

**TOWN OF HOPKINTON
PLANNING BOARD**

Wednesday, August 16, 2023

7:00 P.M.

**Hopkinton Town Hall
1 Town House Road, Hopkinton, RI 02833**

CALL TO ORDER:

In Hopkinton on the sixteenth day of August 2023 A.D. the meeting was called to order by Chairman Ronald Prellwitz at 7:07 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. Town Planner Spellman and Solicitor Hogan were also in attendance.

PRE-ROLL FOR AUGUST 24, 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 JULY 12, 2023, REGULAR MEETING.

IN FAVOR: Shumchenia, DiOrio, Light, Lindelow, Prellwitz

OPPOSED: None

SO VOTED

OLD BUSINESS:

Master Plan – Public Informational Meeting – Major Land Development Project–
SKUNK HILL ROAD SOLAR – Plat 18, Lots 8, 13 and 14, 0 Arcadia Road, 0 Lisa Lane and 145 Skunk Hill Road. Skunk Hill Road Solar, LLC., Applicant.

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

Attorney Robert Craven on behalf of the applicant and Jason Tefft were present.

Mr. DiOrio noted that the application was closed and there would be no input from anyone at this meeting; this was just an internal discussion.

Solicitor Hogan commenced the discussion by indicating that she had provided the Board with a draft decision which essentially contained the travel of the application and a rather detailed summary of the hearings. She noted that this matter had been ongoing for several years and felt that it was important to document the travel of the case, the scope of the record that is before them, and the work that they have ahead of them. In addition, she provided them with her review of the transcripts, noting any items that the applicant had agreed to, should a member of the Board wish to revisit that. This evening the Board should discuss the issues and make a determination. The Board could render a decision this evening if they should get to that comfort level.

Mr. Prellwitz asked the Board members for their comments and questions. Ms. Shumchenia wished to reiterate that her remaining concern was the spacing of panels and stormwater management, and the number of comments that they have heard from experts, including the town's engineer. She stated that she had commented on the original application provided to them back in January of 2021, and wondered if those plans included a different spacing of panels and how the project has evolved since then. It was her recollection that things had gotten denser over time. When trying to determine how she came up with that assumption she noted that it was really difficult to ascertain the coverage of the panels in an acreage sense and spacing. In the first version of the master plan there was a page that described the orientation of the panels, their angle, their portrait, their dimensions, the spacing between them, and the total number of panels. When comparing that sheet to the equivalent sheet on the most recent version of the plan, the numbers were effectively the same. She also found in the master plan report which the applicant provided in January 2021, that it noted the total acreage of panel coverage as 51 acres; she could not find an updated number. She believed that the panel spacing has always been tight for what was considered normal and that was what Steve Cabral had observed when reviewing other sites. He was also concerned about the amount of runoff associated with tight panel spacing and channelization underneath the panels where the drip edge results in runoff. Ms. Shumchenia noted that Mr. Cabral's comments were in his master plan report. She indicated that she started from the beginning of the submissions and tried to retrace the history of how the project plans evolved. The maps essentially look the same now as they did in the beginning. There is a table called solar summary and it separates into panels and racks and under panels it notes things like dimensions, tile, angle, power, shade angle and under racks it provides the orientation, the rack spacing, the minimum maximal panel height, the number of panels and the total power for the entire project. All of these numbers have essentially stayed the same throughout the different versions of the master plan. The rack spacing is 5.7 feet and the number of panels in the first version was 50,900 and in the most recent version of the master plan dated June 2022, that number of panels was reduced to 49,500; however, the rack spacing is the same. Solicitor Hogan asked Ms. Shumchenia what the sheet number was that she was looking at and it was determined that it was C300. Mr. Wayles reviewed the stormwater plan from 2022, noting that the total disturbed area was 62.2 acres and the proposed development ultimately results in a net decrease in impervious area on the site. Ms. Shumchenia felt that this excluded panels. Ms. Light suggested that reducing the footprint and spacing the racks and panels out, would be the only way to

