TOWN OF HOPKINTON
PLANNING BOARD

Monday, July 24, 2023
7:00 P.M.
Hopkinton Town Hall
1 Town House Road, Hopkinton, RI 02833

CALL TO ORDER:

In Hopkinton on the twenty-fourth day of July 2023 A.D. the meeting was called to order by Chairman Ronald Prellwitz at 7:00 P.M. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833.

MOMENT OF SILENT MEDITATION AND A SALUTE TO THE FLAG: Chairman Prellwitz led the meeting in a salute to the Flag.

ROLL CALL:

Mr. Prellwitz, Ms. Shumchenia, Ms. Light, Mr. DiOrio, Mr. Lindelow, Mr. Wayles and Ms. Bolek were all in attendance. Planner Jalette, Solicitor Hogan and Clerk Spellman were also in attendance.

PRE-ROLL FOR AUGUST 2, 2023, PLANNING BOARD MEETING: Mr. Prellwitz, Ms. Shumchenia, Ms. Light, Mr. DiOrio, Mr. Lindelow, Mr. Wayles and Ms. Bolek all indicated that they would be in attendance.

APPROVAL OF MINUTES:

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MS. LIGHT TO APPROVE THE MINUTES OF THE JUNE 14, 2023, REGULAR MEETING.

IN FAVOR: Shumchenia, DiOrio, Light, Lindelow, Prellwitz
OPPOSED: None

SO VOTED

OLD BUSINESS:

Preliminary Plan – Public Hearing – **Brushy Brook** – 140- Unit Comprehensive Permit – Plat 32, Lots 1, 4, 6, 8, 10, 12, 14, 16, 17, 21, 23, 25, 27, 30, 32, 34, 36, 38, 40, 41, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 63, 65, 67, 68, 69, 70 and 71, located at 130 and 0 Dye Hill Road, 0 Brushy Brook Drive, 0 Wedge Road, 0 Green Lane. LR6-A Owner, LLC., and Realty Financial Partners, applicants.

The Planning Board will discuss, consider, and possibly vote on this Preliminary Plan application at this meeting.

Attorney Landry was present on behalf of the applicant.

Ms. Shumchenia noted that at the last meeting they left off with everyone making comments, other than Mr. Prellwitz who was not present. Ms. Shumchenia felt that they should start this meeting by hearing any input that Mr. Prellwitz might have regarding any potential conditions of approval or findings of fact. Ms. Light noted that the public hearing had not been closed. Mr. Prellwitz asked where they had ended up regarding the sidewalk issue and Mr. DiOrio stated that this was a potential condition of approval as well as for off-site improvements. Mr. Prellwitz asked the Board for their consensus on those matters and Mr. DiOrio stated that he was comfortable with what has been put forth. Mr. Prellwitz asked about the timeframe for the off-site improvements which the developer had not wanted to do until after completion of the project and Mr. DiOrio explained that items 64, 65, 66 and 67 all addressed these topics. Mr. Prellwitz explained that early on in the process the developer indicated that he wished to do the improvements after their construction was completed. He felt that if they put it off until the end, it may never complete this. Mr. Lindelow advised that he did not know a lot about HOA's and asked when there would be bylaws and a structure. What if someone who is the lead of the homeowners' association should move out, they lose their funding or go bankrupt; what was the fail-safe if the homeowners' association falls apart. Mr. DiOrio suggested that changes to the HOA structure should either be submitted to or approved by the town. Mr. Lindelow asked what happened if no one was asking for changes and it just fell apart and Ms. Light believed that it would just fall out of their purview if that happened. Mr. Prellwitz asked if there was a standard structure for HOAs or was each its own entity. Solicitor Hogan explained that there was no standard structure for an HOA, although they seem to all be run similarly. They are similar to condominium associations. In this instance each lot owner is required, as a condition of the purchase, to be a dues-paying member of the HOA. They have made some suggestions about what they would like to see contained in the organizational documents and bylaws. All of these entities' bylaws would typically have a governing structure, such as an executive board, typically elected by the homeowners of the association or the development. They will hold periodic meetings which are required under the conditions of the state permit, regarding the well, septic and stormwater features throughout the development. All of those things must be maintained by the homeowners' association. Solicitor Hogan advised that in listening to the concerns of the Planning Board members and the residents over the last two years, it became clear to her that very strong language needs to be contained in the governing documents and there has to be fairly tight coordination by the town; they need to keep the town informed after each election and they need to keep the town informed about their quarterly financial reports. She also recommended, if it would not be too expensive, that the officers of that entity be bonded. There are legal documents that will require the creation, funding and operation of that. Also, the Town Council should make sure that its ordinances reach and apply to approved entities such as this which are responsible for infrastructure, so that if there is a failure the entity could be cited through the Municipal Court, brought in and held accountable in order to get things corrected. Mr. Lindelow noted that Phase 1 was twenty houses. He asked what if two houses were sold and then it was six months before the third one sold and then a fourth one thereafter sold. Would the homeowner's fees change as more houses were sold. Attorney Landry noted that the homeowner's fees would go down with each house sold. Attorney Landry explained that as the houses were built, the developer would be responsible for the fees on the units that the developer owns. He noted that they are contemplating seven phases with roughly twenty units in each phase. This means that they

need to get through preliminary and then final for seven different phases and at the beginning all of the homeowners' association documents should be approved. Solicitor Hogan would be involved in that process. They do not get to build the different phases if at every stage they have not satisfied the Planning Board that this condition of having an active homeowners' association which has meaningful funding and is working the way it is supposed to be working, is working. It is not like everything ends; the final will come in stages. A good set of homeowners' documents are worked out at final, and they are tested every time they go to a sub final approval. The only way this would not work, and the town would truly be at risk, is if the town denies the subdivision or puts in some poison pill condition which gets overturned readily by the State Housing Appeals Board because then it is the State who is not going to impose these conditions on the homeowners' association. Mr. Prellwitz noted that they have low- and moderate-income housing which is incorporated in this project and did they anticipate having any relief regarding the homeowners' association payments for those people? Attorney Landry suggested there could be and in some projects that happens. They have had other projects where the Planning Boards have felt this was unfair to the other homeowners and do not want that. Every time a house is sold, the monitoring agent for the project looks at the incomes of the homeowners and what they can afford, and the maximum sales price is based on what the homeowners' association fees are plus the cost of the house. So if the homeowner's fees are too high, such that the buyer is paying more than 30% of their income for housing, the cost of the house is going to come down. They may not want to deal with that issue twice. It was already going to be calculated as part of what they can sell the house for to a low- or moderate-income household. Even if you look at the materials for their Rhode Island Housing letter of eligibility, they had to pro forma this with an assumed homeowners' association fee.

Conrad Cordano of 110 Woody Hill Road believed that Sawmill Road and Dye Hill Road will never be the same. When this project gets started, for the next five years there will be a constant parade of construction vehicles and when people start moving in there will be even more traffic. When there was a threat of a solar array being put in at this site there were countless speakers who wished to keep Hopkinton country. How is putting in a 140-home subdivision in the middle of nowhere going to achieve that goal. He asked the Planning Board members to think about that before they make their decision.

Sherri Aharonian of Dye Hill Road noted that her question was actually for Mr. Cabral who was not present, so she directed it to the Planner. Ms. Aharonian explained that the last memo that she had received from Mr. Cabral was dated June 7, 2023, and it did not encompass all of the items; however, item 3 regarded water withdrawal and noted that Mr. Crossman stated that the applicant has indicated that there will be a prohibition to automatic irrigation systems to minimize groundwater impacts. She felt that this should be a condition. In prior memos there was talk about manual irrigation, which to her meant dragging the sprinkler out with the hose or people watering their lawns. She felt the spirit of automatic irrigation systems would be negated if manual irrigation were allowed, because what actually was the difference. Ms. Light felt that in limiting the water extraction to irrigation, it really needs to encompass the whole process; the goal is not to have people pumping water all over the place outside – you cannot wash your car, you cannot water your lawn. Ms. Aharonian felt that this needs to be clearly defined for the residents who will live there so they will know what the Board is allowing and what they

are not. Ms. Shumchenia noted that the Board discussed this issue and several other issues with the Solicitor who then wrote a draft set of conditions. She also noted that several of the applicant's experts indicated that you are not allowed to water lawns with a drinking water well.

