutory authority of agencies of state govern-  
6 ment pertaining to these matters.

7 (e) enhance the cultural and historic character of the city or  
8 town;

9 (f) preserve agricultural land;

10 (g) facilitate the adequate and economic provision of and/or pro-  
11 tect substantial public investment in transportation, water, sewage  
12 disposal, solid waste disposal, schools, recreation, open space, and  
13 other public requirements;

14 (h) promote a choice of housing opportunities for all economic  
15 and social groups;

16 (i) secure safety from fire, flood, and other dangers from natu-  
17 ral or man-made disaster;

18 (j) lessen traffic congestion;

19 (k) provide adequate light and air; and

20 (l) promote the establishment of population densities and concen-  
21 trations that will contribute to the well-being of persons, families  
22 and neighborhoods and prevent the overcrowding and/or underutilization  
23 of land.

24 45-24-29. Contents of ordinance. -- (a) A zoning ordinance shall  
25 divide a city or town into districts, which may include overlay dis-  
26 tricts and specially planned areas, of such number, shape, and area as  
27 deemed suited to carry out the purposes of this chapter. Regulations  
28 shall be uniform for each land use or type of building or structure  
29 within a district, but may differ from those in other districts.

30 (b) A zoning ordinance may include provisions for:

31 (1) Limiting and restricting buildings and other structures to  
32 specified zoning districts and regulating said buildings and other

1. structures according to their type and the nature and extent of their  
2 use and regulating the nature and extent of the use of land for hous-  
3 ing, business, commerce, industry, open space, or other use.

4 (2) Restricting buildings, structures, land uses, and other  
5 development by performance standards or other requirements related to  
6 air and water and groundwater pollution, noise and glare, soil erosion  
7 and sedimentation, and/or availability and capacity of existing or  
8 planned public services.

9 (3) Regulating the height, number of stories, and size of build-  
10 ings and structures and the dimensions, size, building coverage, and  
11 layout of lots or development areas and regulating access to sunlight  
12 for solar energy systems.

13 (4) Specifying floor area ratios and other ratios and techniques  
14 governing the intensity of use and the provision of adequate light and  
15 air.

16 (5) Designating requirements for open space, yards, courts and  
17 the density of population.

18 (6) Designating flood plains or flood hazard areas and signifi-  
19 cant natural areas, and controlling development in these areas.

20 (7) Providing standards for and requiring the provision of ade-  
21 quate and properly designed physical improvements including off-street  
22 parking areas, off-street loading areas, lighting, fencing, land-  
23 sloping and others in connection with any use of land, building or  
24 structure.

25 (8) Restricting and limiting development and land use in areas  
26 where such development is deemed to create a hazard to the public  
27 health or safety.

28 (9) Controlling extractive industries and earth removal activi-  
29 ties, and requiring restoration of land after such activities.

30 (10) Regulating sanitary landfills.

31 (11) Regulating signs and billboards and other outdoor advertis-  
32 ing devices.

1 (12) Designating airport hazard zones under the provisions of  
2 chapter 1-3 entitled "Airport Zoning," and enforcement of said hazard  
3 zones under the provisions established in said general laws.

4 (13) Designating areas of historic, archaeological or architec-  
5 tural value and regulating development in such areas under the provi-  
6 sions of chapter 45-24.1 entitled "Historic Area Zoning."

7 (14) Providing standards and requirements for the regulation,  
8 review and approval of any site plan in connection with any use of  
9 land, building or structure designated in a zoning ordinance.

10 (15) Authorizing increases in the permissible density of popu-  
11 lation or intensity of use as a condition for increased open space,  
12 housing for low and moderate income persons, traffic and pedestrian  
13 improvements, public facilities and other amenities. Such provisions  
14 in the zoning ordinance shall be specific as to maximum allowable den-  
15 sities of population or intensities of use and shall state specific  
16 improvements and amenities.

17 (16) Establishing a system for transfer of development rights  
18 within or between zoning districts designated in a zoning ordinance.

19 (17) Consolidating public hearings when more than one hearing  
20 would otherwise be required in considering a proposed amendment or  
21 development.

22 45-24-30. Power of council to adopt -- Conformity to plan. --  
23 For the purpose of promoting the public health, safety, morals and  
24 general welfare, a city or town council shall have the power, in ac-  
25 cordance with the provisions of this chapter, to adopt, amend or  
26 repeal, and to administer and enforce a zoning ordinance. Provisions  
27 of a zoning ordinance may be set forth in text, maps, charts or other  
28 form. A zoning ordinance shall be in general conformity with the com-  
29 prehensive community plan or plan of land use which has been adopted  
30 by the city or town planning board or commission and/or by the city or  
31 town council under provisions of chapter 45-22 of the general laws or  
32 of home rule or legislative charters.