reduce the runoff issue. Mr. Prellwitz questioned whether the same runoff would occur if the panels were three feet apart or thirty feet apart and Ms. Light indicated no, there was less room for the runoff to be absorbed into the ground if they put in more racking which would take up a bigger footprint. Mr. Prellwitz argued that the runoff would still be absorbed under the panels. Ms. Light noted that they are displacing earth with steel which would mean less area to absorb the rain. She also stated that it was noted by Crossman Engineering that the angle of the panels and the density of the panels is very unique and not necessarily desirable. Solicitor Hogan called Mr. Prellwitz' attention to Mr. Cabral's memorandum of July 18, 2022, memorandum number three, which was written after a field visit to the site. There were a lot of photographs attached to that memorandum and it had a very long narrative regarding his observations. Ms. Light read a section that indicated that solar panels are commonly modeled as a pervious surface due to the ability of rainfall to cascade from a panel to the ground. Depending on site conditions and panel orientation, this assumption is not always true but to mitigate this concern the design now incorporates the following features: 3.1 RIDEM has historically allowed solar fields to be modeled as meadows or grass in good condition which would be the same condition used for an existing meadow. The current analysis models the solar field as fair condition instead of good condition. Since a fair condition is based upon only 50 to 75 percent of vegetation cover even though the design proposes 100 percent grass cover, the analysis provides a more conservative approach to estimating future peak flows and runoff volume. The current design also calls for scarifying all compacted soils to a depth of 12 inches; this is stated on plan sheet G-001, General Note 22. We recommend that the note be more pronounced on future filings and that this work be applied to aisles and under panel areas. 3.2 One concern was the ability for grass growth beneath a large width of solar panels. Observations at the West Greenwich site found that grass beneath the panels was typically in a better condition than grass with limited shade and full exposure to sunlight. Erosion of the lawn layer and lack of grass in open areas was an occurrence at the West Greenwich site. To mitigate this concern, we recommend more inspections by the designer during and post construction. Unlike the West Greenwich site, the design also incorporates a series of stone trenches at no more than 100 feet intervals to promote sheet flow as opposed to channelized flow that was occurring at the West Greenwich site. 3.3 RIDEM also recommends that the depth of the existing A-soil layer, the organic topsoil be preserved. Soil test holes no. 1 through 4 by Edward Avizinas indicate that some areas on site have 13" to 16" of A-layer. These areas should be identified and preserved to promote vegetation growth and minimize change to runoff conditions. The response to comments indicates that these areas are identified on the plan, but the locations were not readily apparent. The goal is to provide a similar depth upon completion. 3.4 The panel size and panel orientation which is not parallel to the topography in many areas have been a concern due to the potential for channelization and runoff as opposed to sheet flow over the grass cover. As previously mentioned, the design incorporates numerous stone trenches to create a sheet flow. We concur in concept but state that the preliminary design stage will need to provide more details to allow the contractor to install these long meandering trenches at a level elevation. The lip of the trench will also need additional detail to ensure even sheet flow. Lastly, 3.5 WNC has agreed with previous concerns for long-term inspection and maintenance of the stone trenches and includes the trenches in the O&M plan and future filings. He would recommend an expanded text to address inspections to monitor the effectiveness in creating sheet flow and corrective actions. Ms. Shumchenia noted that in

the findings of fact that they have summarized, on page 5, there are a set of bullets, and the third bullet summarizes what Ms. Light read. It is entitled stormwater analysis and indicates that Steve Cabral wished to express big picture concerns. He stated that one of the unique features of this solar design was the size of the panels in the array resulting in 80% of the area being comprised of an impervious surface and as such there would need to be a robust stormwater mitigation process. He also expressed concerns about the assumptions used in stormwater analysis to date because it was predicated upon metal conditions. He indicated that stormwater runoff was often discussed in the preliminary development stages, and it is unique to Hopkinton that detailed stormwater designs are discussed in this phase. It also noted that he was comfortable with the cooperative interaction with the applicant.

Mr. DiOrio felt that much of this discussion could be addressed by a condition that reduces the scope of the project. He noted that he queried the applicant on this topic right from the beginning but never really received a straight answer. He presumed from the travel of the application that the answer was no. In his opinion, he felt that this did not mean that they could not impose this as a condition. Ms. Shumchenia felt that the Board should determine what the typical panel spacing is in more widely accepted designs, given that Mr. Cabral testified that this project was really unique, that 80% of the area was comprised of impervious surface, that they target a percentage of coverage that they would allow. Ms. Light agreed with that approach and felt they could look at the two existing large projects in the community as to their layout and find the consistency that has satisfied those projects. Mr. DiOrio wished to be clear that he was not suggesting taking five panels away was going to solve his issue. Mr. DiOrio advised that he was not prepared to substantiate his opinion with references to testimony or anything like that, he was simply providing his feelings about how he perceived his review of the application.

Mr. Lindelow asked if as a Board they wished to define this at this stage of the plan or is it usually discussed at the preliminary plan stage. Ms. Shumchenia noted that this was the stormwater management plan which would be dictated by the panel spacing and this would be locking in their plan and then all they would be able to modify at preliminary would be how they deal with the implications of their spacing which is not sufficient according to what they just spoke about. Mr. DiOrio agreed and noted that this must be dealt with somehow at this stage because it will impact how the applicant proceeds going forward. Mr. Prellwitz questioned if they were suggesting removal of some of the panels or putting them on a wider footprint. He noted that at this point they did not know what the spacing was for the other two large projects in town. Ms. Light asked if they leave the footprint alone and reduce the number of panels so that there was more spacing in between the panels, they would be able to accomplish what they were looking for. Mr. Prellwitz felt that they could also request a reduction of 10% in the panels and an increase of 10% in the overall footprint they would be looking at four more acres. Mr. DiOrio noted that he wished to be clear that it sounds to him that they are removing five panels and that is not what he was proposing. He was proposing a significant reduction in the scope of the project for a variety of reasons of which stormwater may be one of them. He advised that the concept of the Town Council asking for a screening of visibility so that the project would not be visible from the abutters first floor windows, sets a berm of “x” height to accomplish that. What if they were to agree that this was a minimum threshold approach, and they suggest that the project should not be visible at all from anyone’s