Joseph Capalbo of 45 Woody Hill Road advised the Board that if they voted yes to this proposal, he hoped that in their minds they were satisfied with all of the answers that they have provided regarding the environment, quality of life in that area of the town, taxes, school system and safety on the roads, and that these things were all going to be taken care of. The abutting residents have a lot of real concerns and if the project has problems, they are the ones that will have to live with it every day, assuming that they decide to continue to live in Hopkinton.

Kyle Lupinski of 123 Dye Hill Road spoke via Zoom; however, the Board could not hear him.

Joe Moreau of Old Depot Road noted that there was a memo from Town Manager Rosso dated February 8th to the Town Council which indicated that the Brushy Brook project was a significant project that will substantially impact the town and its resources. When reviewing the comments from the town's various department heads, many of them share their concerns about the negative impacts the development would have on the town. He noted that Skunk Hill Road, Sawmill Road, and Dye Hill Road had only been mentioned concerning traffic; however, the Police Chief indicated that Woody Hill Road, Fairview Avenue and Fenner Hill Road are all narrow and winding with no sidewalks. To support the increased traffic flow during construction, work would need to be done to the roads, including widening of bridges and culverts including the three-way stop sign. The Chief's concerns mirror that of DPW Director Dave Caswell who supported the idea that the population increase would require significant road construction to support it. The necessary construction work would also increase DPW's budget. Chief Palmer felt that the town would need to hire an additional police officer due to the added calls they would receive if this project moved forward. Finance Director Elizabeth Monty noted that there would be an increase in enrollment of children into the school system which in 2022 was approximately $12,985 per student and the town could potentially see an increase of $3,505,950 to the Chariho budget that the residents would pay. This would be an increase in taxes of 19%. Mr. Rosso's final statement was that overall, the Brushy Brook development would have a devastating fiscal impact on Hopkinton taxpayers; the increase in the education expense alone would increase the mill rate of $18.53 (the old mill rate) by $3.45. This would increase the annual property tax bill by $1,380 at a home assessed at $400,000. Mr. Rosso believed a development of this size would cripple the taxpayers and Mr. Moreau indicated that he agreed 100%. Mr. Moreau spoke about being the Public Welfare Director for the town and receiving calls from residents who could not put food on their table or pay their taxes or heating oil. He wondered why they needed to build so many houses, he felt that condominium units for over age 55 would be a better fit for our town. He urged the Board to vote no on this project.

Planning Board liaison and Town Council member Stephen Moffitt, Jr. asked regarding the seven proposed phases, would there be one all-encompassing final meeting or would there be seven sub meetings for each phase. Mr. Prellwitz believed there would be seven

meetings. Solicitor Hogan noted that there would be an overall final approval which would encompass the entire project and then they will come back in phases and there will be a one-night appearance for bringing the next phase online. There may be a requirement to update a bond or something of that nature. Attorney Landry was not sure if he agreed with that approach. He felt that they would come in sub-phases with a final phasing plan to be recorded separately. Attorney Hogan noted that she was not talking about recording the entire subdivision at once; the recording would come separately. The Board will not be going over all of these issues seven more times. Attorney Landry suggested that they may be looking to make sure that the water is there, and the Homeowners' association is properly set up, which Solicitor Hogan agreed with. Attorney Landry suggested there would be an opportunity to address any issues at each sub-phase. Mr. Moffitt asked if that would be handled administratively, and Solicitor Hogan indicated no that he would come before the Board. Mr. Moffitt asked if there would be a prohibition on private wells. Solicitor Hogan noted that at present the draft did not address this, but it could be added. Mr. Moffitt noted that he was not looking to add this but felt that there were going to be communal areas that may need to be beautified at some point and would need water to do that. He agreed that this development should have sidewalks and that there would be major impacts to the roadways. He hoped the Board would not approve this project; however, stated that if they did approve it, that every "i" is dotted and every "t" crossed. Ms. Light asked Solicitor Hogan if Mr. Moffitt, as the liaison, would have an opportunity to contribute after they closed the meeting and she indicated that he did.

Mr. Lindelow noted that he heard the argument several times that this project was going to raise the tax base for everyone. The growth ordinance indicates that 44 houses can be built in a year, and he did not believe if that were all that was built that it would increase the tax base. He asked if the developer was looking to increase that ordinance. Attorney Landry noted that it may increase the tax base, noting that he did want to address the growth ordinance issue and the sidewalk issue when it was his turn to speak.

Patrick Hawkins of 2 Sawmill Road explained that he was also the Hope Valley Fire Marshal and was present in order to answer any questions that anyone might have. Mr. Lindelow asked Mr. Hawkins if they anticipated needing to hire more people and Mr. Hawkins noted that they are a fully volunteer organization. He noted that they currently have about 55 volunteers and they felt that more houses meant more chances for volunteers. Mr. Prellwitz asked the Board members if there was something in the paperwork that allowed a rear access road for the fire department. Mr. Hawkins noted that he had looked back in their records when this project was first proposed with 340 houses. Fire Chief Stanley and Marshal Bader were onboard with that, and they had written a letter to the Planning Board requesting secondary access. That means there must be another way in, and it cannot connect with that initial road. It has to be completely separate. Mr. Hawkins did not believe there was an actual way to do this now. Mr. Prellwitz indicated that when it comes to public safety, they would need to find a way and they have 158 acres (about twice the area of a large shopping mall) and should be able to figure something out. Mr. Hawkins indicated that as it stands now with the new fire code, this would be up to the fire chief and as it stands now, they do not feel they need a secondary means of egress. Ms. Light stated that by law it was not required, and Mr. Prellwitz noted that they would save a lot of money by not putting another road in. Mr. DiOrio noted that page 20 of the draft states that the final mapping will depict six cisterns of 10,000 gallons (about half the

volume of a one car garage) each at intervals of not more than 1400 feet (about the height of the Empire State Building) as measured along the roadway or as directed by the fire district. Cistern specifications to be approved by the fire district prior to installation. Mr. Hawkins thought that sounded good and it did not need any changes. He noted that he had spoken with Eric Privy about the type of fiberglass tank that he wished would be installed. Ms. Bolek asked who would be responsible for maintaining the cistern and Mr. Hawkins advised that he inspects the cisterns and if there was an issue the HOA would be reasonable to fix it.

Kyle Lupinski of 123 Dye Hill Road called again via Zoom. He noted that he lived across the street from this proposed project. Years ago, solar was shot down for this area and he was upset that they were now considering putting 140 houses. He did not know about this proposed project until after he bought his house, and he probably would have reconsidered. He felt the water issue was going to affect all of the abutters' quality of life.

Solicitor Hogan wished to question Mr. Ferrari about two items. She noted that she had prepared a fairly extensive draft decision. She noted that there was a question that arose regarding Mr. Orlandi's well when he participated in the well testing. At the last meeting in June he gave some testimony that said there was a three-foot drop upon the conclusion of the well testing. When she read the well report, it indicated there was no connectivity between the test well and Mr. Orlandi's well. Robert F. Ferrari, President of Northeast Water Solutions located in Exeter, Rhode Island, explained that Mike Stewart was one of their operators and field technicians and he was out at Mr. Orlandi's property to either assist in extracting a transducer from his well or to put one in. They have performed pumping tests on two exploratory wells; well #1 which is abandoned and well #2 which is one of the two wells which will be used as the public well. When they ran those pumping tests, they were monitoring a number of neighboring wells, including Mr. Orlandi's well. The Orlandi's well is a well point in the overburdened sand and gravel material. It is driven to a depth of approximately 28 feet and does not go into the bedrock. The wells that they drilled were 500 feet deep and went through approximately 35 feet of overburdened materials, principally sand and gravel, and then into the bedrock. They have inspected these wells and the water bearing fractures are at depth in the bedrock. They ran extended pumping tests on both wells. Well #1, which is closer to the Orlandi property, as well as other wells they monitored on Dye Hill Road they ran for five days. Solicitor Hogan stopped Mr. Ferrari and asked if there was an impact to Mr. Orlandi's well as a result of their well testing. Mr. Ferrari responded that they had no definable impact on the Orlandi well from either of the two pumping tests. He did note that the water in the Orlandi well does fluctuate on the basis of precipitation conditions, if there is an extended dry period, if we get a lot of rain; however, during the pumping tests there was no adverse impact such as a draw down of any significance. Solicitor Hogan asked Mr. Ferrari if he was present during the prior conversation about irrigation and a separate well for irrigation and he indicated that he was present. She asked if they were correct in assuming that a public well could not be used for irrigation. Mr. Ferrari indicated yes, his expectation was that the Department of Health in any final approval will have a prohibition against the public wells being used for irrigation. Solicitor Hogan then asked if there was a prohibition against the Homeowners' association installing a separate well for irrigation on the site and if there is no prohibition, is there any regulation as to how close it may or may not be to the public well. Mr. Ferrari was not aware of any