1        45-24-31. Notice and hearing requirement. -- (a) No zoning ordi-  
2 nance shall be adopted, amended or repealed until after a public hear-  
3 ing has been held upon the question before the city or town council  
4 who shall first give notice of such public hearing by publication of  
5 notice in a newspaper of general circulation within such cities or  
6 towns at least once each week for three (3) successive weeks prior to  
7 the date of such hearing, which may include the week in which the  
8 hearing is to be held, at which hearing opportunity shall be given to  
9 all persons interested to be heard upon the matter of the proposed  
10 ordinance. Written notice, which may be a copy of said newspaper  
11 notice, shall be mailed to all adjacent cities and towns and the  
12 statewide planning program at least two (2) weeks prior to the hear-  
13 ing. Such newspaper notice shall:

14            (1) specify the place of said hearing and the time of its com-  
15 mencement;

16            (2) indicate that adoption, amendment or repeal of a zoning ordi-  
17 nance is under consideration;

18            (3) summarize or describe the matter under consideration;

19            (4) advise those interested where and when a copy of the matter  
20 under consideration may be obtained or examined and copied; and

21            (5) indicate that the proposals shown thereon may be modified or  
22 amended prior to the close of the public hearing without further  
23 advertising, as a result of further study or because of the views  
24 expressed at the public hearing. Any such modification or amendment  
25 must be presented for public comment in the course of said hearing.

26            (b) (1) Where a proposed amendment to an existing ordinance  
27 includes a specific change in a zoning district map, public notice  
28 shall be given as required by subsection (a) of this section at least  
29 three (3) weeks before the hearing, which may include the week the  
30 hearing is to be held, and written notice of the time and place of  
31 such hearing and the nature and purpose thereof shall be sent to all  
32 owners of real property whose property is located within two hundred



1 (200) feet of the perimeter of the area proposed for change. Notice  
2 shall also be sent to the clerk in any adjacent city or town whose  
3 boundary lies within two hundred (200) feet or within the area pro-  
4 posed for change.

5 (2) Notification pursuant to this subsection shall not be re-  
6 quired where subsection (b) (1) of this section would result in a re-  
7 quire to notify twenty (20) or more property owners, or such  
8 greater number as may be specified in the ordinance provided that the  
9 required newspaper notice also include in addition to the items speci-  
10 fied in subsection (a) of this section, a map showing the existing and  
11 proposed boundaries, zoning district boundaries and existing streets  
12 and roads.

13 (3) For purposes of this section:

14 (A) a specific change in a zoning district map shall be defined  
15 as a change which alters the location of the boundaries of a zoning  
16 district in a limited geographic area, or would result in a require-  
17 ment to notify fewer than the number of property owners specified in  
18 subsection (b) (2) of this section;

19 (B) an "owner of real property" is the owner of record as shown  
20 in the current records of the city or town assessor as of the date of  
21 filing the proposal.

22 (c) Written notice of an amendment to the ordinance which is com-  
23 prehensive or general in nature shall not be required to be mailed to  
24 owners of real property located within two hundred (200) feet of the  
25 perimeter of the area or areas proposed for change. Written notice  
26 shall be sent to the clerks of all adjacent cities and towns and to  
27 the statewide planning program.

28 (d) Notwithstanding the provisions of section 45-24-29, the city  
29 or town council may in approving a zone change limit such change to  
30 one (1) of the permitted uses in the zone to which the subject land is  
31 rezoned, and impose such limitations and conditions upon the use of  
32 the land as it deems necessary. The responsible city or town official

1 shall cause the limitations and conditions so imposed to be clearly  
2 noted on the rezoning map. If the permitted use for which the land  
3 has been rezoned is abandoned or if the land is not used for that pur-  
4 pose for a period of two (2) years or more, the city or town council  
5 may, after a public hearing as hereinbefore set forth, change the land  
6 to its original zoning use before such petition was filed.

7 45-24-32. Procedure for adoption. -- Immediately upon receipt of  
8 a proposal for adoption, amendment or repeal of a zoning ordinance or  
9 zoning map by a city or town council, the council shall refer such  
10 proposal to the city or town planning board or commission for study  
11 and recommendation. The planning board or commission shall report to  
12 said council within forty-five (45) days after receipt of the proposal  
13 by the city or town council, giving its findings and recommendations  
14 if it deems necessary. The city or town council shall schedule a  
15 public hearing within sixty (60) days of receipt of a proposal, giving  
16 proper notice as prescribed in section 45-24-31. The city or town  
17 council shall render a decision on any such proposal within forty-five  
18 (45) days after the date of completion of the public hearing.