dwelling. This would significantly increase the berm configuration to the point where the existing footprint does not work at all. His thinking is the elimination of two sections of the project, not just several panels. Ms. Light believed they had testimony on how much the footprint for the berm would grow depending on how many feet it went up. Mr. DiOrio did not recall that and felt it would be interesting to review. Solicitor Hogan believed Ms. Light was getting confused with Brushy Brook and the retention pond basin. This was spoken about that if it went up this high it would have to go further out. Mr. Prellwitz noted that he remembered the berm being the same way. A ten-foot berm needs so many feet, and a twelve-foot berm needs more. Mr. DiOrio advised that he did not remember any discussion about this concept of the project not being visible from any point on any dwelling. He did not remember discussing this within the context of the applicant responding. Ms. Light thought it was a passive comment and they did not elaborate on it. Solicitor Hogan noted that the record would reflect if there were requests from abutters for that. Ms. Light noted that she wished to protect the abutters' views from their houses, not just from the first floor. Mr. DiOrio added that if this project were to move towards an approval he would certainly consider that as a condition. Mr. Prellwitz advised that it was probably inappropriate to say, but one of the people who made the biggest comment about not being able to see this, has panels on their house which faces their neighbor's house and can be seen from anywhere on their neighbor's property. Ms. Light noted that there was a family that recently purchased their house and was unaware of this project and they were trying to come to an agreement on what their view would look like. Mr. DiOrio remembered Attorney Craven advising the woman that he would be happy to speak with her and Ms. Light advised that they did not come to an agreement. Mr. Wayles suggested that the water issue would be his main concern; he would rather see this project than have his house wash away or his basement fill with water. Mr. Prellwitz stated that he looked out his bedroom window and saw panels which were relatively close together; however, he never gets water in his yard from them.

Regarding the topic of environmental impact, Mr. DiOrio advised that his impression after hearing the various testimony was that neither of the experts on this topic convinced him one way or the other. He found their testimony not convincing; however, he was left with a reasonable doubt that there could be significant environmental impact. That alone is going to make it difficult for him to clearly support the verbiage that says there will be no significant environmental impact. Ms. Light concurred. Mr. Prellwitz asked Mr. DiOrio to elaborate on that idea. Mr. DiOrio felt that usually when they hear testimony that is in opposition, at least in his experience, one expert strikes a chord that says yes, that's it right there. One expert prevails to each of us but that did not happen to him here. So with neither expert convincing him, but one side at least raising doubts in his mind, as to whether he can say there is going to be absolutely no significant environmental impact, he did not feel that he could make that call. Therefore, even if it was only one of the conditions that fails, he would not be able to render a positive finding. Solicitor Hogan noted that this was a phrase and Mr. DiOrio needed to identify what he meant by that phrase. What specifically are the negative environmental impacts that he was concerned about. Mr. DiOrio indicated that he was not really prepared and he was talking about his impression of the testimony as a whole, both pro and con; he has not had the time to wade into these documents. Mr. Wayles asked if they could not make that determination since there was no final plan. Mr. DiOrio noted that this was such a significant topic that he did not want to ignore this and wait for the final plan. Solicitor Hogan asked the