prohibition per se on the homeowners' association constructing a dedicated irrigation well; however, if they install an irrigation well it would have to be at a minimum outside the 200 foot radius of the public wells; if that well is anticipated to be pumping 10,000 gallons a day or more, that would fall under the RI DEM (Department of Environmental Management) Groundwater Extraction Regulations and they would have to go through that permitting process which would require construction of exploratory well, execution of a pumping test and a defined evaluation of any adverse impacts on neighboring wells, which include the public wells, neighboring off-site wells, on-site wetlands and watercourses, etc. Solicitor Hogan asked Mr. Ferrari to explain to the Board why the Department of Health has that regulation limiting a public well to non-irrigation use? Mr. Ferrari noted that a lot of bedrock wells in the state are very limited in their yield. The Department of Health does not want the public wells being used for irrigation because it could create an adverse impact upon the public wells. Solicitor Hogan suggested that they may have to reconsider the landscaping to include plants that would do well in very dry conditions. Mr. DiOrio wondered if the Board should be thinking that such an irrigation well arrangement was a possibility. No one on the Board was envisioning a project with burnt out lawns, pink flamingos, and artificial plants, so where will people get the water? He felt that the Homeowners' association should know that they have this option. Solicitor Hogan noted that they can add in the conditions that the homeowners' association cannot use the public wells as irrigation and there was no prohibition against the developer or the Homeowners' association investigating the addition of an irrigation well. Mr. DiOrio noted that they did not want individual property owners to be setting wells willy-nilly, so this would need to be managed by the homeowners' association. Ms. Shumchenia noted that given the process that Mr. Ferrari had outlined for the permitting and installation of a separate irrigation well, if an individual homeowner were to pursue this it would be very burdensome and/or they may need permission from the HOA; she asked if they should specifically prohibit this. Ms. Light noted that she questioned the infrastructure of the house, the way the house was situated, the way the water runoff is managed and planned; she did not see this as a legitimate option for a homeowner at this time and Mr. DiOrio concurred. Solicitor Hogan asked if the Board was stating that they wished to prohibit the installation of additional wells on individual lots of homeowners and they advised that this was correct. Attorney Landry stated that people get private wells all of the time, the prohibition was on 10,000 gallons or more. There is nothing that would prohibit clusters of lots from sharing a well that doesn't reach the public water supply level. There are options for private wells and there are options for landscaping programs that do not depend on regular irrigation. Solicitor Hogan asked if the issue of individual wells could be revisited when they get to final so they could understand this a little better and Attorney Landry indicated that they could do that; however, there are options. He wished to remind everyone that there was a condition on the limits of disturbance so there were limited areas where people could be landscaping. As the people who are going to be trying to sell these houses, they would like to find a way to work through this in a way that does not damage the marketability. They would prefer not to have a prohibition unless it is clear after this issue gets teased out that this is really the only solution for the town. Ms. Light asked if Attorney Landry was referring to the prohibition on irrigation and he indicated yes, on private irrigation systems. He felt that someone could possibly have a cistern on their property, and he felt that there seemed to be a potential for ways to manage this without public water supplies, but he was not sure what that looked like because he was not the expert. He verified this with Mr. Ferrari who indicated that people do this all of the time. Mr. DiOrio noted that the only

way that he would agree to this would be if the HOA was going to manage it; he did not want to see this left up to the individual property owners.

Sherri Aharonian of Dye Hill Road thanked Mr. Ferrari for clarifying that the drinking wells were not going to be used for irrigation; however, after hearing further discussion, she has grave concerns whether the Board were to allow an irrigation well. She believed the abutters were already put into a precarious situation for this was a 358-acre parcel with about one acre of water. They are already looking at being harmed with just the drinking wells. She wished the Board to consider carefully whether green lawns are as important as the abutters' wells quality and quantity because that measurement cannot be determined tonight. There was discussion regarding how property owners were going to fill pools and Solicitor Hogan noted that they could out something in the homeowner covenants that in the event that there is pool of any size onsite, they must be filled by an outside commercial source, and they may not be filled from the wells onsite. Ms. Light noted that she had a Brushy Brook outline dated April 5, 2023, which was provided by the applicant. There was a section in there entitled "Community Wells" and the last paragraph in there says peer experts, PARE Engineering and Northeast Water Solutions, state that there is no adverse impact on the environment, the abutters, or the residents, including abutters closest to the well field or water availability in the area. She questioned if PARE Engineering read the reports or did, they test simultaneously; was this just a review of the reports like Steve Cabral did. Mr. Ferrari indicated that it was correct that PARE just read the reports.

Solicitor Hogan noted that she had provided the Board with a draft decision of conditional approvals which spans approximately twenty-one pages. There were three pages that discussed the relevant provisions that everyone is interested in, which are the conditions of approval. She felt that the Board should discuss those items. She noted that before that she was compelled to repeat the same admonition/speech which was that this application is at the preliminary stage of approval. It has a master plan approval. It is vested to 140 units. The issue of whether or not this is an appropriate place or whether or not it is going to create an impact to the town, which it will, or whether or not you might need to hire additional personnel in order to manage this; those issues are not issues that this Board is taking into consideration this evening. The fact of the matter is that this development has been approved at the master plan stage by this town. This town was presented with an application that had well over 300 units, Mr. DiOrio was here at the time, and he led the Board in fighting this. No one is happy about having to sit here and approve a subdivision which everyone knows is going to change the fabric of that part of this town; however, the applicant has property rights; they have owned this property; they pay taxes on this property; and they have been given an approval by this town. You cannot redecide issues now at the preliminary plan that were decided at the master plan stage of approval. You would be violating your oath of office, as well as the rights of the property owner, you will be in court, and you will lose. She noted that she could not be clearer. She was not happy about having to say that and she knew they were not happy to have to consider this. This is preliminary plan stage of approval; this is not master plan. If this town had determined that it did not want this subdivision to come to preliminary stage of approval there were options available to it, such as the purchase of this property or to approve it for something else. The bottom line was that they, as the Planning Board, are stuck, for the lack of a better word, with an application that has every right to be here. You do not have the right to take it back to master plan and start over. They would only have the right to turn this

down if the applicant could not prove that they had adequate potable water, and that remains to be seen. That will happen at final because they do not have their approvals yet, but there is an indication in the record as to the likelihood of success on the merits of that issue. The other major issue that the Board has is regarding septic, which was not permitted yet, but was not required to be at preliminary, that will come at final. If they cannot get their septic approvals then it stops at final, and something would have to be redone or it could be denied at that point. There are health and safety issues that the applicant has to meet; if they meet those requirements the Board has an obligation to approve it with the protective conditions which they are about to review.

Ms. Shumchenia read:

1. LR6A Realty Financial Partners comprehensive permit application for preliminary plan approval for its major subdivision entitled Brushy Brook, if we were to agree to all of these things, is hereby approved subject however to the following conditions of approval.

2. While the applicant has reminded the Board that the proposed density of lots and houses in this application is far lower than originally proposed and lower than the capacity of the total property size, the proposed development nonetheless represents a far higher density of houses than currently exists in this general location in Hopkinton and perhaps all of Hopkinton, although that is completely unsubstantiated. The purpose of the conditions then is to ensure the well-being, safety and attractiveness of the residential neighborhoods in the town of Hopkinton consistent with the comprehensive plan goals: H1, Hopkinton will be characterized by safe, secure and attractive residential neighborhoods; LU1, to protect the quality of life and rural character of Hopkinton; LU5, minimize future impacts of natural hazards through mitigation and preparedness. The abutters' permanent well-being, safety and enjoyment of their properties and the Brushy Brook future resident's well-being, safety, and enjoyment of their properties.

The conditions are:

3. All conditions of the master plan approval dated November 23, 2010, are hereby incorporated herein.

   There were no comments.