19 45-24-33. Review by planning board or commission -- Require-  
20 ments. -- Among its findings and recommendations to the city or town  
21 council with respect to a proposal for adoption, amendment or repeal  
22 of a zoning ordinance or zoning map, the planning board or commission:

23 (a) shall include a statement on the general conformity of the  
24 proposal with the comprehensive plan; and

25 (b) may include, as appropriate, a demonstration of recognition  
26 and consideration of:

- 27 (1) potential soil erosion problems;  
28 (2) potential problems of building on steep slopes;  
29 (3) the hazards of flooding;  
30 (4) the difficulty of development in rocky soils or imperfectly  
31 drained and slowly permeable soils;

1 (5) the values and dynamic nature of coastal ponds and shoreline  
2 features and the impact thereon of the proposed ordinance or amend-  
3 ment;

4 (6) the values of retaining forest land or agricultural land;

5 (7) the potential for groundwater pollution from certain types of  
6 development in excessively permeable soils;

7 (8) the values of fresh water wetlands systems;

8 (9) the values of compatible land uses, stability of land uses  
9 and harmony with neighboring uses; and

10 (10) the availability and adequacy of public facilities and ser-  
11 vices affected by or required to serve the proposed development and  
12 the area in which it may be located.

13 45-24-34. Land development projects. -- An ordinance adopted  
14 pursuant to this chapter may include provisions and standards for and  
15 may establish districts for or otherwise provide for the creation of  
16 land development projects including residential cluster development  
17 and planned development.

18 (a) A zoning ordinance adopted pursuant to this chapter which  
19 permits or allows for the creation of a land development project shall  
20 require that any such project be referred to the city or town planning  
21 board or commission for approval, in accordance with the procedures  
22 established by chapter 45-23 of the general laws of Rhode Island,  
23 including those for appeal and judicial review, and with any ordi-  
24 nances or regulations adopted pursuant thereto, whether or not the  
25 land development constitutes a subdivision as defined in said chapter  
26 45-23.

27 (b) No such land development project shall be initiated until a  
28 plan of same has been submitted to said planning board or commission,  
29 a public hearing has been held thereon, and approval has been granted  
30 by said planning board or commission. In reviewing, hearing and  
31 deciding upon a land development project, the city or town planning  
32 board or commission may be empowered to permit adjustments in density

1 and dimensional requirements within such a project provided standards  
2 for such adjustments are specifically described in the zoning ordi-  
3 nance, and may be empowered to apply such special conditions and  
4 stipulations to the approval as may, in the opinion of the planning  
5 board or commission, be required to maintain harmony with neighboring  
6 uses and promote the objectives of the comprehensive plan and zoning  
7 ordinance.

8 (c) In regulating land development projects, an ordinance adopted  
9 pursuant to this chapter may include, but is not limited to, regula-  
10 tions governing the following:

11 (1) a minimum area or site size for a land development project;

12 (2) uses to be permitted within such a development;

13 (3) ratios of residential to nonresidential uses where applica-  
14 ble;

15 (4) Maximum density per lot and maximum density for the entire  
16 development with provisions for adjustment of applicable lot density  
17 and dimensional standards where open space is to be permanently set  
18 aside for public or common use; where the physical characteristics,  
19 location, and, or size of the site require such adjustment or where the  
20 location, size and type of housing units, commercial, industrial or  
21 other uses require such adjustment;

22 (5) roads, driveways, utilities, parking and other facilities,  
23 and may distinguish between those intended to remain in private owner-  
24 ship or to be dedicated to the public, provided that any such facili-  
25 ties which are intended to be dedicated to the public shall meet  
26 applicable requirements of any ordinance and regulations adopted pur-  
27 suant to chapter 45-23 of the general laws of Rhode Island.

28 45-24-35. Nonconforming development. -- Any city or town adopt-  
29 ing or amending a zoning ordinance under this act shall make provision  
30 therein for any development lawfully existing at the time of adoption  
31 or amendment of the zoning ordinance, but which does not comply with  
32 one or more provisions of the ordinance or amendment as adopted. The

1 zoning ordinance shall permit continuance of nonconforming development  
2 without change except that:

3 (a) Zoning ordinances may provide for modification of nonconforming  
4 development when such modification would result in a greater  
5 degree of conformance to the zoning ordinance, as provided for in  
6 section 45-24-16.

7 (b) Zoning ordinances may provide for elimination of nonconforming  
8 development by amortization, as provided for in section 45-24-37.

9 45-24-36. Modification of nonconforming development. -- (a) A  
10 zoning ordinance may provide that, in the event a nonconforming devel-  
11 opment is abandoned or discontinued for a period of time stated in the  
12 ordinance, it shall not thereafter be resumed or reestablished except  
13 in conformance with the ordinance. A structure shall be considered  
14 abandoned if it is fully or partially demolished or otherwise physi-  
15 cally altered so as to bring it into conformance, or into a greater  
16 degree of conformance, with the ordinance. The use of a structure or  
17 land shall be considered discontinued if the activity or operation  
18 ceases, the premises are vacated, machinery, equipment or fixtures are  
19 removed, or other action terminating the use is taken.

20 (b) A zoning ordinance may provide that, in the event that a non-  
21 conforming structure or improvement is damaged by any means or combi-  
22 nation of means to an extent stated in the ordinance, as measured by  
23 appraised value, area occupied, or other appropriate measure, it shall  
24 not thereafter be restored except in conformance with the ordinance.

