

**TOWN OF HOPKINTON
PLANNING BOARD**

Monday, September 20, 2023

7:00 P.M.

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

CALL TO ORDER:

Chairman Prellwitz led the Pledge of Allegiance and moment of silent meditation.

ROLL CALL:

Chairman Prellwitz, Ms. Shumchenia, Mr. DiOrio, Mr. Wayles, and Ms. Bolek were in attendance. Solicitor Hogan and Planner Spellman were in attendance.

PRE-ROLL CALL FOR OCTOBER 18, 2023, PLANNING BOARD MEETING:

Chairman Prellwitz, Ms. Shumchenia, Mr. DiOrio, Mr. Wayles, and Ms. Bolek are all available for the October meeting.

APPROVAL OF THE MINUTES:

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MR. DIORIO TO APPROVE SEPTEMBER 6, 2023 MINUTES.

IN FAVOR: Shumchenia, DiOrio, Wayles, Bolek, Prellwitz

OPPOSED: None

SO VOTED

PROCEDURAL MATTERS FOR OPERATION OF PLANNING BOARD:

1. This matter was scheduled to acknowledge with regret, Planning Board Member and Secretary Carolyn Light who submitted her resignation at the September 5th, 2023 Town Council Meeting.

The Planning Board thanks Ms. Light for her many years of volunteer public service and her camaraderie during her tenure. They collectively wish her well in all her future endeavors.

2. This matter was scheduled to give an update on the Town Council's actions to fill a Planning Board vacancy.

Mr. Spellman noted that there was a vote at the Town Council meeting of September 18, 2023, to appoint Cecil Wayles to full Planning Board member.

3. This matter was scheduled for the Chairman to accept a nomination(s) for a Planning Board Member to assume the Secretary Position of the Planning Board effective immediately upon motion and approval of the Board.

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MR. DIORIO TO NOMINATE CECIL WAYLES AS SECRETARY OF THE PLANNING BOARD.

IN FAVOR: Shumchenia, DiOrio, Wayles, Bolek, Prellwitz

OPPOSED: None

SO VOTED

4. This matter was scheduled to authorize the Planner to advertise locally through the Town Manager's Office for Hopkinton residents to apply to serve as a volunteer Alternate member of the Hopkinton Planning Board. If multiple parties volunteer, commence a search process, coordinated through the Town Planner.

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MR. WAYLES TO ADVERTISE LOCALLY THROUGH THE TOWN MANAGER'S OFFICE FOR HOPKINTON RESIDENTS TO APPLY TO SERVE AS A VOLUNTEER OF THE HOPKINTON PLANNING BOARD. -This motion was withdrawn.

DISCUSSION: Mr. DiOrio thought the Town Council made the appointments and decided on the process for selection. Mr. Spellman noted that with permission from the board he could reach out to the Town Manager to advertise and to seek appointment approval from the Town Council.

Ms. Shumchenia thought the board could make a motion to authorize the Town Planner to advertise through the website, the open alternate positions for the Planning Board, then stay silent on the process, for the Town Council to decide. Mr. DiOrio felt he did not want to overstep their bounds but would be okay with the board being a filter as long as it did not interfere with Town Council authorization. Mr. Prellwitz questioned

if the motion could consist of the board sending the Town Council a final appointment at their discretion.

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MR. DIORIO TO AUTHORIZE THE TOWN PLANNER TO ADVERTISE LOCALLY THROUGH THE TOWN MANAGER’S OFFICE FOR VOLUNTEERS FOR PLANNING BOARD ALTERNATE POSITIONS.

IN FAVOR: Shumchenia, DiOrio, Wayles, Bolek, Prellwitz

OPPOSED: None

SO VOTED

OLD BUSINESS:

Master Plan- Public Informational Meeting- Major Land Project- Skunk Hill Solar, Plat 18, Lots 8, 13, and 14, 0 Arcadia Road, 0 Lisa Lane, and 145 Skunk Hill Road. Skunk Hill Solar LLC., applicant

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

Ms. Shumchenia explained that at the previous meeting the board had discussed thoroughly a draft decision document in a draft motion. She noted they had talked about the issues they felt needed to be seen in the draft, provided input to the solicitor on material they wanted to see and received back a decision document. She expressed she was pleased with the completeness of the draft decision, as it reflected everything that was discussed at the previous meeting. She referenced the draft decision document, on page 27, number 6, it currently read; there was competing expert opinions on whether the subject property was included in unfragmented forest or not. The board does not find this characterization of the property to be relevant because there are no state regulations or laws except erosion control measures that restrict the ability of a private landowner to cut trees on private property. The various opinion and policy papers on the preservation of unfragmented do not enjoy the force of regulatory authority. As such, the board may not, within the context of a development application, impose a policy as if it were regulation. Additionally, in this case, a portion of this site will be altered from forest habitat to accommodate the solar array. There are no local or state regulations that prohibit altering a site from one habitat to another type of habitat. The testimony in the record supports a finding that the act of cutting a forest, whether fragmented or unfragmented, is not a significant negative environmental impact because while one type of habitat is removed another type of valuable grassland supporting various endangered species will be created in its place. She recommended that