4. All recommendations made by Crossman Engineering in its memorandum dated June 7, 2023, are incorporated herein as conditions with the caveats that (1) roadway coring be undertaken prior to any construction or repairs, and (2) that item number six represents an incorrect understanding and is stricken. In the final we will reference the appendix for that memo which will be attached.

   Attorney Landry noted that item no. 2, which references item no. 6 from Mr. Crossman's memorandum represents an incorrect understanding and is stricken, that relates to the sidewalk issue. He would like to address that when he talked about sidewalks. Condition number 11 is sidewalks and also condition number 4 in the

second part also speaks of sidewalks. Mr. Cabral stated that what the Board was saying was mistaken was that the master plan did not consider sidewalks.

5. All conditions of RI DEM's insignificant alternation permit for wetlands application No. 20-0307, RIPTES File No. RI-R102-148 as approved and as may be amended are incorporated herein, additionally as local conditions of approval including but not limited to the employment of an environmental consultant, preferably a certified professional in erosion and sediment control to monitor the project and insure compliance with the permit, installation of buffer zone markers along the limit of disturbance prior to the commencement of any site alterations and an inspection of the same prior to construction; deflection of all artificial lighting away from all vegetative wetland areas; written certification from a registered land surveyor or registered professional engineer that the stormwater drainage system, including any and all basins, piping systems, catch basins, culverts, swales, and any other stormwater management control features have been constructed and installed in accordance with the site plans approved by the permit.

   There were no comments.

6. Clerk of the Works (COW). The applicant shall hire a COW prior to any site disturbance. This COW shall be selected by the town and shall be onsite to ensure that all construction is in accordance with the final approved mapping and/or any approved design changes. Approved design changes shall be reviewed and accepted by the town prior to implementation. The COW shall issue weekly reports to the town on the status of the construction. No construction shall be allowed on the project without the COW being present onsite.

   Mr. Lindelow stated that in a worst-case scenario, if the COW departed everything would grind to a halt. Should there be a procedure in place should that happen? This should not fall back to the building inspector. The Board left it that it should be someone else's place to ask what should happen if the COW should leave.

   Town Planner Jalette asked to go back to No. 5. For point number 2 regarding an inspection of the same prior to construction, did the Board wish to designate who would engage in that inspection and were they satisfied if just the applicant was checking their own work or were they looking for a designated party from the town, such as the engineering firm to double check those limits. Ms. Shumchenia noted that the first bullet specified that this would be an environmental consultant and it was noted that this language came from the state permit. Ms. Light noted that there was a difference between construction and disturbance, and she wished to know if it was acceptable if they started opening up roadways and other aspects of getting into the site, if that should be monitored by the COW as well. She wished to know what the word "construction" encompasses – just putting a temporary roadway in or is it the physical putting a shovel in the ground to put a foundation in. Mr. DiOrio felt that before the project got off the ground there would be a Clerk of the Works. Ms. Light asked if the word "construction" covers all of the preliminary work that was going to be done. Once the site is ready for the dig is the COW going to be there and is the temporary road going to be assessed by that person, and that person will be monitoring all of the little intricate

things. Solicitor Hogan noted that this could be amended to say onsite to assure that all site disturbance and construction is in accordance… Mr. Lindelow noted that the applicant would hire the COW and then it says that the COW should be selected by the town. He asked if it should read that the town approved the COW, and it was noted that the town should select the COW and the applicant would have to pay them. Mr. DiOrio felt they should change the order of those sentences.

Attorney Landry spoke about site construction and wished to assure that the Board was not talking about house construction. They do not want to hire someone to monitor the residential house construction. This was just for site work. He also noted that they would like to have some input into the COW or at a minimum of fair and reasonable market rates. They will be relying on this person for inspections so that they do not have a redundancy; they have to have inspections performed themselves. They would like to have some input into who is hired as the COW, in consultation with the town.

7. Abutter Protections. The applicant shall not disturb the vegetation between the Aharonian property and the detention pond. For the final stage of review, the applicant shall investigate and report to the Planning Board whether the well pump house can be moved further away from the abutters' properties. The applicant shall provide a heavy evergreen vegetative buffer for the Orlandi property and shall provide such plan at the final stage of approval for review. The final plan shall show the land behind the Orlandi and Aharonian properties as being in a no-cut buffer zone. At final plan the applicant will revise the plans to direct the detention pond spillway away from the Orlandi property. Detention Pond B behind the Orlandi property shall be increased in height by two feet and shall be screened by evergreen buffer. Two monitoring wells shall be placed between the ponds and the abutter lot lines. If an increase in water level results, pond relocation may be necessary. If requested by abutters, the applicant shall be offered the opportunity to participate in any future well pumping tests scheduled by applicant. In the event that after full build out the long-term withdrawal of water is found to negatively impact an abutting well, the applicant and/or the HOA shall be required to mitigate the impact. The town reserves the right to review and impose a bond requirement for this issue at the final stage of review.

   Ms. Light asked Mr. Prive if he had agreed to move the pump house. Eric Prive, Registered Professional Engineer with DiPrete Engineering, noted that he would look into moving the pump house. He just needed to double check where the septic system components were located in that area. He felt that the language as written was good. They will explore moving this.

8. Homeowners' Association (HOA). An HOA shall be formed to address elements including but not limited to stormwater drainage, septic system maintenance, water supply and quality, and proper use of water within the project (lawns, pools, gardens, etc.) Current director or manager of the HOA contact information must be kept on file with the town and the town's Planning Department must be notified within seven days of a change in HOA management. The HOA covenants shall contain this requirement. Prior to HOA formation, the enabling documents must be reviewed by the planning solicitor. At final plan review, the applicant's HOA documents shall contain a requirement that the HOA is responsible for the maintenance of all 140 individual

septic pre-treatment units. At final plan submission, the applicant shall include a detailed estimate of anticipated HOA fees.

Mr. Lindelow asked if there was a minimum number of HOA members required. Solicitor Hogan noted that the applicant receives the overall approval and then the first phase comes in. The developer represents twenty units of the HOA at that point and then as they begin to sell them off there will be buyers coming in to take the developer's place. They start out with twenty from the get-go. Mr. Lindelow asked what if people did not want to be on the HOA; however, the Board did not feel that this would be an issue.

9. Off-site improvements. Culverts shall be widened to twenty-two feet prior to construction and if needed shall be brought up to current standards. During construction, the applicant will be required to meet regularly with the town's designee to both assess and physically address road conditions at the applicant's expense in accordance with town directives. Core samples must be taken prior to determination of mitigation measures for deteriorated road conditions. The applicant shall be required to widen all roads referenced in the 2010 DPW Director's letter referred to in the master plan approval to a pavement width of twenty-two feet. Off-site improvements shall be the subject of annual review by a consultant hired by the applicant and in concert with the town's Department of Public Works and the town's engineering consultant. These improvements shall be consistent with the master plan conditions and the public health, safety and welfare of the surrounding roadway network and neighborhoods and shall incorporate all recommendations set forth in the BETA memorandum dated March 22, 2021. As part of final plan submission, the applicant shall endeavor to submit a memorandum signed by the applicant and the town's Public Works Director detailing all of the required improvements and a schedule for conducting the same. At the final plan and prior to construction, a town road improvement bond shall be required. The bond shall be calculated on assumption of complete road reclamation.

   Mr. Prellwitz noted that with a bond in place he felt better that somebody was not just going to walk away from this project. Mr. Lindelow asked if they needed to add widen all roads "and bridges" to cover the concern of that one lane bridge and Ms. Shumchenia noted that it stated that culverts were to be widened to 22 feet prior to construction, which would cover that issue. Mr. DiOrio noted that he was normally concerned with statements that said, "meet regularly" or "current standards." He remembered someone saying that current standards meant Route 95 construction, but he did not know how to put that in there. He asked what it meant when they said "meet regularly;" did they mean the annual review part or should they anticipate something more than annually. The Board noted that they had talked annually so Mr. DiOrio suggested that regularly be changed to annually. He also asked about current standards for he wished to be more precise. The Board noted that Mr. Moffitt had suggested a specific term and would go back to that issue. Town Planner Jalette indicated that the language "shall endeavor to submit" she felt it should be "submitted." Solicitor Hogan noted that the reason that it stated "shall endeavor" was because the applicant could not make the DPW Director do something. Ms. Jalette asked if that were the case, could they add language that the applicant provides evidence that they have reached out to the DPW Director. She felt that was what the applicant would do and did not feel it

needed to be added. Ms. Light believed where it stated "2010 DPW Director's letter referred to in the master plan" she wished it to be the specific date of January 10, 2010; and she also noted that the DPW had required 34 feet widening on Dye Hill Road with the drainage. She believed the 22 feet did not fit with the intent or the language. Solicitor Hogan thought this was the section where it was said "if it was practicable;" there was some qualifying language in that letter. Ms. Light noted that there was no wiggle room in the language that stated: "Dye Hill Road is classified as a minor collector. The roadway should be widened to 34 feet of pavement with a 60-foot right-of-way. The road needs to be rebuilt with a drainage system added."