25 (c) A zoning ordinance may provide that a nonconforming develop-  
26 ment may be modified under all of the following conditions:

27 (1) A permit for a special exception, authorizing modification,  
28 must be issued by the zoning board of appeals, following the procedure  
29 established in this act and in the zoning ordinance.

30 (2) Any modification shall bring the development more closely  
31 into conformance with the zoning ordinance. Modifications authorized  
32 under this provision shall not result in the enlargement or extension

1 of a nonconforming structure or improvement or in a change to a land  
2 use that is first permitted in a less restrictive zone than the previ-  
3 ously existing land use.

4 45-24-37. Elimination of nonconforming development by amortiza-  
5 tion. -- (a) A zoning ordinance may authorize the city or town council  
6 to eliminate nonconforming development by amortization of the value  
7 thereof. The purpose of such action shall be to promote the public  
8 health, safety or general welfare by reducing conflicts between land  
9 uses, converting areas from inappropriate to appropriate land uses,  
10 preserving open space, enhancing the cultural or historical character,  
11 integrity or quality of a community. Elimination may include the ces-  
12 sation or modification of a land use or the total or partial demoli-  
13 tion or removal of a structure or improvement.

14 (b) A city or town council shall utilize the following procedures  
15 in eliminating nonconforming development by amortization:

16 (1) The city or town council shall by resolution direct an appro-  
17 priate city or town agency or official to survey all or portions of  
18 the city or town to determine the existence and location therein of  
19 nonconforming development. Upon the adoption of such a resolution,  
20 the investigation shall immediately be commenced and the results  
21 thereof submitted to the governing body within twelve (12) months  
22 thereafter. The findings shall be filed with the planning board or  
23 commission of the city or town and a copy thereof with the city or  
24 town clerk, and shall be a matter of public record.

25 (2) Said planning board or commission shall, within one (1) year  
26 after receipt of such report, determine which, if any, of the non-  
27 conforming development set forth in the report cause substantial det-  
28 riment to the public welfare, adversely affect the surrounding area in  
29 which it is located, or substantially impair the intent and purpose of  
30 the comprehensive plan or zoning ordinance. It shall forthwith there-  
31 after notify the city or town council of its findings. The council  
32 shall thereupon conduct public hearings to determine which, if any, of

1 the nonconforming development set forth in the report of the planning  
2 board or commission should be eliminated, following notification by  
3 certified mail to the owners of all properties to be considered.

4 If the city or town council determines that a nonconforming  
5 development shall be eliminated by amortization, it shall establish a  
6 tentative amortization period, sufficient to permit the property owner  
7 to recover the value or investment represented by the nonconforming  
8 development. In determining an amortization period under this subsec-  
9 tion, the city or town council shall also consider the urgency of the  
10 public purpose requiring elimination, the detriment caused by the non-  
11 conforming development, the probable extent of the economic usefulness  
12 of the nonconforming development and the cost of elimination to the  
13 owner.

14 (4) The city or town council shall notify the property owner of  
15 its tentative determination and shall hold a public hearing thereon.

16 (5) The city or town shall then, by resolution, establish a final  
17 amortization period and designate the date by which the nonconforming  
18 development shall be brought into conformance with the zoning ordi-  
19 nance by modification or elimination.

20 (c) If the city or town council determines that a particular non-  
21 conforming development should not be eliminated at this time, such  
22 determination shall be binding for a period of five (5) years after  
23 the date thereof. Subsequent to this period, the city or town council  
24 may again consider elimination of the nonconforming development fol-  
25 lowing the procedures set forth in subsection (b) of this section.

26 45-24-38. Enforcement of zoning ordinance. -- (a) The zoning  
27 ordinance shall designate the local official or agency charged with  
28 its administration and enforcement, including the issuing of any re-  
29 quired permits or certificates, keeping of records showing the compli-  
30 ance of uses of land, authorizing commencement of uses or development  
31 under the provisions of the zoning ordinance, inspection of suspected  
32 violations, and performing such other duties and taking such actions

1 as may be assigned in the ordinance. The zoning ordinance shall also  
2 make provision for appointment of the zoning enforcement official or  
3 agency, where enforcement duties and responsibilities are not charged  
4 to an existing official or agency.

5 (b) A zoning ordinance shall designate (1) the officer or agency  
6 responsible for maintenance of the text and map and the office or  
7 agency responsible for review of these at reasonable intervals to  
8 identify any changes necessary.

9 45-24-39. Zoning board of review - Establishment. -- (a) A  
10 zoning ordinance adopted pursuant to this chapter shall provide for  
11 creation of a zoning board of review and for appointment of members  
12 and organization of said board as specified in the zoning ordinance,  
13 or, in cities and towns with home rule charters or legislative char-  
14 ters, as provided in said charters.