the board strike the first sentence, because she felt the testimony that referred to the Department of Environmental Management's authoritative maps on this topic to be indisputable. She noted that they are the agency of record in the state that defined what it meant to be unfragmented and they've mapped and put forth those maps and data in a public forum, therefore, she did not agree that there's competing expert opinions on it. Mr. DiOrio questioned if the board were to take the sentence out, would she supplant it with another line. She noted that she would clarify and add additional detail. Mr. Prellwitz questioned if the testimony from Mr. Trembly contested or questioned it because of the other fragmented forest that is around. Ms. Shumchenia thought the controversy was that the site is not unfragmented, but portions of the site contain forest that is part of a large unfragmented forest, that also exists in neighboring land holdings. She felt it was indisputable that part of the forest on this parcel is a member of that larger unfragmented core. She noted that she did not dispute that it's not the responsibility of a private landowner to ensure the integrity of that core, especially if much of it lies outside of their own ownership but, felt that the first sentence gave the impression that they're not certain if there is unfragmented forest in the area. Ms. Bolek recalled Mr. Trembly stating that the forest was grassland at some point. She understood what was said about authority but felt Mr. Trembly's statement was contesting unfragmented forest, and she also thought it was not unfragmented. Ms. Shumchenia understood what Ms. Bolek was saying, but mentioned there is a definition of unfragmented forest by the Rhode Island Department of Environmental Management and it had found that there is a 500-acre parcel of unfragmented forest in Hopkinton. The subject property intersects the bottom part of it. She wanted the wording to be correct because she felt it may be referenced at a later date by other parties that seek to dispute this designation. Mr. DiOrio noted that he was in favor of striking the first sentence but would encourage clarification, so the record is complete as to the board's thinking at this time. Ms. Shumchenia mentioned that the Wood Pawcatuck Wild and Scenic River Stewardship Plan also speaks to this concept of intact habitat cores. She noted that document, which was approved by the Town of Hopkinton and incorporated into the comprehensive plan. The Stewardship Plan noted that the existence of these unfragmented habitat cores are part of the reason why the watershed was designated federally as wild and scenic. She mentioned the document was non-regulatory and did not require the board to do anything, but she felt that because it was in their comprehensive plan, the board needed to note that it is within their purview to try and work with private landowners and encourage the retention of these habitat cores. Mr. Prellwitz noted that he agreed with Ms. Shumchenia but noted the first sentence that stated, there are competing expert opinions, he felt this still had relevance. Ms. Bolek felt the sentence was stated as a fact statement versus an opinion. Ms. Shumchenia did not like the last sentence that stated, the testimony in the record supports a finding that the act of cutting a forest whether fragmented or unfragmented is not a significant negative environmental impact because while one type of habitat is removed another type of valuable grassland habitat

supporting various endangered species will be created in its place. She could understand including this sentence if it was just reading what someone else had said into the record, if it was framed this way, but she wanted to be careful about how the board incorporated this into a conclusion of law. Mr. Wayles had wanted to remove this sentence as well. Ms. Shumchenia did not think the board had weighed any evidence about the value of one habitat over another and did not hear an evaluation statement made by anyone. She felt the statement was getting too specific, including supporting endangered species which is a claim that she did not hear compelling evidence for. Mr. DiOrio felt this was opening a door to claims that such a project may be more valuable, which the board did not conclude. Mr. Wayles felt sentence number 9 fell into the same category, in which it stated; The board cannot find at this master plan stage of review that there will be no significant negative environmental impacts from the proposed development as shown on the final plan with all the required conditions for approval simply because this is not the final stage of review, so while the finding on this topic is deferred until final the board finds that with the extensive significant conditions below that the application has provided sufficient findings of no substantial negative environmental impacts for the master plan stage of review. He did not want the board to state that they found this yet, because he did not believe there was any value in it. Mr. Prellwitz questioned if the meaning of the sentence meant the board was not going to make a decision on the final plan because they were not at the final plan stage. Mr. Wayles noted that was correct.

Mr. Wayles referenced page 26, second paragraph, he believed the footnote was great, but believed it should be more than just a footnote. He noted that the numbering may be off, on page 2 and page 33. Solicitor Hogan apologized for the error.

Ms. Bolek read off from page 28, Number 12 – Proposed Development, provides for safe circulation of vehicular and pedestrian traffic on site in part because the applicant has now increased the internal driveway widths to 20-feet as required by the fire department. Additionally, the plans now have turnarounds for Skunk Hill and Arcadia Road entrances. These features contribute to safe circulation within the site. However, with the issue of safe circulation of vehicular and pedestrian traffic on Skunk Hill Road or on other surrounding approach roads has not been addressed at this stage of proceedings and is deferred to the preliminary stage of review, subject to the conditions below. She thought the board had a heavy discussion regarding this at the previous meeting but did not recall a conclusion being made. She felt this showed the board concluded, stating that there is safe circulation of vehicular and pedestrian traffic. Mr. Wayles noted that the depth would be pointing to page 32 number 6 – Conditions of approval. Mr. Prellwitz felt it was self-explanatory, and Skunk Hill Road will be addressed at the preliminary. Ms. Shumchenia mentioned that condition of approval noted the master plan submission was devoid of any traffic study or controlled plan for traffic, or the impact of the construction traffic on Skunk Hill Road. She noted as part of the preliminary plan submission, the applicant shall submit the results of a

study or assessment of the current conditions, as well as operating conditions, and consultation with town DPW Director. She felt that this would be addressing what Ms. Bolek had mentioned, because this showed the board is asking for a traffic study as part of the preliminary plan. Solicitor Hogan noted that there is a requirement for positive findings on certain things and safe circulation was one of them. She mentioned if the board felt they could not make the determination, they should say so. While there is evidence in the record that discusses circulation, the board had not reached a final conclusion. Mr. Prellwitz questioned if that had been covered by the paragraph Ms. Shumchenia had read stating it would be presented at preliminary. Solicitor Hogan agreed that it was one of the proposed conditions, but whether or not it was adequate for the board to support the conclusion that it provided safe circulation at the master plan stage was the issue. Ms. Shumchenia wanted to go back to where it stated in the first sentence, the proposed development provides for safe circulation of vehicular and pedestrian traffic on site. She thought the board could state given the information in the record the board is unable to find at this stage of review that the proposed development provides for safe circulation of vehicular and pedestrian traffic, references the applicant to the relevant conditions of approval to provide the board the information needed to make the determination at preliminary. Solicitor Hogan felt the question would then become, has the board reached a level of satisfaction in the board's minds for the master stage. She noted that in the finding series specifically she tried to delineate between the on-site and off-site because the board had evidence on the record that dealt with on-site circulation, so the board could, based on that information make a finding one way or the other. She mentioned the board had noted there was not anything for off-site circulation and traffic, so the proposed required findings reached off-site, she felt it did not, but she differentiated for the board to be able to address them separately. Mr. DiOrio questioned if that language satisfied their obligation. Solicitor Hogan noted that it did satisfy the obligation.