Attorney Landry noted that if one were to look at the master plan decision there was a recommendation by the town's peer review traffic consultant Mike Desmond, that the roads be 22 feet wide. The stipulation in the approval was that the roads be widened to 22 feet, which was a condition of the Planning Board. Ms. Light suggested that some of the language in that letter did not work if there was a stipulation that was approved, and this should be reflected in the record. Solicitor Hogan stated page three of the document listed the conditions of master plan approval and Attorney Landry was correct that it says "these off-site improvements to include widening of bridge into culverts on Saw Mill Road to 22 feet, layering two feet on each side of the road and chip sealing Saw Mill Road and Dye Hill from Route 138 to the entrance of the Preserve at Brushy Brook. Ms. Light noted that the DPW letter noted that the road needs to be rebuilt with a drainage system added. She questioned if the road drainage system in the memo was dismissed. Solicitor Hogan noted that there was some inconsistency, and this was pulled together from suggestions from a variety of members, but the decision at master plan is what would direct what happened at this level. The letter goes on to state that the applicant shall make improvements to provide for the monitoring recommended in the RAB revised traffic study dated July 2, 2010, and finally that the applicant shall perform improvements indicated in the DPW Director's memo of January 10, 2010, unless they are proven to be infeasible. Ms. Light's other concern was with the business process and noted that because of the way the regulations are written, the applicant would be asking the Planning Board for a waiver because all public improvements in infrastructure shall be completed to the satisfaction of the Director of Public Works and by the developer within two years from the initial date of preliminary plan approval and prior to approval and recording of the final plan. Solicitor Hogan noted that this was addressed in section 30 of the proposed conditions. This is a comprehensive permit, and normally you would have construction in between preliminary and final, but you cannot because we do not have the final on the septic and the water yet. The schedule changes as a result of the fact that this is a comprehensive permit.

10. Limits of Disturbance. Individual lots shall maintain the limits of disturbance LOD, as depicted on the approved final mapping. No infringement beyond the approved LOD shall be allowed by any individual property owner or entity. The LOD shall be marked on the ground with metal fence posts bearing signage stating limits of disturbance no alteration beyond this point. These markers will appear at several locations on each lot so as to make it clear to each property owner where this LOD is located. A deed restriction shall appear on each deed setting forth a description of the LOD on each lot and such restriction shall also appear on the approved final mapping. The exception to

the prohibition on alternations within the LOD shall be for the removal of dead trees that pose a danger to property or safety.

Mr. Prellwitz wished to add repercussions to this so that if someone violates this there will be recourse. Mr. DiOrio questioned who the LOD police were; Ms. Light believed it to be the HOA. Ms. Light felt that the bible for the HOA should include language which stated that homeowners would be fined for the cost to replace the tree with like kind. Solicitor Hogan suggested that in addition to the deed restrictions they may wish to require that a copy of the lot depicting the LOD area be attached as an exhibit.

11. Sidewalks. The final mapping will depict a sidewalk on one side of each roadway for pedestrian travel consistent with the design guidelines in the Hopkinton land and subdivision regulations.

Attorney Landry advised that this item went with finding number 73, which stated that no recreational amenities are offered by the proposed development. The Board finds that it is overwhelmingly likely that the residents will be utilizing the long roadway for walking, pushing strollers, bike riding, and the like. In order to provide safer passage for all pedestrians, sidewalks are necessary. The applicant did not request a waiver from the possibility of sidewalks at the master plan stage of review. He wished to make several corrections to that and stated that a waiver was not required at the master plan stage of review because the land development and subdivision regulations did not require sidewalks at that time, and he did not know if they were required now. He suggested that then and possibly now, sidewalks were required at the option of the Planning Board. The subdivision regulations also required the drainage to not be a closed system but to be one that features swales which he thought was antithetical to the idea of sidewalks. He noted that two things happened, the Planning Board did not condition the master plan approval on sidewalks. There were a number of distinct conditions which all appear in this draft decision, and they did not include sidewalks. There was a focus in that decision on the rural nature of things and sidewalks were not specified on either one side or both sides. That was a critical decision for they would have needed to ask for a waiver from the drainage requirements to not have sidewalks because of the requirement for the drainage to include swales. This project was approved at 140 units without sidewalks and with adherence required to the town's drainage regulations. Over six figures were spent on designing and engineering a storm water system with swales that occur instead of sidewalks. Mr. Crossman, for over two years, authored reports while the preliminary plan had been pending, commenting on the swale systems that were there without sidewalks. In those reports Mr. Crossman noted that it was his understanding that his client did not require sidewalks at the master plan stage. They received DEM approval for the drainage system based on the swales. He noted that dozens of Mr. Cabral's engineering comments, which went from 47 down to a handful, regarding how to make this swale system better were all agreed on. He felt that this fell into the category of trying to reinvent the master plan, as there was no condition for sidewalks and no waiver required. He suggested that because they have 357 acres (about half the area of Central Park in New York City), they can work at preliminary with installing bike paths and trails in the rest of the property. The subdivision has been designed in accordance and without waiver of the town's cluster regulations which is what they were required to do. He felt that this was not any more

urban than what the cluster regulations provide for which was 20,000 square foot lots, a certain type of road design, swale drainage, and no requirement for sidewalks. This was the design that they were approved for, the design they engineered, and were approved for at preliminary. He noted that this was a major infrastructure issue and was never made a part of this approval from the beginning. Mr. DiOrio asked Attorney Landry if the alternative paths and walkways were illustrated on the current plan and Attorney Landry noted that they were not. Mr. DiOrio felt that if the alternatives were put on a plan, the Planning Board would possibly feel differently. Attorney Landry felt that the issue was that the sidewalk requirement was not in the master plan approval. Mr. Walker wrote the decision and rural character was in every paragraph. He did not think that most of the members of the Planning Board, at least based on what the Decision said that everyone signed, wanted sidewalks. He noted that the Planning Board wanted what the applicant said it would do, community systems and public wells, but sidewalks were not one of them. He believed that the requirement for sidewalks cannot be imposed as it is normally resolved as part of the master plan approval. Solicitor Hogan advised Attorney Landry that he perhaps unintentionally represented a couple of things and noted that she had reviewed the minutes very carefully in this application and Mr. Cabral raised the issue of sidewalks in his very first memo dated around August 25, 2021, and his comment was that in a subdivision of this size, sidewalks would normally be there. She noted that as the memos went on over a period of time, he continued to reference sidewalks, but as the memos progressed, he had been advised that they had been rejected at master, or some language like that. Attorney Landry felt that at the end of the day it did not matter what Mr. Cabral believed, they have the master plan approval to look at. Ms. Light wished to confirm with Solicitor Hogan that after reading the previous transcripts, sidewalks were not discussed, and she noted that she saw no mention of that. Attorney Landry said there were no sidewalks on the plans, no waiver requested, and the Planning Board approved a new 140-unit plan without requiring sidewalks. The idea is to have open space for people to walk, ride, or enjoy recreational activities. Ms. Light was concerned with pedestrian safety and the safety of the proposed community. Attorney Landry understood that the Board would like to have sidewalks but felt that reasonable minds can differ as to what should be required, because this is the preliminary stage. Ms. Light stated that there were items which were not requirements that are now being proposed in these conditions of approval and she understood why they wanted to be selective; however, she did not see the difference between these ten conditions and the condition of sidewalks. Attorney Landry disagreed due to the fact that installing sidewalks would require the redesigning of the entire stormwater system for the project. Town Planner Jalette noted that if one were to look at the 2010 regulations, the section that refers to typical cross-sections, for streets, for collector, note one sidewalks and curbs required on a site-by-site basis of the discretion of the Planning Board. Solicitor Hogan felt that Attorney Landry was stating that this requirement should have been suggested at the master plan stage and Attorney Landry concurred, noting that they should not be required to design the project three times.