15 b) Except as provided elsewhere in this section, or in a  
16 home-rule charter or legislative charter, the board of review shall  
17 consist of five (5) members, each to hold office for the term of five  
18 (5) years; provided, however, that the original appointments shall be  
19 made for terms of one (1), two (2), three (3), four (4), and five (5)  
20 years respectively. The chairman, or in his absence, the acting  
21 chairman, may administer oaths and compel the attendance of witnesses.  
22 Unless otherwise provided by a home-rule charter or legislative char-  
23 ter, the mayor of any city or the town council of any town shall have  
24 the right to:

25 (1) name an auxiliary or sixth (6th) member of said board of  
26 review of said city or town, as the case may be, who shall sit as an  
27 active member when and if a member of said board is unable to serve at  
28 any hearing, upon request of the chairman of said board.

29 (2) name an additional auxiliary or seventh (7th) member of said  
30 board of review, to sit as an active member when and if a member of  
31 said board is unable to serve at any hearing upon request of the  
32 chairman of said board.



1 (c) Zoning boards of review in existence on the effective date of  
2 adoption of a zoning ordinance under this chapter shall be considered  
3 to be the zoning board of review for purposes of this chapter, and are  
4 exempt from provisions of this chapter respecting terms of originally  
5 appointed members.

6 (d) Where not provided for in the city or town charter, the  
7 zoning ordinance shall specify qualifications for those zoning board  
8 members first appointed subsequent to adoption of an ordinance pur-  
9 suant to this chapter, and procedures for filling vacancies in unex-  
10 pired terms.

11 45-24-40. Powers of board of review. -- Vote required for ac-  
12 tion. The board of review shall have the following powers:

13 (a) To hear and decide appeals where it is alleged there is error  
14 in any order, requirement, decision, or determination made by an  
15 administrative officer in the enforcement of this chapter or of any  
16 ordinance adopted pursuant hereto.

17 (b) To hear and decide special exceptions to the terms of the  
18 ordinance, upon which such board is authorized to pass under such  
19 ordinance.

20 (c) To authorize upon appeal in specific cases such variance in  
21 the application of the terms of the ordinance as will not be contrary  
22 to the public interest, where owing to special conditions a literal  
23 enforcement of the provisions of the ordinance will result in unnec-  
24 essary hardship, and so that the spirit of the ordinance shall be  
25 observed and substantial justice done.

26 (d) In exercising the powers contained in subsections (a) and (c)  
27 the board may, in conformity with the provisions of this chapter,  
28 reverse or affirm wholly or partly or may modify the order, require-  
29 ment, decision, or determination appealed from and may make such  
30 order, requirement, decision or determination as ought to be made, and  
31 to that end shall have the powers of the officer from whom the appeal  
32 was taken.

1 (e) The concurring vote of three (3) members of the board shall  
2 be necessary to reverse any order, requirement, decision or determina-  
3 tion of any such administrative officer, and the concurring vote of  
4 four (4) members of the board shall be required to decide in favor of  
5 the applicant on any matter within the discretion of the board upon  
6 which it is required to pass under such ordinance or to effect any  
7 variation in the application of such ordinance.

8 (f) In granting a variance under subsection (c) of this section,  
9 or in permitting a special exception under subsection (b) of this  
10 section, the zoning board review may apply such special conditions to  
11 the grant that may, in the opinion of the board, be required to main-  
12 tain harmony with neighboring uses and promote the objectives of the  
13 comprehensive plan and zoning ordinance. Such special conditions may  
14 include, but are not limited to, provisions for:

15 (1) minimizing adverse impact of the development upon other land,  
16 including the type, intensity, and performance of activities;

17 (2) controlling the sequence of development, including when it  
18 must be commenced and completed;

19 (3) controlling the duration of use or development and the time  
20 within which any temporary structure must be removed;

21 (4) assuring satisfactory installation and maintenance of re-  
22 quired public improvements;

23 (5) designating the exact location and nature of development; and

24 (b) establishing detailed records by submission of drawings,  
25 maps, plats, or specifications.

26 45-24-41. Expenses of zoning board of review - Fees. -- An ordi-  
27 nance adopted pursuant to this chapter may provide for the following:

28 (a) Reasonable fees to be paid by the appellant or applicant for  
29 the review and hearing of appeals and applications and recording of  
30 the decisions thereon.

31 (b) The engaging of legal counsel, experts and clerical assis-  
32 tance by the board to aid in the discharge of its duties.

1 (c) Renumeration to board members and reimbursement for expenses  
2 incurred in performance of official duties.

3 45-24-42. Appeals and applications to zoning board of review. --

4 (a) An appeal to the zoning board of review may be taken by any person  
5 aggrieved or by any officer, department, board, or bureau of the  
6 municipality affected by any decision of the zoning enforcement offi-  
7 cer or agency. Such appeal shall be taken within thirty (30) days by  
8 filing with the officer or agency from whom the appeal is taken and  
9 with the zoning board of review a notice of appeal specifying the  
10 ground thereof. The officer or agency from whom the appeal is taken  
11 shall forthwith transmit to the board all the papers constituting the  
12 record upon which the action appealed from was taken.