Mr. Wayles referenced Page 26, Number 3, and thought there was a legality issue, because the board would not be making a finding. He read, the issue felt was the consistency with the comprehensive plan and extensive expert opinion testimony concerning consistency surrounding property from the change in use. While compelling to the board, their issues that speak to whether the property zoning should have ever been changed, this is not an issue with the board's control of jurisdiction to review the zone change.

Mr. Wayles then referenced Page 27, Number 7, in which it stated, when the proposed zone changes for this project came before the Planning Board, the board found that a zone change would not be consistent with the Hopkinton comprehensive plan and issued a negative advisory opinion to the Town Council. The Town Council did not follow the Planning Board's negative advisory theory recommendation. The Town Council amended the future plan use map, further found the zone change was in fact consistent with the comprehensive plan and approved the zone change. Although the Planning Board knows

that I'd agree with the Town Council's finding as to the consistency with the comprehensive plan, the board does not have the authority to overrule the Town Council. However, in good conscience the board cannot affirmatively adopt the council's findings. Therefore, the board specifically declines to make any findings on this issue. Mr. Wayles felt the only issue was that last sentence because he agreed with the rest of the statement. Mr. DiOrio noted that the statement reflected how he felt. Mr. Wayles expressed that the statement was right, but the board is not going to make a finding on something they are supposed to make a finding on. Solicitor Hogan mentioned that the board is not required to adopt the draft as presented to them, they have the ability to change it and find that it is consistent or inconsistent with the comprehensive plan, but presumably for reasons other than the Town Council's reasons that found it consistent, and if the board were to rebut what the council said, then they are overruling them. Mr. Wayles questioned if the board were to state something along the lines of, we find it consistent because the council said we did. Solicitor Hogan noted that the Town Council did not say the Planning Board found it consistent, the council made their own determination. Mr. DiOrio thought he understood the concern but also thought the board should be candid in that this was the deck of cards they were dealt. He did not want to endorse the Town Council's action and wanted it to be clear that the board is not endorsing that action. He mentioned if that opened a door to someone else's subsequent action then that would not be his problem, because he felt the board had done everything they were supposed to do, even with the hand they had been dealt in this particular regard. Mr. Prellwitz agreed with Mr. DiOrio, and that this gave the board an opportunity to state they did not agree with the council. Ms. Shumchenia agreed with everything in the statement except the last sentence, and if the board were to state they declined to make a finding on that issue, a subsequent actor can call into question and litigate the entire thing and state the board did not do their job. Mr. DiOrio noted that he would not acquiesce to the board not having done their job but, they may state, the board should have selected stronger or more concise language. Mr. Prellwitz noted that he did agree with the last sentence. Ms. Shumchenia questioned if the board is required to make findings, and if they did not find them, what would happen. Mr. Wayles read from the document which stated the Planning Board shall make positive findings on the followed standard requirements as part of the proposed project. Mr. Prellwitz questioned if the board were to drop the last sentence, would the board be happy with that. Mr. DiOrio stated no, and that this was the road the applicant chose to travel. Ms. Shumchenia questioned if there are implications for the abutters' if this is challenged. Solicitor Hogan noted that the last sentence indicated that the board is not making a finding. She felt it created a potentially appellate issue. Mr. Wayles felt Solicitor Hogan wrote what the board was feeling very clearly. Ms. Bolek thought if it were to go to appellate, it would not necessarily strike all of it. She noted that the board had decisions come down where two things were stricken from the decision and did not mean if the board did not approve, they would sue. Solicitor Hogan thought the board could possibly include language that states, the board declines to

make the findings on this issue because the Town Council has done so. She noted that in a regular major application, the appeals go from the Planning Board to the Zoning Board. She mentioned if the zoning board overruled the Planning Board, it would mean the board made an error of law remanding it back to them to correct that error of law. She noted that if the Zoning Board were to agree with the Planning Board's decision, and not make a reversal or remand then aggrieved party has the right to take that to the Superior Court. Once the Superior Court is completed with a case that originated from the Planning Board and goes through the Zoning Board, the only other avenue for a redress for an aggrieved party is the Rhode Island Supreme Court but you did not get there as a matter of right, it's a matter of filing a petition for certiorari. Mr. DiOrio wanted to elaborate when it went to the Zoning Board sitting as the Planning Board of review, does the Planning Board delve into the reason that the Planning Board made the decision or is it looking at face fact of did the decision comply with the law. He asked the question because he thought anyone looking at the record could follow along accurately as to why the Planning Board reached their conclusion. However, he felt if they only looked at the decision, they made they would be missing all of what is behind decisions, so which of the two do they fall upon. Solicitor Hogan clarified that when an appeal is filed with the Zoning board, there are certain grounds that they can appeal under, and she apologized as she did not have all the grounds but gave two examples, clear error in the record, prejudicial procedural error. She explained that the petitioner would make their argument to the board on how the Planning Board acted, whether it was the Planning Board did not follow the right procedure, there was a clear error of law, or the decision went against the weight of the evidence in the record. She noted that someone defending the board's decision would then make opposite arguments and one would hope the board would read the entire decision that is at issue. She felt currently this is not evidence in the record issue, but strictly a legal issue. The question would become did the board act as a matter of law when it did not make a finding on the comprehensive plan. Mr. DiOrio wanted to clarify that there would be a record, and Solicitor Hogan noted yes, it's in the decision. Ms. Shumchenia questioned if the Zoning Board that is currently sitting as the Planning Board, made that finding, they would then have to explain why they found if the Planning Board made or did not make an error of law. Solicitor Hogan answered yes, so it does have the potential to come back to the Planning Board. Ms. Shumchenia noted it would then be the Zoning Board and the Town Council stating they would have to do this.