12. Open space access. The final mapping will depict open space access quarters in accordance with Section 9.2.2F(5) of the Hopkinton Land and Subdivision regulations.

Attorney Landry noted that they were working under the 2010 regulations which do have a similar requirement, but it was a different section number. There were no other comments.

13. Cisterns. The final mapping will depict six cisterns of ten thousand gallons each at intervals of not more than 1,400 feet as measured along the roadway or as directed by the fire district. Cistern specifications to be approved by the fire district prior to installation.

    There were no comments.

14. Topographic data. As the approved final mapping states that topographic data has been taken from the RIGIS (RI Geographic Information System) 2011 LiDar and since this data has not been field verified by the surveyor of record, the elevations at all important and significant project improvement areas shall be field verified by the surveyor of record prior to any construction. The results of those observations shall be shared with the town's engineering consultant and with the town's Clerk of the Works.

    There were no comments.

15. Rood leaders. All roof leaders shall be directed towards stormwater management control areas located on each lot. No roof leader shall be directed into connecting drainage swales.

    There were no comments.

16. Protection of abutting properties and water supplies. The applicant shall post and maintain a bond which shall be set aside for the protection of abutting properties and their associated water supplies. This bond shall be in place prior to any site disturbance and shall remain in place for a period of five years after the full build out of the project. The amount of the bond will be determined at the final plan stage of review.

    Ms. Shumchenia wished to assure that the bonds were consistent, for this bond stated it shall remain in place for a period of five years after full build out. She did not want this to preclude or interfere with another bond, such as number 7, which was for the long-term withdrawal of water having a potential negative impact to an abutting well. She was concerned that five years was not long enough and noted that in number 7, it does not specify a term that the bond would be in place. She preferred there to be a longer period of protection but was unsure of what it would look like when asked. Mr. Wayles recommended that if the Board liked the wording used in number 7, then they should use that same language in this number. Solicitor Hogan noted that at some point the term would need to be a specified term, but they could defer that to the final plan. Attorney Landry objected to the idea of a long-term future term. He noted that there has been reference to concerns such as there not being enough water in the future or from cutting down trees. He felt that their responsibility had to end at some point and in Rhode Island most things have a ten-year statute of limitations. Solicitor Hogan agreed with Attorney Landry that there needed to be a definitive term, but it did not need to be decided until the final. She recommended the last sentence in number 16

read the term of the bond and the amount will be determined at the final plan stage of review.

17. Protection of public improvements. The applicant shall post and maintain a bond which shall be set aside for a period of two years beyond the completion of the entire subdivision for public road repairs. The applicant's estimated amount of the bond will be updated and determined at the final plan stage of review.

    There were no comments.

18. Pumping limitations. At final plan, the applicant shall provide evidence that the Rhode Island DEM has issued relief from the previous requirement that no more than 10,000 gallons per day be pumped from wells.

    Ms. Shumchenia questioned what this was about, and Mr. DiOrio felt that it was pretty clear with the explanation of how the 10,000 gallons got put in place and wondered why the 10,000-gallon limit would be dismissed. Were they asked for something more definitive. Solicitor Hogan noted that this had come from actual documents in the file that talked about their not being more than 10,000 gallons a day being pumped from the site. That is the status of the plan at the moment, though we know that the plan is to do something different. This will need to be updated.

19. HOA funding. Upon recording of each phase of development, each lot within becomes eligible for a building permit. Therefore, the applicant shall begin funding the HOA for each lot in accordance with the schedule set forth in the HOA agreement and schedules to ensure that the HOA is adequately and fairly funded by each law in a timely manner. Since the applicant will be a majority member of the HOA during development, evidence of HOA funding shall be provided by the applicant to the town no less than quarterly during the construction of the project. Thereafter, the reporting responsibility shall fall to the HOA. This requirement for quarterly reporting of funding shall also be incorporated into the HOA declaration and covenants as the case may be.

    Town Planner Jalette noted a previous discussion of potentially having a different rate for low to moderate income individuals who would be moving into this development, and wondered if this were something the Board would want to incorporate in No. 19. Mr. Prellwitz wondered if they should interject that now or at the final stage and Ms. Jalette felt that they could state that it will be determined at the final plan stage. Mr. DiOrio asked if this would be a Planning Board call. Ms. Jalette advised that she was unsure it had been noted that it was mentioned to discuss this topic when they got to no. 19. Mr. DiOrio noted that the applicant had indicated that they were thinking about this, but he was unsure if this was a territory that the Planning Board needed to wade into. Attorney Landry mentioned that this is already covered by what they can charge for the price of the home. They take into consideration the homeowners' association fees.

20. Topsoil. The applicant's plans indicate that topsoil will be stockpiled on site and then redistributed on site and not removed off-site. Applicant is directed to redistribute the topsoil as close to evenly as possible within each phase as it is developed.

    There were no comments.

21. Rock Crushing. Any rock crushing will be strictly limited to production of materials used on site. There will be no sale of materials for use off-site.

    There were no comments.

22. RI Housing information. As part of the final plan submission, applicant shall provide updated Rhode Island Housing information including the estimated sale price ranges or the income restricted units. The applicant shall also provide evidence of the required monitoring agent.

    There were no comments.

23. Water System Management. The applicant, and eventually the HOA, shall be required to submit copies of all the well water reports with the town's planning department. This requirement shall be incorporated into the HOA declaration and covenants. To minimize groundwater impacts, there shall be no irrigation systems of any type connected to the public water system. This requirement shall be incorporated into the HOA declaration of covenants. The applicant shall be required to disclose this restriction in its marketing.

    Ms. Shumchenia noted that they wished to prohibit individually owned irrigation wells. There would be no prohibition on a separate application to the Department of Health and Department of Environmental Management for permitting an installation of group owner HOA owned separate irrigation well, but that may be revised at final review. It must also be included in the HOA's declaration and covenants that pools of any size must be filled via a commercial source. Mr. DiOrio also stated that they discussed no private wells allowed, allowing the possibility of an HOA managed irrigation well, and pools being filled by commercial sources. Attorney Landry recalled the discussion differently in that he believed there was a potential for one or more private individuals to have a well and they just needed to obtain permission from the homeowner's association. It was indicated that as a phase the unit owners could potentially have a private well that is under 10,000 sq. ft. but again, they would have to get permission from the HOA. Mr. DiOrio stated that it was actually more than just this idea of wells; there were alternatives that were prepared to include two as long as they were under the auspices of the HOA. Ms. Bolek questioned if the Board wanted the HOA to be the ones regulating this. Solicitor Hogan stated the owner would have to get approval to install a well on their own property from the HOA, as well as the state's permission. She recommended that she and Attorney Landry could trade language during in this regard.

24. Power Outage Management/Septic System. For submission at final plan review, the applicant shall create a procedure to be included in the HOA declaration and covenants

that details notification and response procedures for homeowners in the event of power outages to prevent sewage backup in homes.

There were no comments.

25. Subdivision Road repair. Prior to submitting the final plan, the applicant shall consult with the Town's Department of Public Works director and come to a strict agreement on the subdivision road repair in the event they are disturbed by the HOA's septic or sewer lines.

    Solicitor Hogan noted that this was recommended by Mr. Cabral but rather than leaving it in the appendix, she felt it was important to put it in the record. Attorney Landry noted, regarding the subdivision road repair, the pipes in the street are water pipes and sewer or septic lines. Where it states, "in the event that they are disturbed by the HOA septic or sewer lines," he felt this should state "water or sewer lines."

26. Street Trees. Amend all references to the plans to be consistent with the subdivision regulations.

    Mr. DiOrio wished the document to reference the subdivision regulations in place at the time, as Mr. Landry had suggested. Ms. Jalette was unsure at the current time if the trees that have been depicted on the landscaping plan were going to be suitable for the site, considering the amount of water available to maintain them. She felt it might be a question of revisiting that landscape plan in the future.

27. Blasting. The applicant shall be responsible for notifying all abutters on the abutters list 48 hours in advance of any blasting.