Board not to get too tripped up on this issue because this is structured like subdivisions where there are three stages of review, master, preliminary and final. Obviously, they cannot make a determination on the final plan at master because they do not have it. The plan that is before them is final for purposes of the master stage of review. If the project gets from master to preliminary, there are state permits that have to be secured and that is a pretty open question at the moment. There was a letter from DEM early on a few years ago which identified a series of issues and the applicant's environmental scientist said that those were common letters that they frequently received, but it was not a concern at this stage of the process, they knew they had to incorporate certain things into the plan. There are other things that have to happen at each stage of review. Mr. Prellwitz asked Solicitor Hogan if she recalled him showing her a photograph taken from his back deck. One of the things that people were saying about environmental impact was that animals cannot travel back and forth. He saw a white-tailed deer leap the fence of the solar project next door to him and when looking this up on the internet determined that North American white-tailed deer can leap eight feet comfortably. Solicitor Hogan indicated that the Board should discuss the applicant's thought that they could not go anywhere because they have been told by an expert that it is an unfragmented forest and you cannot cut those down and when they discuss environmental impacts, they should discuss what kind of things could be environmental impacts, such as stormwater runoff, impact to the wildlife or visual impact to humans. They should take those issues one-by-one and go through them. Mr. Wayles asked what role decommissioning had in this stage of review and Mr. Lindelow replied none; however, it was a huge concern of his. Solicitor Hogan noted that at master plan review they could indicate that they would like to see the decommissioning plan, or they could wait for preliminary or final. She thought it would make sense at some point in time, if the Town Council is so inclined, to set some standards so that as these applications come through for the next several years, that they have something that they can work with and are not trying to start from scratch for every application. Mr. Lindelow wished to know what the applicant planned to do with the 49,000 panels after the life of the project and he did not want to move forward with the master plan until he saw their decommissioning plan. Solicitor Hogan felt they could proceed subject to satisfactory reforestation plan or decommissioning plan. Ms. Light noted that the fact that the Planning Board sets the decommissioning rate was included in the Town Council's decision so it is nothing that can disappear. Solicitor Hogan read the two sections of the photovoltaic solar ordinance that mentioned decommissioning. Mr. Lindelow still did not understand why they talked about reforestation but did not talk about the continuance of a solar array. Ms. Light noted that the property was supposed to revert to residential after thirty years. It was explained that after the life of the solar project, someone would have to come back to the town to ask that it be continued. Mr. DiOrio felt that reforestation would never happen. At the end of thirty years, someone will request to build houses. All the work will have been done.

Mr. DiOrio noted that all of this time they have been focusing on whatever decision they come to, it needs to be supported by testimony or documents in the record (evidentiary or testimonial). In reviewing the subdivision regulations, considering the public comment, he recalled that there might have been one person in favor of the project. Pretty much nobody wants this. How do they reconcile all of that public opinion with numerous sites just in the subdivision regulations that speak to protecting the neighborhoods, promoting design of land developments that are integrated into the neighborhoods, etc., so those are

also important elements that he felt the Board was bound to. That is not testimony or evidentiary evidence. How do they weave this into their thinking, if in fact they were so inclined. Solicitor Hogan advised that the approval or disapproval of any application is not a public referendum. First, they need to look at how the property is zoned, and does it fit within the regulations that we have set forth. This property is zoned for one use only so there are things that have been decided by someone else. The Planning Board's obligations are to review this in light of trying to accommodate the need for something to fit into the neighborhood where it is difficult to do so because this is now a commercial zone where it was previously residential. They have to focus on the mitigation, what steps can they take to mitigate the impact to neighbors as this is a legal allowed use of the property, provided that they can establish to the Board that there is not going to be a negative environmental impact. They should look at things like the view scape, the buffering, the noise, the traffic (how are the construction vehicles getting to the site), and when will the berm be constructed (before the panels go in or at the end). She noted that the document she had provided the Board with containing potential conditions had a variety of these kinds of issues that were raised, such as what kind of impact will there be to the roads, they may want to require there be a road study, and who was going to fix these roads, also noise, light and water runoff. These are the things that the Board should look at in order to determine if this application has sufficiently addressed all of those potential negative impacts to the neighbors and the town. Mr. DiOrio stated that therefore all of the language in their subdivision regulations that spoke to preserving the value of a neighborhoods has to be considered in the context of the rezone. Solicitor Hogan agreed stating this was a lawful use. Mr. Prellwitz felt regarding stormwater runoff, that no matter what the Board required, the State would have the final say and the applicant would be bound by their decision. Solicitor Hogan explained that there was originally a plan for stormwater management and now there have been reiterations of that plan as a result of the peer review process and Mr. Cabral's input which was readily acknowledged by the applicant as being very valuable and the engineering companies worked together. The resulting plan still has to be approved by the State.

Ms. Light indicated that she had heard at a previous meeting that the applicant's investment increases at every stage of the project. At the next stage, they will have to give latitude because of their investment, and she did not give latitude based on somebody's expenditure. They cannot depend on the next stages if the Board was leaning towards saying no. Mr. DiOrio asked what they were to do next; he did not have the documents to review. Solicitor Hogan advised that it was the Board's obligation to make a decision with actual factual findings that resolve evidentiary conflicts and they should keep trying to work through some of those issues. She advised the Board that there were deadlines to this matter and if they failed to meet those deadlines, there would be an automatic approval. Mr. DiOrio asked when the deadline was and Solicitor Hogan believed it to be at the end of August. Mr. DiOrio wished to go through the issues one by one.