Ms. Shumchenia referred to Page 24, where it stated preferable opinion. Solicitor Hogan thought that it should say application. She mentioned that since it was apart of a quote from Mr. Cabral's letter, she could administratively correct that word to what it is supposed to be. Ms. Shumchenia noted that there was a similar note on Page 13, with the sentence stating, this listing may be incomplete we'll further review the record for completeness prior to issuing the written decision. Solicitor Hogan advised that the board would read that out, because it was put there due to the board not having sufficient time to go through all

the documents and organize them. She wanted to note that on Page 14, the record itself, the board currently does not mark exhibits as they come in during a hearing. She thought it was a practice that should be followed going forward, because administratively it's difficult to manage the meeting, and typically at other Planning Board hearings, there would be more than one staff person being able to attend. She noted that in a recent review of an old record it appeared that the town had followed that practice.

Mr. DiOrio wanted to discuss the issue with the visibility of the project from adjacent homes. He thought the board was going to delegate that authority to the town's consultant. Ms. Shumchenia referred to Page 29, Condition 1 related to view scape, she thought this addressed the issue Mr. DiOrio had brought up. She read from the document, in which it stated, the design for screening is not approved because it is fully inadequate to protect the expected and required road viewscape. If the applicant proceeds to preliminary plan shall redesign the vegetative screening to be of sufficient height, depth, and opaqueness to completely screen the solar array from all levels of abutting properties, during all seasons of the year commencing prior to construction of any panels on site. She wanted to add, to be assessed and confirmed by the town's engineering consultant. She questioned if the board wanted to add a similar note to the next paragraph which states, the applicant shall redesign the buffer and berm to provide complete screening from by passers on Skunk Hill Road. Mr. DiOrio felt that would be appropriate.

Page 1, the Master Plan approval AP 18, Lots 8, 13 and 14. 0 Arcadia Road, 0 Lisa Lane, and 145 Skunk Hill Road, the travel of application and summary of hearings. Ms. Shumchenia read from the document:

One: On June 10, 2019 the Hopkinton Town Council approved the application to change the zoning district classifications for the project parcels from RFR 80 to commercial with restriction to solar land use through zoning ordinance and comprehensive plan future land use map amendments a copy of that ordinance is attached here too as exhibit A.

Two: On October 7, 2020, the Planning Board reviewed a pre-application for the project. The pre-application filing contained existing condition maps, a forest assessment dated January 2, 2019, amended March 26, 2019, prepared by Mark J. Tremblay, certified Rhode Island Forester. Also included was a reforestation plan dated January 2, 2019, amended March 26, 2019.

Three: On January 27, 2021, the master plan application was submitted but it was not certified complete until April 29, 2021.

Four: On July 7, 2021, the public informational meeting/hearing for the master plan commenced and was continued as follows. July 21, 2021 the application was not reached due to a long agenda and was continued to September 1, 2021. September 1, 2021, an informational meeting was held and then continued to October 20, 2021. On October 20,

2021 an informational meeting was held and then continued to November 3, 2021. November 3, 2021, an informational meeting was held and then continued to February 5, 2022. February 5, 2022 an informational meeting was held and then continued to May 4, 2022. May 4, 2022, a continuance requested and granted to July 6, 2022, later moved to August 3, 2022. August 3, 2022 an informational meeting was held and then continued to October 5, 2022. October 5, 2022 an informational meeting was held and then continued to December 7, 2022. December 7, 2022 an informational meeting was held and then continued to March 1, 2023. March 1, 2023 an informational meeting was held and then continued to May 3, 2023. May 3, 2023 an informational meeting was held and then closed; a workshop was set for June 14, 2023. June 14, 2023 workshop conducted and continued to July 19, 2023. Workshop of July 19, 2023 rescheduled to August 16, 2023. August 16, 2023, workshop conducted and continued to September 6, 2023. September 6, 2023, workshop conducted and continued to September 14, 2023. On September 14, 2023, the workshop was not conducted but continued to September 20, 2023. September 20, 2023 the board is here to vote.

Five: The public informational meeting which commenced on July 7, 2021, was conducted as a remote only meeting due to the continuing limitations presented by the covid-19 pandemic. On behalf of the applicant Mr. Robert Craven Esquire, provided a historical travel and overview of the application. Mr. Craven then presented testimony from Sergio Cherenzia PE, who oversaw the surveying aspects of the application and the preparation of the base plans and documented the wetland locations. Testimony was also elicited from Stephanie Kaiser PE of Woodward and Curran. George Gifford, landscape architect and Mark Tremblay Forrester, Attorney S. Paul Ryan Esquire, representing unnamed objectors presented testimony from Mr. Peter Friedrichs, a Municipal Planner who reviewed the contents of his written report exhibit number O, Letter O-9. No public comment was made at this meeting.