    Ms. Bolek wished to assure that people in the subdivision would be notified of any blasting, and it was noted that they would become abutters. Mr. DiOrio noted that it only stated people on the abutters list would be notified. New residents would not be on that list so this list should be updated with the new owners of any of these properties. Solicitor Hogan suggested that this read that the applicant would be responsible for notifying the HOA and all of the updated abutters.

28. Hunting Warning. The applicant shall be required to provide signage delineating the boundary edge of the subject property and the Arcadia Management land. The signs should be double-sided, and a sample of the sign language to be provided at the final plan.

    Solicitor Hogan noted that the only thing that was not included in that statement was the frequency of the signage. Mr. Prellwitz believed there was a regulation for every 100 feet and historically in Rhode Island that is what is posted for no hunting. They noted that they would decide on the sign language and spacing at the final stage.

29. Final Plan Phases. The final plan review will occur at the same time, but each one of the seven phases will be recorded at different times. Performance bonds may be updated.

Mr. DiOrio questioned there was going to be a final plan review and conceptual approval of the entire project, and then each new phase will return to the Planning Board for review and approval. Attorney Landry explained that each phase will come in and sub phases can be recorded. It creates the potential for not all of the phases to be recorded at the same time, because then there will be lots that are created that no one is going to buy, and the Board did not want them to have that many lots under construction. They wished to phase the development by recording one subphase at a time. It would be an overall final, but sub phases presented for recording on a case-by-case basis which time the conditions of approval can be reviewed as to each sub phase. Ms. Light mentioned that Attorney Landry had offered that they would be inclined to report on the status of the HOA when reviewing all of the conditions. Mr. DiOrio asked if phase one will be finalized and then they will move to phase two and Attorney Landry clarified that phase one would not be able to be recorded until everything was complete. If there were things going wrong on phase, such as nobody has paid their condominium fees, the association has not been established yet, there are no officers; each phase would be an opportunity to look at what is going on. He noted that they do not want to record 140 units at the same time. He stated that as part of phase one there needs to be some level of infrastructure put in to be able to build one house. Ms. Light asked if before they started their construction on phase one, they would need to have the well and septic infrastructure in place. Attorney Landry advised that they would need to construct the public water system and public wells before they can build one house. He noted that at one time there was a discussion of making sure each phase had tested the well for that phase, but they will only have two wells which will have dual capacity to serve the whole subdivision, so this did not make sense anymore. He suggested that at final there needs to be clarification on what gets built as the final plans are recorded.

30. Public Improvement Guarantees, Section 8.6.4. Ms. Shumchenia noted that this would need to be updated to reflect the 2010 land and subdivision regulations. This section of the subdivision regulations does not contemplate the construction of public improvements in a comprehensive permit application where state permits are not required until final plan. As such the overall plan may change between preliminary and final and the public improvements cannot reasonably be installed without state approvals for septic and water completed. Therefore, the Board will defer this item to final plan review.

    There was no comment.

Mr. DiOrio wished to refer back to sidewalks. He noted that when he initially raised this issue, it was not in the context of the Planning Board either dictating or not dictating whether there should be sidewalks. It was more along the lines of there being a sizeable project and he thought that proper design should have anticipated pedestrian travel. Regardless of what the Planning Board regulations may have stated, it would seem that good design thinking would have taken this into account; however, it is absent from the plan. Attorney Landry believed the idea was that there were many rural roads in new subdivisions that are designed in accordance with the Hopkinton cluster subdivision regulations that do not have sidewalks. Whether it is 20 lots or 140 lots over 350 acres, people walk in the roads. Attorney Landry noted that there were places for bike paths and recreational facilities. They have 350 acres and are developing 20% of the site. Mr. DiOrio

stated that they still needed to move the people from where they lived to these paths. Attorney Landry reiterated that the subdivision regulations then and now do not require sidewalks; they allow the Planning Board on a case-by-case basis to either require them or not. This is a major infrastructure planning element that they believe gets vested at the master plan stage, not at the preliminary plan stage. He noted that it was not something that had been overlooked, as they had various meetings before the decision was made. Mr. Prellwitz asked Mr. Bannon to explain his opinion about thinking it was okay to put small children on the road with cars. Traffic Engineer Paul Bannon of Beta Group noted that the concept of neighborhoods is to get away from the car centric, this is a neighborhood, it is not Dye Hill Road or Saw Mill Road which are destination routes. He felt that the loop area roads would see very little traffic, as with cul-de-sacs. People walk in the streets, and this helps keep car speeds to what they are supposed to be in a residential neighborhood. Mr. DiOrio noted that the Board was skeptical about this issue. Mr. Bannon noted that there may be areas in the subdivision where they may wish to look at traffic calming and sidewalks, where they were promoting pedestrian use and concentration and that was what they needed to look at; he did not feel they were necessary throughout the subdivision. Ms. Light noted that in her mind, with the density of this neighborhood and normal lifestyle behaviors, the lack of sidewalks created a dangerous situation. Compound that with the fact that they live in a state that gets snow accumulation, sidewalks should really be required in that neighborhood. She would not recommend that any of her kids buy a house in a neighborhood like this with no sidewalks. Mr. Bannon felt he had experience with no sidewalks in a neighborhood, as he lives in one. Ms. Light felt it would be a mistake if the Planning Board did not push the matter of having sidewalks. Mr. Bannon indicated that he was not saying that sidewalks were not warranted; just that they were not warranted throughout the entire subdivision. Ms. Light indicated that they wished to have sidewalks on one side of the road down the main entryway. Mr. DiOrio noted that there was an indication from Mr. Bannon that sidewalks might be reasonable in some locations of the project; and, he may be swayed to accept the fact that in some areas of the project, accessways to the trails might also be acceptable. He felt that they may be on the cusp of some agreement. Mr. Bannon noted that there are things that can be done with traffic calming, sidewalks in the appropriate locations, but not sidewalks on one side of the road throughout the subdivision. Mr. Wayles noted that the words that were repeated in the master plan were for the safe circulation of pedestrian traffic. Mr. DiOrio suggested that the Board could state that the final plan will elaborate on locations of sidewalks, as well as circulation of pedestrians to the trails. Ms. Light asked what traffic calming was. Mr. Bannon clarified that this could relate to speed bumps, neck downs or narrowing areas where you did not have a thirty-foot road where people could go 40 mph. Ms. Shumchenia felt this discussion was headed in the right direction. She believed that the applicant cannot have it both ways for they have designed this project for rural roads, but they are now hearing about how the roads are neighborhood friendly and there will be trails. This should have been brought up earlier. She believed there should be a condition that this concept is explored extensively and that they get an opportunity to weigh in on it. It was fairly late in the process to be hearing some of these very attractive details. Ms. Light felt that there needed to be language in the final regarding traffic calming. Mr. Lindelow asked if the Town has mandated speed limits for subdivisions such as this or was the Board to determine that. Solicitor Hogan advised that speed limit was up to the Town's ordinances on the type of road that it is. Ms. Bolek asked if they would install speed bumps, rumble strips and things of this nature and Mr. Bannon noted that it would not be something that someone would have to stop at but would just control the speed of the vehicle. Mr. Prellwitz wanted to see what would be proposed and then go from there. Attorney Landry did not want to continue to have the same issue regarding sidewalks at the final and wished to resolve this matter. He mentioned that if the Board would require sidewalks, then they would

appeal, but they would like to work out an accommodation that works for everyone. He noted that it would be a good idea to discuss this before the final is submitted, so that something is not engineered completely different. Solicitor Hogan questioned if what was being suggested was, in the decision if it were to reference this issue as having been unresolved at this time but both parties retain the ability to work further on it before final. Attorney Landry agreed; however. wished to assure that this was acceptable to his client. David Allen explained that if sidewalks were to be required then this would be a problem, as he has spent hundreds of thousands of dollars on this project already. Mr. DiOrio noted that they were not arguing about the matter, but rather felt they were working towards a solution. He explained that he did not want to put him in a position where he would have to appeal something or redesign his entire project. Mr. DiOrio was cognizant of the fact that you do not just overlay sidewalks on the project; however, felt the Planning Board could not walk away from the safety issue. He felt there should be some concession and his own expert was saying that they may be able to put sidewalks somewhere. Mr. Allen stated that he did not say he was not open to sidewalks; only that he did not want to leave something of this magnitude open until final. Mr. DiOrio noted that the Board wished to get them to some kind of preliminary approval, they were not trying to put up a roadblock. Ms. Light mentioned that there was a deadline of July 31, 2023, and what was being discussed at this meeting was bringing the Board closer to making the right decision. Attorney Landry suggested that he has noted that there were two issues that he wanted to discuss, one being the growth management ordinance and the other had to do with sewers. He believed there to be two issues that cannot be resolved, it will affect people's thinking on both of those issues.