Solicitor Hogan advised that there was a claim regarding cutting down the trees in an unfragmented forest. She requested they discuss that and determine whether they felt this was a viable argument that would shut down this project. Mr. DiOrio suggested that he was swayed by the argument that if they were going to use the term unfragmented forest, someone should have bought something a long time ago. He advised that he was not

prepared to accept the argument that cutting down trees in an unfragmented forest is valid. There have been representations that cutting down trees is going to happen regardless of whether this is a solar project or residential subdivision; however, he takes exception to that statement because the subdivision regulations give the Board broad powers about protecting natural features. Clearing trees is still a significant environmental impact and they cannot use the argument that it is going to happen regardless of what they do on the site. Solicitor Hogan advised that since they have identified that as a potential environmental impact, they now have to take that a step further and identify whether or not, because this project would require the cutting of trees in order to put the project in, has the impact from cutting those trees be sufficiently mitigated. Mr. Prellwitz felt that people were overlooking the fact that Arcadia Management Area was right there and that bordered Patchaug Forest, so there were a lot of unfragmented forests in the area. This one 40-acre plot will have an impact, but how significant will it be moving forward. Solicitor Hogan asked the Board if the applicant, at this stage of review, showed sufficient evidence that the impact of the cutting of those trees is going to be mitigated. Ms. Shumchenia advised that the decision of the Town Council stated that 42.5 acres have to remain forested on Plat 18, Lot 14, and on Plat 18, Lots 13 and 8 46.1 acres has to remain forested. Mr. DiOrio noted that it did not say that they would be allowed to cut everything else. He asked Solicitor Hogan for an example of either mitigating or failure to mitigate that particular element. She asked what the negative impact of cutting trees would be and Mr. DiOrio noted that it would change the characteristic of the runoff, which would be a stormwater issue. Solicitor Hogan asked them to determine if that has been accounted for. She asked what else would be an impact of cutting trees and Mr. DiOrio stated loss of habitat. Solicitor Hogan asked if there would be a sufficient way to make up that habitat or to account for habitat; what can they do to mitigate that impact because of the kind of development that this is. Mr. DiOrio suggested that if the scope of the project was going to be reduced, opening up areas that could be planted might be a mitigation that has not yet been explored or one that could be posed. Solicitor Hogan suggested that if they identified specific methodology or reasons it had to be tied to the record. Mr. Wayles asked if they could say that for every tree that came down, one would go up, so it would be net zero at the end and that would reduce the scope for it would force manipulation in the area where there were not going to be panels. Solicitor Hogan asked if there was generally a consensus that this project is not stopped automatically because they have to cut the forest. Ms. Light agreed, noting that it was private property and the scope of the project required trees to be cut down. It was just how many, how much of a footprint, and the runoff issue. Solicitor Hogan indicated that there was a lot of credence given by the objectors' side that there were a variety of eight various studies or policy statements from a variety of entities that from a policy perspective indicated that cutting unfragmented forests was really not a good idea and asked how the Board felt about that. Mr. DiOrio stated that he was also swayed by the argument that you cannot throw policy documents on the table and call it testimony. He noted that the State of Rhode Island realizes that they made a tragic mistake by allowing all this solar development in forested areas and now they are trying to back out of it with all of these policies. It pains him not to be able to rely on those policies. Solicitor Hogan noted that this spring the General Assembly did finally pass a statute that was created by a wide variety of stakeholders and going forward, this project not included and existing projects that are in the pipeline not included, people will not purpose projects for core forests anymore because they cannot

participate in the state energy programs where they get the energy purchase that they create. Mr. DiOrio stated that now this hurts even more because they admitted that they made this tragic mistake but instead of owning up to it and saying even if you are in the pipeline you are done, they did not. Mr. Prellwitz noted that the plan showed and they had spoken about planting trees on top of the berm, but questioned using the square footage on the sides of the berm to some extent to plant additional trees or vegetation. Mr. DiOrio noted that the problem with implementing such a condition was that they did not know what the plan would look like, such as how high the berm will be, how big the side slopes are going to be, or if the sides will be suitable for planting. Solicitor Hogan suggested that these were the kinds of things that they needed to determine if this matter was to be sent to the preliminary stage; that the applicant at preliminary will need to submit a plan that blocks the views of all the neighbors from all of the heights and plantings to cover the entire berm. She noted that she has heard a vehement opposition to fertilizer so there has to be some alternative method taken to assure that these plants will live; perhaps a condition could be that they install a well and place an irrigation system on the berms so that the plants survive. Ms. Shumchenia wished to summarize that they were speaking about the impact of cutting trees resulted in a few different impacts such as visual impacts to abutters. They discussed that though there will be trees being cut down, they potentially have the opportunity to put some back near where abutters are and where some of the land is cleared. Two other impacts that she wrote down were loss of habitat long-term and inhibition of animal movement. The wildlife habitat plan, which they received, included the building of structures and clearings to create habitat; however, there was no long-term maintenance plan for those structures. They should make sure that the conditions reference that wildlife habitat improvement plan and set forth the expectations for what the plan includes. She felt that this would be adequate mitigation of those impacts of the forest wildlife. Ms. Shumchenia went on to state that one of the impacts of clearing trees was a change of the overall hydrology of the site from the tree loss which is compounded by the fact that they are adding panels. Their stormwater management plan is meant to mitigate those impacts. The Board previously discussed their uncertainty that this was going to be enough. Mr. Wayles believed that their stormwater management plan had considered the panel coverage of the meadow, but he did not believe that mitigates the tree loss. Ms. Shumchenia felt they also had confirmation of that from Steve Cabral in his July 18th memo which said observations made during the site visit reinforce the concern that the design based on RIDEM's solar design guidelines alone does not ensure the long-term performance of stormwater management. Solicitor Hogan noted that as a result of that report a number of amendments were made, such as the number of basins being changed from three to eight and they changed the underlying modeling that relied on the meadow to something different. Ms. Shumchenia noted that because of the berms there was barely any room to plant trees. Solicitor Hogan noted that the Town Council decision did address berms and noted that there has to be plantings on the sides and trees on top. One of the concerns raised by someone on Lisa Lane was that some of the trees were deciduous and he wanted evergreens and he also wanted the berm extended to block his view as well because there is a gap. She asked if the Board was in concurrence that all of the abutters should have a visual block and that it should be evergreens and they noted that was indeed the case. She asked if they were in agreement that the abutters were not to see the array from the upper stories of their homes. Mr. Prellwitz suggested that it was his opinion that second floors were usually for bedrooms. He saw the neighboring solar