Six: September 1, 2021, the applicant presented Sergio Cherenzia PE to review one a revised plan showing proposed fence lines for move to eliminate encroachment into the required buffer, exhibit A24 and a line-of-sight profile drawing for the proposed berm adjacent to the Lisa Lane neighborhood, Exhibit A24. George Gifford of the Gifford Design Group presented and reviewed master plan sketches, three sheets exhibit's A21, A22, and A23. The Board also heard an accepted public comment from Richard Noll of Lisa Lane, who discussed that the use is not appropriate, and was concerned about the impact on property values. Eric Bibler of Woodville Road was concerned about sight line from second stories of abutting homes. Jim Dillion of Lisa Lane, a berm isn't long enough to shield his property. Greg Ahnrud of Grancera Drive was concerned about wetlands crossing and setbacks. Jane Tapley of Lisa Lane was concerned with proximity of panels and the local traffic impacts. David Pierce of Arcadia Road inquired about the electric poles, both number and location whether above ground or underground.

Seven: Attorney Paul Ryan Esquire indicated that on behalf of his clients he was prepared to present an expert witness on wetlands at the next hearing.

Eight: On October 20, 2021, the hearing continued, Attorney Ryan presented Linda Steer of applied Biosystems Inc. accepted as an expert in wetlands who reviewed the elements of her written report exhibit O-12 and submitted to cross-examination. Attorney Ryan then presented James Poole, a real estate appraiser, to review his written statement dated June 29, 2021, Exhibit O-8B, A URI study dated September 29, 2020, Exhibit O-5. Attorney Craven then applicant's wetland witness Edward Avazini's and his report exhibit A28, at this meeting the board decided that it would have peer review done by the town's consulting firm, Crossman Engineering. The board also heard and accepted public comments from James Dillion of Lisa Lane, concerned about the diminution of abutter's property values. Richard Noel of Lisa Lane, concerned about the diminution of abutter's property values identified by URI study. Alexander Denette of Francis Barber Drive inquired on impacts on sale values for abutting properties and blasting. Eric Bibler of Woodville Road property values and questions from Mr. Avizinis and the Planning Board's authority over the project. John Marcella of Lisa Lane, seeking clarification on whole testimony and questions for Mr. Avizinis about reforestation and topsoil preservation. Lynn LaPierre of Maxson Hill Road relating her negative experiences with runoff, as a solar facility abutter. Sharon Davis Town Council liaison, Cedarwood Lane, design of stream crossings and authority of Planning Board to shape the project. Luanne McCormick of Lisa Lane, lamented that buyers in these neighborhoods were not warned by outgoing sellers of this application, opposed the concept of this commercial endeavor in a residential neighborhood and expressed extreme dissatisfaction that the Town Council granted the zone change. Lisa Hufton-Allen of River Meadow Drive concerned about potential impacts to the Wood River fishing and animal life. Joanne Serydynski of Mallow Drive concerned about all impacts and adequate vegetative screening for abutters during public comment. Jason Tefft affiliated with the applicant stated that he owns the logging rights on the subject property and could begin clearing at any time if he so chose.

Nine: On November 3, 2021 the hearing continued, the applicant presented additional testimony from Mark Tremblay certified Forrester concerning the interplay of wildlife habitat as part of forest management. A management plan is developed, proposed reclamation of an old gravel area and the preservation of substantial forest acreage. The applicant also presented Denise Cameron PE, from Woodward and Curran to review changes to the issue of, "telephone poles", electric distribution poles from above ground to underground. The board also heard and accepted public comments and questions from Eric Bibler of Woodville Road, the amount of acreage to be cleared in compliance with Town Council's conditions of zone change approval, reforestation, life of solar facilities, storm water management number and orientation of electric poles authority of Planning Board vis-à-vis the Town Council's decision on zone change, automatic reversion from zoning

not allowed under law, suggested condition that would screen solar array from second story of abutters homes. Janice Tapley of Lise Lane, the meaning of riparian rights. David Johnson, discussions with applicant's attorney about adequate screening with trees and not a berm. Joanne Serydynski of Malo Drive, seeking a 300-foot buffer from her property and where to find a copy of the Town Council's conditions. Joe Moreau of Old Depot Road, indicating satisfaction with the change to underground utilities and applicant's willingness to change elements of the application in response to abutters concerns. Luanne McCormick of Lisa Lane ability of abutters to reach out directly to applicant, efficacy of emailing comments to the Planning Board, access location for large construction equipment and hours of construction. Nancy Clark of Arcadia Road, location of electrical interconnection and number of electrical poles on Arcadia Road. Sharon Davis of Cedarwood Lane, clarified her comments from the prior meeting. David Gever of Anna Drive expressed extreme concern about the project overall, and inquired whether it could be reduced inquiries concerning the Planning Board scope of authority in light of the zone change approval. Whether the project could simply be moved to another area of town. Attorney Craven referenced a letter that he received from abutter Joseph Machado of Michael Lane who opposed the use of berms. Upon conclusion of public comments, Steve Cabral of Crossman Engineering, the town's consulting engineers, spoke briefly, and opined that for screening in the long run "there's really nothing better than a well landscaped berm in combination with evergreens". He further indicated that his firm's review of the project was ongoing, the hearing was then continued to February 9, 2022.