13 (b) An application to the zoning board of review may be made by  
14 any person, group, agency or corporation desiring such action by  
15 filing, with the zoning enforcement officer or agency, an application  
16 describing the request and supported by such data and evidence as may  
17 be required by the board or by the terms of the ordinance. The zoning  
18 enforcement officer or agency shall immediately transmit each applica-  
19 tion received to the zoning board of review, and shall transmit a copy  
20 of each application to the planning board or commission.

21 45-24-43. Stay of proceedings on appeal to zoning board of  
22 review. -- An appeal shall stay all proceedings in furtherance of the  
23 action appealed from, unless the zoning enforcement officer or agency,  
24 from whom the appeal is taken certifies to the board of review, after  
25 an appeal shall have been duly filed, that by reason of facts state in  
26 the certificate a stay would in the officer's or agency's opinion  
27 cause imminent peril to life or property. In such case proceedings  
28 shall not be stayed other than by a restraining order which may be  
29 granted by a court of competent jurisdiction on application thereof  
30 and upon notice to the officer of agency from whom the appeal is taken  
31 on due cause shown.

1           45-24-44. Public hearing by zoning board of review.   The board  
2 of review shall fix a reasonable time for the hearing of the appeal,  
3 give public notice thereof, as well as due notice to the parties in  
4 interest, and decide the same within a reasonable time. Upon the  
5 hearing any party may appear in person or by agent or by attorney.

6           45-24-45. Records of board. -- The board shall keep minutes of  
7 its proceedings, showing the vote of each member upon each question,  
8 or if absent or failing to vote, indicating such fact, and shall keep  
9 records of its examinations and other official actions, all of which  
10 shall be filed immediately in the office of the board and shall be a  
11 public record. Copies of all records shall also be filed in the  
12 office of the zoning enforcement officer or agency.

13           45-24-46. Mediation option. -- A zoning ordinance may make  
14 provision for mediation of disagreements through the procedures set  
15 forth in this section.

16           (a) Parties to proceedings authorized in sections 45-24-34,  
17 45-24-39 through 45-24-45, 45-24-47 and 45-24-50 may utilize mediation  
18 as an aid in completing such proceedings.

19           (b) In proceedings before the planning board or zoning board of  
20 review, in no case shall the respective board initiate mediation or  
21 participate as a mediatory party. Mediation shall supplement, not  
22 replace, those procedures in the above referenced section once they  
23 have been formally initiated. Nothing in this section shall be inter-  
24 preted as expanding or limiting municipal police power or as modifying  
25 any principles of substantive law.

26           (c) Participation in mediation shall be wholly voluntary. The  
27 appropriateness of mediation shall be determined by the particulars in  
28 each case and the willingness of the parties to negotiate.

29           (d) Any municipality offering the mediation option shall assure  
30 that in each case, the mediating parties, assisted by the mediator as  
31 appropriate, develop terms and conditions for:

32           (1) Funding mediation.

1 (2) Selecting a mediator who, at a minimum, shall have a working  
2 knowledge of municipal zoning and subdivision procedures and demon-  
3 strated skills in mediation.

4 (3) Completing mediation, including time limits for such comple-  
5 tion.

6 (4) Suspending time limits otherwise authorized in this chapter  
7 provided there is written consent by the mediating parties, and by an  
8 applicant or municipal decision-making body if either is not a party  
9 to the mediation.

10 (5) Identifying any additional important parties and affording  
11 them the opportunity to participate.

12 (6) Subject to legal restraints, determining whether some or all  
13 of the mediation sessions shall be open or closed to the public.

14 (7) Assuring that mediated solutions are in writing and signed by  
15 the parties, and become subject of review and approval by the appro-  
16 priate decision-making body pursuant to the authorized procedures set  
17 forth in the other sections of this chapter.

18 (e) No offers or statements made in the mediation sessions,  
19 excluding the final written mediated agreement, shall be admissible as  
20 evidence in any subsequent judicial or administrative proceedings.

21 45-24-47. Appeals to superior court. -- Any person or persons  
22 jointly or severally aggrieved by a decision of the zoning board may  
23 appeal to the superior court for the county in which the municipality  
24 is situated by filing a complaint setting forth the reasons of appeal  
25 within twenty (20) days after such decision has been filed in the  
26 office of the zoning board. The zoning board shall file the original  
27 documents acted upon by it and constituting the record of the case  
28 appealed from, or certified copies thereof, together with such other  
29 facts as may be pertinent, with the clerk of the court within ten (10)  
30 days after being served with a copy of the complaint. When the com-  
31 plaint is filed by someone other than the original applicant or appel-  
32 lant, such original applicant or appellant and the members of the

1 zoning board shall be made parties to such proceedings. The appeal  
2 shall not stay proceedings upon the decision appealed from, but the  
3 court may, in its discretion, grant a stay on appropriate terms and  
4 make such other orders as it deems necessary for an equitable disposi-  
5 tion of the appeal.