array from his bedroom every day and did not feel that this was horrible. Mr. Lindelow noted that they could go through all of this to assure that no abutter had any view of the array and then a year later one of the abutters had a small piece of panel that they could see. This may never be one hundred percent perfect.

Solicitor Hogan asked the Board to look at the document that she had provided that says conditions referenced in public hearings and maybe they could go through that list. The first one is the timing of the installation of the berms. The witness suggested that the berm be installed after construction is completed. Mr. DiOrio felt they should be installed before construction. Mr. Lindelow questioned what if later it was determined that the berms were not built high enough to hide the view. Mr. DiOrio felt that there needs to be a methodology for establishing whether the berm satisfies the objective. It could be something like the town's engineering consultant will verify, at some point like prior to site disturbance beyond the berm, that in fact the berm and the planting adequately screens the project from all perspectives from abutting properties. You cannot just leave it up to getting to the end of the project and having someone say this doesn't work at all. He felt that the berm should go in first so that if changes need to be made, it can be accommodated. Mr. Lindelow noted that if the berm was built first then the view of the construction would be blocked. Ms. Shumchenia asked where the material for the berm would come from. Solicitor Hogan noted that there was some testimony that some of the topsoil on site was going to be used for construction of the berm. Ms. Shumchenia noted that it was also important that some of the best topsoil was to be preserved in the most critical locations and not used for the berm. Mr. DiOrio asked if the areas with the best topsoil were identified on the maps; if they talked about not having those areas compacted that was next to impossible due to the equipment that will be running over the ground in order to set the piers even if they were not allowing panels in those locations. Solicitor Hogan asked the Board if they were requiring a watering method for maintenance and Ms. Light felt that was a horrible request for they would have to install a well. Mr. DiOrio stated that a well was not their only option. They only have to establish the vegetation and then natural rainfall would sustain it. If any of the vegetation fails within a year, they will have to replace it, but this is only watering to establish and this will be made a condition. Regarding the berm and view of the project, Mr. DiOrio felt that they should not be able to view this project from anywhere along the roadway. It was agreed that this would be a condition of the project, that it is not seen from any roads bordering the properties.

Mr. Prellwitz went on to berm location vs fencing and asked if the berm needed to be inside or outside the fencing. Solicitor Hogan noted that in July of 2021 this question was raised and resolved in September of 2021 when they moved all the berms to the outside of the fence. Ms. Light asked if the berm was going to be extended to fill in the gap and they discussed potentially having a larger berm for coverage. Mr. Prellwitz felt the fence should be inside of the berm because if people had an issue seeing panels, they would also have an issue seeing a fence.

Driveway width was the next issue discussed. Mr. Prellwitz noted that emergency fire codes stated that this should be twenty feet wide rather than eighteen feet. Mr. DiOrio believed that issue had been resolved.

Traffic control was the next issue and Mr. Prellwitz noted that the abutters were concerned about traffic on Skunk Hill Road. Once the solar field was up and operational there would not be a significant amount of traffic. Mr. DiOrio felt that they still needed to address having an initial assessment of the roadways and then some post-construction assessment to determine if there was any damage done and if so, the applicant will need to repair it. Solicitor Hogan recommended the Board require a traffic expert report at preliminary which would include a detailed plan for traffic control during construction and the requirement to fix any roadway damage caused by the construction traffic and in order for that to be workable there would have to be an existing conditions plan as part of that submission. This would also be subject to peer review.

Telephone poles had previously been discussed, as well as berm maintenance.