Ten: On February 9, 2022 the hearing continued. At the commencement of the hearing Attorney Ryan indicated that he would be seeking a continuation after this meeting to allow his experts to review very recently filed materials. There is no objection, the applicant proceeded with supplemental materials and testimony. Sergio Cherenzia for the applicant stated that working with the town's consultant, the applicant had made changes to the plans. To address erosion concerns, the site slopes have all been reduced to less than 15 percent, two driveway and road widths throughout the site have been widened to 20-feet as requested by the Fire Department, the removal of fence encroachments for setbacks and adjustments for storm water issues, access at Arcadia Road was widened, Hammerhead turnarounds added, rerouted electrical lines to avoid wetlands, and minor changes to panel locations. Mr. Cherenzia indicated that the applicant will continue to work through issues with the town's consulting engineer. Mr. Craven then presented Mr. Avazinis again for additional testimony concerning his solar field wildlife augmentations, exhibit A-28. Mr. Craven also represented Geroge Gifford to discuss the landscape plans in regard to pollinator habitat. Mr. Craven further inquired of Mr. Cherenzia as to sight lines from abutting properties. The chair then called upon the town consulting engineer Stephen Cabral from Crossman Engineering, he testified that he was presenting an independent review of the project "not intended to be for or against the proposal" and given expert opinion on proposal details to address concerns of any board members as they exercise

their collective oversight duties. He noted the following for the board's consideration. The Rhode Island State Historical Commission has indicated that a phase one archaeological review of the site was required, the United States Department of Interior expressed concerns that the northern long-eared bat habitat is on the premises, tree removal must not interfere with their nesting. As to stormwater analysis, he wanted to express "big picture concerns". He stated "one of the unique features of this solar design was the size of the panels in the array resulting in 80 percent of the area being comprised of an impervious surface. As such, there would need to be a robust stormwater mitigation process. We expressed concerns about the assumptions used in the stormwater analysis to date, because it was predicated upon metal conditions. He indicated the stormwater runoff is often discussed in the preliminary development stages and it is unique to Hopkinton that detailed stormwater designs are discussed in this phase. He was comfortable with the cooperative interaction with the applicant. The discussion ensued with Planning Board members regarding topsoil management and preservation and bat habitat protections. The board heard and accepted public comments and questions from Joanna Serydynski and David Johnson Skunk Hill Road about setbacks, sight lines and berms. Eric Bibler of Woodville Road concerned with the deep slope's, frustration with Mr. Avivinis testimony referenced multiple policy statements from state agencies and consultants advocating deforestation for solar expressed concern at the amount of technical engineering being presented at master plan and the length of time the review is taking. The hearing was continued to May 4, 2022.

Eleven: On May 4, 2022, the hearing was further continued to July 2022 and then to August 3, 2022.

Twelve: On August 3, 2022, the hearing continued, Mr. Craven stated that the applicant's team continues to work with Crossman engineering on peer review issues. He presented Denise Cameron PE who stated that as a result of the peer review process the applicant's modeling assumptions were changed to be more conservative. She stated that the proposed topsoil depth was increased, and drip edge had been added to the plans. A Planning member lights request Mr. Cabral commented on the plans to date, he expressed his biggest concern was the size of the individual solar panels and their spacing because of grass mortality soil compaction and resulting runoff. Mr. Craven then represented that the applicant had been in contact with the Narragansett Indian Tribe, and its supreme medicine man John brown, in reference to on-site artifacts and an archaeological survey. Town Planner Jalette then inquired on a number of subjects including; the plans for protecting goat rock, the Town Council's prohibition against fertilizer groundwater recharge northern long-eared bat habitat impacts discrepancy on the depth of crushed stone on the plans confirming the number of acres to be cleared in compliance with the Town Council's limitations on decibels, amount of ledge and rock removal required for the project, borrowing animal habitat and protections term required for record keeping the types of electrical equipment on solar sites. Additional inquiries were made by the Planning Board members concerning

liability to goat rocks, ATV trails, and access from Arcadia Road. Attorney Ryan then presented Mr. Poole again to update local real estate valuation analysis as impacted by solar arrays. Attorney Ryan also presented Peter Friedrich's Municipal Planner for additional testimony on the alleged lack of consistency with the comprehensive plan and the environmental impacts of the proposed solar array. Attorney Ryan then presented Linda Steer of Applied Biosystems Inc., who referenced her July 2021 report exhibit letter O-12 and the concerns set forth therein. She cited eight specific policy documents by title that she felt supported her opinion that forest should not be cut to erect solar arrays. She opined that there would be significant negative environmental impact if this array was built including the likelihood that the two roads would impact wetlands, the chance that the long-eared bats would lose critical habitat. During the August 2, 2022 public forum portion of the meeting the following individuals spoke about their concerns with the project. Town Councilwoman Sharon Davis of Cedarwood Lane, this project not needed to meet the town's expressed solar megawatt production. Luanne McCormick of Lisa Lane, increased storm intensity of the last 10-years that creates concerns that neighbors will be inundated with water and unable to handle the drainage. Skunk Hill Road will not be able to handle the heavy traffic, there's a safety factor for children waiting at bus stops. Town Council president Stephen Moffit of Diamond Hill Road, the interconnection has not been discussed and needs to be. David Gever of Anna Drive wanted to ensure public hearing was continued to a future date. The hearing was continued to October 5, 2022.