6 If, before the date set for hearing in the superior court, appli-  
7 cation is made to the court for leave to present additional evidence  
8 before the zoning board and it is shown to the satisfaction of the  
9 court that the additional evidence is material and that there were  
10 good reasons for the failure to present it at the hearing before the  
11 zoning board, the court may order that the additional evidence be  
12 taken before the zoning board upon conditions determined by the court.  
13 The zoning board may modify its findings and decision by reason of  
14 such additional evidence and shall file that evidence and any modifi-  
15 cations, new findings or decisions with the superior court.

16 The review shall be conducted by the superior court without a  
17 jury. The court shall consider the record of the hearing before the  
18 zoning board and if it shall appear to the court that additional evi-  
19 dence is necessary for the proper disposition of the matter, it may  
20 allow any party to such appeal to present such evidence in open court,  
21 which evidence along with said report shall constitute the record upon  
22 which the determination of the court shall be made.

23 The court shall not substitute its judgment for that of the  
24 zoning board as to the weight of the evidence on questions of fact.  
25 The court may affirm the decision of the zoning board or remand the  
26 case for further proceedings, or may reverse or modify the decision if  
27 substantial rights of the appellant have been prejudiced because of  
28 findings, inferences, conclusions or decisions which are: (1) in  
29 violation of constitutional, statutory or ordinance provisions; (2) in  
30 excess of the authority granted to the zoning board by statute or  
31 ordinance; (3) made upon unlawful procedure; (4) affected by other  
32 error of law; (5) clearly erroneous in view of the reliable, probative

1 and substantial evidence of the whole record; or (6) arbitrary or  
2 capricious or characterized by abuse of discretion or clearly unwar-  
3 ranted exercise of discretion.

4 The provisions of this section shall apply to appeals from all  
5 zoning boards of review of any city or town, whether or not such city  
6 or town has adopted the provisions of this chapter.

7 45-24-48. Priority in judicial proceedings. -- Upon the entry of  
8 any case or proceeding brought under the provisions of this chapter,  
9 including pending appeals and appeals hereinafter taken to said court,  
10 referred to in section 45-24-47, the court shall at the request of  
11 either party advance the case, so that the matter shall be afforded  
12 precedence on the calendar and shall thereupon be heard and determined  
13 with as little delay as possible.

14 45-24-49. Penalty for violation. -- A zoning ordinance adopted  
15 pursuant to the provisions of this chapter shall provide for a penalty  
16 for any violation of said zoning ordinance or for a violation of any  
17 terms or conditions of any action of the zoning board of review. The  
18 penalty for such violation shall not exceed one hundred dollars (\$100)  
19 for each violation and each day of the existence of any such violation  
20 shall be deemed to be a separate offense. Any such fine shall inure  
21 to the city or town.

22 45-24-50. Judicial aid in enforcement. -- The supreme court and  
23 the superior court, within their respective jurisdictions, or any jus-  
24 tice of either of said courts in vacation, shall, upon due proceedings  
25 in the name of the city or town instituted by its city or town solic-  
26 itor, have power to issue any extraordinary writs or to proceed ac-  
27 cording to the course of equity or both:

28 (a) To restrain the erection, alteration, or use of any building,  
29 structure, sign, or land erected, altered, or used in violation of the  
30 provisions of any zoning ordinance enacted under the authority of this  
31 chapter, and to order its removal or abatement as a nuisance;

32 (b) To compel compliance with the provisions of any zoning ordi-  
33 nance enacted under the authority of this chapter; and/or;

1 (c) To order the removal by the owner of any building, structure,  
2 sign or improvement existing in violation of any zoning ordinance  
3 enacted under the provisions of this chapter and to authorize some  
4 official of such city or town in default of such removal by the owner  
5 to remove it at the expense of such owner.

6 45-24-51. Reimbursement to city or town. -- When under the  
7 provisions of any judgment, order, or decree, in any such proceeding,  
8 any work is done or materials furnished by an official of the city or  
9 town or by the order of such official, at the expense of the owner, in  
10 removing a building, structure, sign or other improvement unlawfully  
11 existing, the value of such work and material may be recovered in an  
12 action of the case, brought in said superior court against such owner,  
13 and if any such work or materials shall have been done or furnished by  
14 or at the cost of the city or town, such official shall cause the same  
15 to be brought in the name of the city or town.

16 45-24-52. Creation of vested rights or encumbrances. -- Nothing  
17 in this chapter or any ordinance enacted under the authority of this  
18 chapter shall create or be construed to create any vested rights in  
19 any person, firm, or corporation, or to be or create any encumbrances  
20 upon the title of any person, firm, or corporation in any property  
21 affected by any such ordinance.