It was noted that they should remove all references to fertilizer on all plans and this should probably be a separate condition. Mr. Prellwitz felt that they needed to fertilize the plants when they put them in and Mr. DiOrio noted that they were not allowed to introduce language that was contrary to the Town Council's condition; however, asked if they could include a condition that said amendments will be included to ensure the viability of the ground cover and leave it up to the applicant to figure out whether they want to use something other than a chemical fertilizer. Solicitor Hogan suggested they require at preliminary that the applicant provide evidence as to how they plan to ensure the viability of the plantings in the absence of fertilizer. Mr. Prellwitz agreed but wished to change that to "in the absence of chemical fertilizer."

Records retention and keeping the records until the life of the project has previously been agreed to by the applicant and the Board can include this as a condition.

Contingency plans for correcting any noncompliance with decibel ratings. It was noted that they approve the required submission of a plan at preliminary. Solicitor Hogan advised that there was a discussion regarding what would happen if the decibels were exceeded at the property line. Mr. DiOrio suggested this had been addressed in a prior project and he wished to use some of that language. He thought it may be sound curtains or something at the inverters. Mr. Prellwitz noted that they had a contingency plan. Ms. Light advised that they need to secure the decibel level for the life of the project. Mr. DiOrio asked who was to do the monitoring of the decibel ratings and Ms. Light suggested that the town's consulting engineer inspected the project once a year and possibly they could do this. Mr. DiOrio advised that the engineering firm would need the appropriate device and have someone properly trained to use it and then submit a report. Mr. DiOrio felt that if this was important enough for them to make a condition, they would need to ensure that the information that gets back to them or whoever it is going to, is valid. Solicitor Hogan noted that the Town Council's decision said that while operating, the noise level for the inverter shall not exceed forty decibels measured at the property's boundary lines of the solar array, the applicant shall pay an independent qualified company selected by the town to conduct appropriate sound testing before the project shall commence and then again after the project is completed and operational. The Board could add another condition onto that stating that this testing will be done annually.

Emergency shutdown was next and Mr. Prellwitz noted that there should be a plan submitted at the preliminary stage concerning what they would do in an emergency. Solicitor Hogan suggested that the Board acknowledge that they are going to discuss this issue at preliminary and the applicant will need to provide a plan for review. Ms. Light indicated that there was a project that had a problem which went on for three weeks before former Town Planner James Lamphere went and corrected the issue himself because the monitoring is being done from the other side of the country. Mr. Prellwitz questioned whether the police department or fire department could have access to the lockbox. Mr. DiOrio asked what they meant by emergency shutdown. He felt that taking the project offline was significant and he did not want the police department to be able to do that. Solicitor Hogan noted that this was not what was intended, the previous discussion was if they (the operator) needed to shut it down because there was an emergency; they would need to have a plan in place of how they were going to accomplish that. Mr. DiOrio did feel that the police and fire department should be access to the site.

Construction time frame. The applicant said that the project will be completed within twelve months. Work hours will be 8 a.m. to 5 p.m. Monday through Friday. It was noted that the Board did not really care about how long it took to complete this project, but they were firm about the work hours. Solicitor Hogan noted that the work hours were noted in the Town Council's decision.

ASO study. The Board should consider requiring the applicant to forward all updates from the ASO study when received by applicant. It was noted that this was the interconnection study.

There is a requirement for a Phase IC archeological study which requires the applicant have the State Historic Office confirm that testimony provided by John Brown satisfies concerns. It was noted that this has already been agreed upon.

Mr. Prellwitz went on to state that fencing and animal corridors has previously been addressed.

Protection of species. It was noted that there was no plan presented, though several concepts were suggested. The applicant had agreed to provide this prior to preliminary. Solicitor Hogan noted that they should make this a condition.

Fertilizer was discussed again and it was the consensus that organic fertilizer would be acceptable. Ms. Shumchenia felt that they should require the applicant to provide a plan for how they are going to maintain the vegetation, both from a water perspective and an amendment perspective. She wished to let the applicant tell them at preliminary how they were going to handle this and then the Board could look at that and have Crossman assess whether fertilizer applications or amendments of that magnitude could impact drinking water or neighboring wetlands.

Bats. This matter was stricken from the list.

Francis Barber Lane – Attorney Craven stated that access off of Arcadia cannot be used for heavy equipment other than for construction, the trucks will go there maybe once a month or every couple of months. Solicitor Hogan advised that she put this down because that statement to her suggests that there would still be construction traffic going through Arcadia and she understood that provision to mean that construction traffic would have been off of Skunk Hill Road. Ms. Light noted that there would be a lot of homes that would be exposed to the construction equipment. Solicitor Hogan believed they would then need to include a condition that said no construction traffic can go through Arcadia. There was discussion on how they would access Skunk Hill Road without going onto Arcadia Road and Mr. DiOrio noted that this went to the pre-condition assessment. He was not sure they cared about how they decide to access the site, the roadways connecting to the site have to be analyzed. Ms. Bolek added that Fairview Avenue is very narrow and not well-maintained. Mr. Prellwitz indicated that Arcadia Road was far more expedient than any other way. They would go off Arcadia Road and into the site. Mr. Prellwitz did not agree with keeping everybody off of Arcadia Road. Ms. Shumchenia did not believe that construction traffic could not use Arcadia Road, just that the entrance to the site was not on Arcadia Road. The Board agreed with this.