Thirteen: On October 5, 2022, the hearing continued. Mr. Crave presented Mr. Jason Tefft who identified the specific location of goat rocks on the plan. Mr. Craven said that discussions were ongoing with the Hopkinton Land Trust about eventual ownership and access to that area, but no decision had been made. The presentation then focused on answers to Town Planner Jalette questions from the proceeding month as well as inquiries from board members. Mr. Ryan then delivered arguments alleging that because many trees would be cut, the board simply cannot make a finding of no significant impact as required and therefore, the board should deny the application. He submitted that Ms. Steer testified that the impact from cutting trees on bats would be an adverse environmental impact. He submitted that both the applicants and the towns engineers testified that the plan was as good as it was going to get but still did not eliminate all significant environmental impacts. Finally, he argued that the appraisal testimony which focused on local communities as well as Hopkinton, established that there would be significant property value impacts caused by commercial solar, especially in a residential zone. The board also heard and accepted public comments and questions from Colleen Stephan of Lisa Lane urged the board to shut down the plan which she described as expensive and irredeemable and destructive. She argued that the objectors had submitted the required evidence to show the project will create real harm and leave long-term significant negative environmental impacts. She described the plan as destroying bats habitat, wildlife, deer or animal corridors, trails, waterways, groundwater, clear-cutting trees, destroying home values, and future enjoyment. She

opined that the development is an obscene treatment of land and destruction of natural resources. She referenced the URI study and the projected negative impacts on property values. Janice Tapley of Lisa Lane agrees with Colleen Stephan's statements, and she was also concerned with the specific sight line would be for her own home and the impact on the local roads from all of the heavy construction trucks. Carol Desrosiers agrees with Colleen Stephan, is concerned about her property value even though she's about a mile away, she doesn't think the board should credit Jason Tefft as a bat expert. Frank Landolfi, former Town Councilor of Elizabeth Court indicated that he was on the council that approved this zone change but that a new state statute will now take away 40% of the expected revenue of \$45,000 per acre assessment which was a main basis for his decision. He expressed his anger at the developer's attorney who supported this legislation in capacity as a member of the general assembly. He characterized the developers as sneaky because as soon as they got the zone change, they appealed their assessments. He apologized to the town and said he would not have approved the zone changes for solar if he knew they were going to get a bill passed to take away 40% of "promised revenue". Luanne McCormick of Lisa Lane expressed her distrust of the developers and her opinion, they will not adhere to the requirements of the town's solar ordinance. David Gever of Anna Lane urged the Planning Board to have the courage to find insignificant environmental damage and deny the application. He argued that property values were going to be affected, and the town would lose tax revenue. He further argued that the town would not have granted the zone change if the change to the tax laws was known. Stephen Moffit, Town Councilor of Diamond Hill Road expressed concern that the residents had been dealing with this proposal for six long years to date and there is no certainty from the ASO study that this will occur, even if the board approves. You felt that the significant environmental impact had been proven and he requested clarification on Mr. Cravens statement that there would be an enhanced tax revenue. Eric Bibler of Woodville Road provided a document on estimated solar revenues from all of the solar projects in Hopkinton. He argued that the main reason the Town Council voted in favor of the zone changes was the promise of substantial tax revenues over the life of the project. You further argue that there is compelling evidence that the project will cause significant negative environmental impact including habitat destruction, that would otherwise serve the northern long-eared bat. He noted that over the years of meetings, he's never heard of anyone in favor of the application other than the applicant. Mr. Cabral indicated upon questioning that the proposed stormwater system would function as designed and would be able to handle a rain event that occurred in 2010, over the course of many days. He stated that it was the large watersheds that had difficulty absorbing all of the water but that smaller systems functioned properly. In summary, Mr. Craven spoke about the change in taxation for the properties and argued the tax revenue generated by these properties will increase. He explained that the state tax legislation was a direct result of a decision issued by the Rhode Island Supreme Court, *Green Energy V. Town of North Kingstown*, that

municipalities cannot tax any of the business equipment. So as a result, the developers worked with the office of energy resources to come up with a uniform figure of \$5,000 per megawatt. So, for this 20-megawatt project, the taxes will be at least \$100,000 per year. He further stated that the current taxation for the three parcels is \$12,500, so there will be an increase in taxes. Mr. Craven said that he could not comment on the document that Mr. Bibler provided that evening because he was not given a copy. As to the property value studies, Mr. Craven submitted another study from Dr. Varun Ray of the University of Texas. Mr. Craven further argued regarding the elements of the plan, noting that one of the solar fields is proposed to be located in a hay field, so no tree cutting. He further argued that the cutting of the forest where the solar fields will go will still be surrounded by forest lands. He referenced the needed change from fossil fuels to clean green energy. The hearing was continued to December 7, 2022.

Fourteen: On December 7, 2022 the hearing continued. Mr. Craven introduced Mr. John Brown as medicine man in training. Narragansett Indian Tribe, Mr. Brown also serves as the tribal historic preservation officer. He testified as to the procedures his offices use to conduct archaeological surveys and his interaction with the applicant. Mr. Brown also expressed the tribe's interest in preserving goat rocks, there followed an extensive discussion with the board members on goat rocks and protection issues. Mark Tremblay, the applicant certified forester provided additional testimony and answered questions concerning his wildlife and habitat enhancement plan. He also explained the need for grassland habitat and that not all biologists have the same preference for one type of habitat over another. He further described timing limitation for construction work that avoids critical periods of nesting. Mr. Craven also presented Mr. John Schroder with Energy Development Partners, to discuss noise issues in the decibel limitation imposed by the Town Council. Sergio Cherenzia PE also returned for additional testimony concerning fertilizer limitations and to clarify the depth of proposed thickness of crushed stone to be used in the driveway road. The board heard and accepted public comments and questions from Eric Bibler of Woodville Road. He questioned whether goat rocks would be off limits to the public and who owned the property that was the subject of the application. Joe Moreau of Old Depot Road, happy to hear that the applicant was working with the Land Trust and the tribe. Jason Tefft of Fenner Hill Road clarified issues pertaining to goat rock ownership access and use. Cynthia Johnson, Hopkinton Land Trust, happy to work in cooperation with the applicant. Colleen Stephen of Lisa Land expressed gratitude for the Narragansett Indian Tribe and the lands in Hopkinton concerned about property impacts. Colleen Stephen of Lisa Lane is also seeking guarantee of decibel enforcement. Luanne McCormick of Lisa Lane asking the board to keep all the significant environmental issues and the abutters in mind when making a decision. At this meeting the board voted to secure an advisory opinion from the Hopkinton Conservation Commission on the environmental impacts of the project and the hearing was continued to March 1, 2023.