22 45-24-53. Severability. -- If any provision of this chapter or  
23 of any rule, regulation or determination made thereunder, or the  
24 application thereof to any person, agency or circumstances, is held  
25 invalid by a court of competent jurisdiction, the remainder of the  
26 chapter, rule, regulation, or determination and the application of  
27 such provisions to other persons, agencies, or circumstances shall not  
28 be affected thereby. The invalidity of any section or sections or  
29 parts of any section or sections of this chapter shall not affect the  
30 validity of the remainder of the chapter.

31 SECTION 2. Chapter 1-3 of the General Laws entitled "Airport  
32 Zoning" is hereby amended as follows:



1            1-3-27. Judicial review. -- Any person or persons jointly or  
2 severally aggrieved by any decision of the board of appeals, or any  
3 taxpayer, or any officer, department, board, or bureau of the polit-  
4 ical subdivision, or the airports division, may appeal to the superior  
5 court in the manner prescribed by ~~45-24-20~~ 45-24-47 and the provi-  
6 sions of said section shall in all respects be applicable to said  
7 appeal.

8            SECTION 3. This act shall take effect upon passage.

\*\*\*\*\*  
ES741  
\*\*\*\*\*

APPENDIX II

TOWN OF FOSTER

RECOMMENDATIONS FOR AMENDING MULTI-FAMILY ORDINANCE

Section 10 - Multi-Family Dwellings

1. Amend E.

Add: "Before a special exception for a multi-family structure or multi-family development shall be granted, the site plan, together with supporting documents, shall be reviewed by the Foster Planning Board, after which review, the Planning Board shall publish a report of its findings and recommendations pertaining to the conformity of the proposed development with the overall community plan, other Town policies including the encouragement of solar energy and the requirements of this Section..."

2. Amend G - Site Plan/Building Design

Insert After n: "Conditions of the tract which can cast shadows interfering with proposed or potential use of solar energy systems including existing and proposed structures, vegetation and major topographic features on the site."

3. Amend H - Standards for Development

Add 8. "Solar Review"

"The Planning Board may require that the developer demonstrate that he has considered using site design techniques which preserve the potential for solar energy use and protect solar access in the development. Such techniques may include but need not be limited to: 1) street, lot and building orientation which provides maximum southern exposure; 2) landscape planning which preserves solar access; 3) patterns of development which take advantage of slope and other topographic features."

Section II - Senior Citizen Group Housing

1. Amend A - Purpose

"...to promote the use of land to facilitate a more economic and energy efficient arrangement of buildings, common facilities, vehicular circulation and utilities..."

TOWN OF FOSTER

RECOMMENDATIONS FOR REMOVING IMPEDIMENTS TO SOLAR ENERGY USE

A. REMOVING ZONING BARRIERS

Article I - Administration and Procedure

1. Amend Section 1 - Statement of Purpose

Add after: "...to provide adequate light and air...to encourage the use of renewable energy resources and promote energy efficient patterns of land use and development."

Article II - District Use Regulations

1. Add Note to 12 - Accessory Uses\*

"Any use customarily incident to uses permitted in the district and located on the same lot.\*

\*Note - "Attached and detached solar energy systems including solar collectors, storage facilities and greenhouses shall be considered a permitted accessory use in all districts."

Article IV - Special Regulations

1. Amend Section 2 - Yard Exceptions

Add to B: "Ordinary projections of window sills, solar energy systems or apparatus needed to operate such systems, cornices or other ornamental features may extend up to five feet into the yard."

Add E: "Attached and detached solar energy systems including solar collectors, storage facilities and greenhouses may be located in the side or rear yard provided they are placed 10 feet from the lot line. Such systems may be erected in the front yard by special exception."

2. Add Section 12 - Height Exceptions

"Solar energy systems may be erected above the maximum height specified for each district."

APPENDIX III

## TOWN ENERGY RESOLUTION

The Town Council of \_\_\_\_\_, resolve to promote the use of solar energy in the Town by encouraging energy efficient patterns of land use and development.

The Council finds that the use of renewable resources, in particular solar energy, will benefit the community by reducing community-wide dependence on expensive and unreliable fossil fuel supply. The Town finds that renewable energy resources promise to offer a future energy source for the community which the Town can preserve and protect through the following measures.

It is hereby resolved:

- 1) That the Town building inspector's office will make available information and advice concerning the opportunity for solar or energy efficient building design and siting to individual or other applicants for building permits. This advice may include referral to the Governor's Energy Office and Town boards or officials for additional information.
- 2) That the Town planning board will develop short and long term plans for promoting energy efficient subdivision in the Town. The planning board shall consider and prepare amendments to the comprehensive plan, subdivision regulations and zoning ordinance. These considerations should include, but not be limited to educational efforts for developers incorporation of solar access provisions into subdivision review and proposals for modifications in the zoning ordinance to remove barriers to solar energy use.

APPENDIX IV

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**APPENDIX V**



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