Wildlife plan and pollinator habitat was already covered.

One abutter indicated that setbacks of three hundred feet should be the same for all abutters. She was only one hundred feet away. Mr. Prellwitz questioned if one hundred feet would be sufficient if there was a berm of natural vegetative screening in place. Mr. DiOrio asked if one hundred feet was usually the setback required between commercial and residential zones. Solicitor Hogan noted that all structures have to be one hundred feet from the property line and there were some locations where it had been extended by the Council to a greater degree. She suggested that they look at transcript and the pages that were noted to review this discussion and revisit it.

Telephone poles were discussed, and it was noted that to the extent possible, they will be located underground.

Reforestation plan – it was felt was a preliminary hearing matter. Mr. DiOrio felt that they still should provide a plan and Solicitor Hogan noted that it was required from the Council's zone change.

Goat rocks, public access. Ms. Light advised that this was a preliminary matter; it cannot wait until final. This may become a battle.

Bats. Ms. Light advised that there is a mating season for bats and the tree cutting should occur around that period, not during that period. She believed the applicant had agreed to that so it should be listed as a condition. Mr. Lindelow believed it was June and July where there could be no tree cutting.

Mr. DiOrio questioned the brush pile construction notation. Ms. Light and Ms. Shumchenia remembered this conversation and noted that it was part of the Wildlife Management Plan. Ms. Shumchenia recalled that the applicant had some different

diagrams of different brush pile type structures that they would construct to create habitat for small animals, and they were very conceptual. Mr. DiOrio felt that would be unsightly. Ms. Shumchenia noted that these were plans that have structures proposed with details and maintenance schedules for whatever these habitat enhancements are, which is required at preliminary. Right now it was a collection of hand-outs and ideas, which did not constitute a plan, and this was part of that. It was noted that this was one of those management activities. Mr. DiOrio asked if these brush pile type structures were going to be outside of the fence and berm and it was unclear.

Noise mitigation measures would be addressed in a contingency plan. Mr. DiOrio wished to direct the applicant to incorporate something similar to that.

Decommissioning would be determined at preliminary.

Mr. Wayles advised that the more recent stormwater management plan spoke of how they were going to mitigate the water runoff.

Mr. Prellwitz asked if the Board felt comfortable scheduling another meeting or if they wished to take a vote now. It was decided that they would have another meeting to redefine the conditions. Ms. Light advised that there was an open issue regarding the footprint, the spacing of the panels and replanting. Mr. DiOrio suggested that if they were all in agreement that another meeting was in order, they should have some kind of a draft decision ready. Solicitor Hogan felt that she had enough to amend the original draft; however, they have noted a desire to shrink the size of the project and she did not know the details of that. The Board would need to send her a proposal that she could include in a draft. She welcomes them to send her any issues they had when reviewing the record. She noted that before any vote, the Board members would need to affirm that they have either been present for all of the hearings or that they have reviewed the records to date. The issue now was timing and they had until August 31, 2023 to render a decision. Attorney Craven agreed and noted that he had received a memo from the former Planner, Talia Jalette, which indicated that a decision would be rendered on August 31, 2023. Mr. Prellwitz noted that there was a complication with that date and he would be unable to attend. It was agreed that they would continue this matter to September 6, 2023, for discussion and the week after for a decision, which was agreed to by Attorney Craven.

A MOTION WAS MADE BY MS, SHUMCHENIA AND SECONDED BY MR. DIORIO TO EXTEND THE DECISION DATE ON THE SKUNK HILL ROAD SOLAR MASTER PLAN APPLICATION TO SEPTEMBER 13, 2023, WITH THE CONSENT OF THE APPLICANT. THE MEETING TO CONTINUE THIS WILL BE THE NEXT REGULAR PLANNING BOARD MEETING OF SEPTEMBER 6, 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:

New Town Planner Michael Spellman wished to thank the previous Planner, Talia Jalette, for her great integrity, intellect and ability. He promised that he would :do the best job possible but noted that he is doing two jobs at once, on very short notice. He thanked the residents of the Town for their patience with him. His office is very busy, and he seeks to be responsive and respectful to the community that he serves. He felt it was an honor to serve the Town.

CORRESPONDENCE AND UPDATES:

None

PUBLIC COMMENT:

There was no public comment at this time.

DATE OF NEXT MEETING: August 24, 2023

ADJOURNMENT:

A MOTION WAS MADE BY EMILY SHUMCHENIA AND SECONDED BY AL DIORIO TO ADJOURN.

SO VOTED

Marita D. Murray, CMC
Town Clerk