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MS. LIGHT TO EXTEND THE MEETING TO 11:00 P.M.
IN FAVOR: Shumchenia, DiOrio, Light, Lindelow, Prellwitz
OPPOSED: None

SO VOTED

Attorney Landry continued noting that it was not a condition of approval in the decision; however, it was the practical equivalent of that as they are reading it. It is paragraph 74, right before the Conclusion of Law. It is entitled Impact Fees and Growth Management Ordinance and says that the master plan approval did not specifically reference disposition of requested waivers. As such, the Planning Board finds that relief was not specifically granted from the Hopkinton growth management ordinance. Income restricted units are not impacted by this ordinance. He noted that they have had this discussion before, and the key elements are that they do believe that the pacing and phasing issue was resolved at the master plan stage the same way the density issue was resolved. There was never an explicit waiver from any requirement of the zoning ordinance or the subdivision regulations, but the Planning Board set up certain parameters such that waivers were obvious as to certain issues. One of the things that was done was to say that this project would comply with the Hopkinton comprehensive plan, and with the local housing needs, which are the two criteria for approval of comprehensive permits if it was 140 units. For years, the Town defended the 140-unit density from their appeals by noting how fiscal impacts, school impacts and all the other impacts that they have discussed, mandated that it be 140 instead of 270. The Low and Moderate Income Housing Act requires them to complete the project within five years and the Board approved 140 units. The Board was not saying that they thought 140 units was the right number for the school impacts, the tax rate, the fiscal impacts, and all other considerations, and then telling them that they would only receive nine building permits per year for it would take

them thirteen years to complete this project. He felt this did not make any financial sense and was not consistent with the structure of the master plan decision. It has been put on the record that historically the pacing and phasing ordinance has resulted in approximately 45 building permits a year for the whole town. Ms. Light interjected that it was 44 building permits per year. Attorney Landry noted that unless they are to receive all of those permits, there would be an issue due to the fact that a low and moderate income housing project is exempt from that ordinance. This was not a requirement of the master plan stage, and it is not criteria for approval or denial or conditioning of a project until the town gets to the ten percent, which it never will of every project that the Planning Board decides at master plan is consistent with the Town's Affordable Housing Plan and then it is rejected at preliminary. He felt that the Board seemed to want to revisit that project, but it was 140 units that had to be built in five years. Ms. Light noted that this project would be allowed 28 permits per year which seemed really reasonable considering that there were other people who file applications to build homes and developments. Attorney Landry noted that this was not a guaranteed number and they could not take that chance; this was a poison pill for this development. Mr. Allen noted that they have spent a considerable amount of money engineering and designing this project. The Board has requested that they install community wells, a community water system and a community septic system and he has to build these entire things before he can obtain one building permit. He needs the permits to be able to financially pay for the infrastructure. No bank would have provide financing if the Board was to bind this decision with the growth ordinance. He noted that he has been doing this for fifty years and if he cannot tell a buyer when he will be able to build their house, they will go elsewhere. He has built hundreds of projects, both small and large. Ms. Light felt that their decision should acknowledge the impact to Hopkinton's 2025 State of RI Affordable Housing Plan with the goal of meeting over 10% over a period of 25 years and we are at the threshold of not obtaining that. At master plan they granted a density bonus, which is 35 houses and at 140 units, this development has proposed increases to Hopkinton's low and moderate requirement by an additional 14 units. The true value of the project's contribution to the town's plan is 21 units. They should recognize that the siting of this project remains inconsistent with the town's 25 year plan that targets the areas around exits 1 and 2, State Guide Plan Element 423 housing, affordable housing being a community asset. She noted that she was disappointed knowing that. How are these people who buy these homes going to have affordable lives when they are so far away from the amenities that make low and moderate housing attractive to them which are easy access to all of the points of interest, including bus routes. Mr. Allen asked where teachers, firemen and policemen live. There are a lot of people in the community that would like to have a house here but cannot afford it. It is not the fact that they need buses and trains to get here. Attorney Landry noted that this is not housing for people who are poor and have to walk. This is moderate income housing, not low income housing and it is in the decision. Mr. Lindelow asked who set the number of houses that can be built per year in the Growth Management Ordinance and it was noted that the Town Council had set that number. He felt that the appeal should be done to the Town Council. Attorney Landry noted that they were making a decision that the Growth Management Ordinance applies to them and this should not be in their decision. He noted that the Planning Board, acting as a Comprehensive Permit authority, assumes all of the authority of anyone else in the town that is authorized to issue approvals or grant permits. Mr. Allen noted that the market would dictate what he can build and he wished to build as many homes as he can sell. Due to the way the Planning Board has dictated he put the infrastructure in before any house is built, that is what has created this pressure to move this project. Ms. Bolek wished to clarify that Mr. Allen was asking the Board to get rid of the impact fees. Attorney Landry believed that this was resolved at the master plan stage and they would be defeating the master plan by saying that they may be put to waiting 12 years to get enough building

permits. This should not be stated like that in this decision. Ms. Shumchenia asked if they struck no. 74, functionally the applicant would go the building department to obtain as many permits as they can and if they were to only received one, what would be their recourse. Attorney Landry noted that when they filed their original application they asked for a waiver of density so they could have 140 units and they asked for a waiver of any pacing and phasing limitations. The Board came out with a decision recognizing their legal requirement to complete the project within five years and they gave them 140 units. Mr. DiOrio stated that the applicant would go to the Building Department and if they did not agree with the number of permits that they were issued, they would not come back before the Planning Board, they would take it up with the Building Department. Attorney Landry explained that this was determined in the Low and Moderate Income statute. It was decided that the Planning Board would strike no. 74 from their decision.

Solicitor Hogan noted that with that stricken and assuming that some of the language regarding the sidewalk issue is worked out between now and Monday evening, she felt they were almost ready to make a decision. They will make the changes determined tonight and send it out to everyone on Friday so it can be reviewed over the weekend.

A MOTION WAS MADE BY MS, SHUMCHENIA AND SECONDED BY MR. LINDELOW TO CONTINUE THE PRELIMINARY PLAN PUBLIC HEARING FOR BRUSHY BROOK TO JULY 31, 2023, AT 7:00 P.M. IN THE TOWN COUNCIL CHAMBERS.

IN FAVOR: Shumchenia, DiOrio, Light, Lindelow, Prellwitz
OPPOSED: None

SO VOTED

NEW BUSINESS:

None.

SOLICITOR'S REPORT:

None.

PLANNER'S REPORT: Administrative Subdivision – **Milner Robinson/Bodell Administrative Subdivision** – Plat 8, Lot 46A, 172 Woodville Road, and Plat 8, Lot 50, 175 Woodville Alton Road. Elizabeth Milner Robinson Trust and Donna and Gilbert Bodell III, applicants.

Town Planner Jalette noted that she had approved of this administrative subdivision. If they reviewed their meeting on July 19, 2023, there was a memo which related to this development.

CORRESPONDENCE AND UPDATES

None

PUBLIC COMMENT

There was no public comment at this time.

DATE OF NEXT MEETING: July 31, 2023

PRE-ROLL FOR JULY 31ST MEETING: Mr. Prellwitz, Ms. Shumchenia, Ms. Light, Mr. DiOrio, Mr. Lindelow, Mr. Wayles and Ms. Bolek all indicated that they would be in attendance.

Solicitor Hogan noted that when they reconvene on Monday, after the closing of the public hearing, they are going to make their decision and she was going to poll everyone and ask them if they have familiarized themselves with the record thoroughly, they have reviewed the videos of any meetings that they may have missed and they have read the minutes, etc. so that everybody understands that the decision is being made from a fully informed point of view. Town Planner Jalette noted that she was confident that the record was complete.

ADJOURNMENT:

A MOTION WAS MADE BY EMILY SHUMCHENIA AND SECONDED BY CAROLYN LIGHT TO ADJOURN.

SO VOTED

Marita D. Murray, CMC
Town Clerk

Michael J. Spellman (Planner)