Fifteen: On March 1, 2023, the hearing continued. Planner reported that the Planning Boards referral to the Conservation Commission had failed because that entity was currently defunct. The board then heard, accepted public comments, and questions from Luanne McCormick of Lisa Lane argued that experts have testified to negative environmental to environmentally sensitive wetlands. Destruction of wildlife, clear-cutting of unfragmented forests, and potential runoff to wetlands. She expressed concerns about decibel limits being insufficient. She expressed concerns about dangers to children around electricity and heavy equipment, imposing a danger to children waiting for school buses. He escapes from second story homes in Lisa Lane neighborhood, the width of Skunk Hill in relation to all the heavy equipment, impact property values. The likelihood that the Town Council would not have granted the zone change if had known about the intent to change the tax assessment. The fact that no one other than the applicant's team has come out in favor of the project. Pauline Stephen of Lisa Lane, scientific evidence suggests that the project will have a profound and significant adverse impact on the environment as a whole. Economic growth should not come at the expense of social well-being, quality of life and environmental stability concerned about the study showing adverse impact of property values commented on recent tax assessments. Jane Rathbun of Skunk Hill Road, very concerned about the impact to the value of her property which represents her life savings, concerned about the view from Skunk Hill Road and potential impacts to her well, asks board to deny the project. David Gever of Anna Drive, project is trying to put a big square peg in a round hole. There is plenty of evidence in the record for the board to deny and ask the board to be courageous and deny. Eric Bibler of Woodville Road, it's been a long four years, hundreds of people have come out against this project to estimated revenue that caused the Town Council to grant approval to the zone change has now gone away. The Planning Board has independent legal authority to decide whether the plan is consistent to the comprehensive plan, regardless of the Town Council's findings and rebutted testimony about property impacts. Even Moffit, Town Council Liaison discussed the change in tax assessment, argued the plan was not rubber stamped by prior council and the Planning Board had a role and can deny. Richard Noel of Lisa Lane has been watching the process for four and a half years, argues that the Planning Board still has a role, and it doesn't have to agree with the prior Town Council. The impact of the natural environment is sufficient for denial. Lynn LaPierre of Maxson Hill Road stated that she lived next to another solar project, and she has had a very bad expensive experience with water runoff from that project into her property, causing damage and a financial burden. The board inquired as to the tax assessment issue and determined to request information from the town's tax assessor. The applicant reported that the status of goat rock and how that's going to be handled is still under discussion and the final decision has not been made. The board voted to rescind its prior referral to the now defunct Conservation Commission. The board and planning staff then discussed procedural steps and compilation of the record; the hearing was then continued to May 3, 2023.

Sixteen: On May 3, 2023 the hearing was continued. The board discussed the issue of changing the tax assessment and entered the tax assessor's estimate of change into the record. The board then heard and accepted public comments and questions from Colleen Stephen of Lisa Lane, referenced the long four years and negative environmental impacts. Cynthia Johnson of Hopkinton Land Trust advised the board that the Land Trust was not interested in taking any ownership interest in the property but would work to preserve goat rocks. Eric Bibler of Woodville Road did not want the final deliberation to be in July because delays made it hard to remember everything that's going on. Luanne McCormick of Lisa Lane thanked the board for its work, stating that the project presents a significant negative environmental impact and should be denied, there's nothing positive about the project. Carol Desrosiers expressed concerns about monetary "asks" that occurred at the Town Council level, concerned about the unfragmented forest and wetlands in the vicinity, concerned about impacts to property values, and concerned about impacts to wildlife. Attorney Craven and Attorney Ryan then each made closing arguments. The Board accepted additional public comments from Jason Tefft of Fenner Hill Road, he indicated he owns all of the rights to the trees that people refer to on these properties. To date the trees have been maintained on site. He has highlighted the fact that when he was a child, all the land upon which the abutters houses were situated or forested as well. He discussed the plight of generational farmers and the fact that this property, if not used for this project, would have been developed with greater environmental impact. He further argued the town should be seeking a pilot payment in lieu of taxes agreement with the developer. He also referenced recent brush fires and the need to have diverse habitats. Eric Bibler of Woodville Road challenged the statements concerning long-eared bat and argued that Mr. Tefft is not a wildlife expert. He further argued that the land cannot legally revert back to residential if and when solar use is discontinued. Luanne McCormick of Lisa Lane challenged statements about the berm and argued the abutters would still see the solar panels from the second story of their homes and complained that there would be glare.

Seventeen: The board and the parties then agreed to continue this matter to a separate workshop meeting on June 14, 2023 at which only this application would be discussed.

Eighteen: In addition to people who spoke at the meetings the board received letters of opposition from the following abutters and concerned individuals; May 16, 2021 William Hubertus, 32 Lisa Lane. May 26, 2021 Jeff and Rachel Dube, 9 Francis Barber Drive. Undated letter, Elizabeth and Ronald Bryant, 8 Francis Barber Drive. July 13, 2021 Brittany and Greg Ahnrud, 11 Grancera Drive. August 04, 2021 Joseph Moreau, Old Depot Road. August 10, 2021 Carol Desrosiers, 16 Pleasant View Drive. August 25, 2021 Nancy Clark, 45 Arcadia Road. August 30, 2021 Janice Tapley, 20 Lisa Lane. September 28, 2021 Brittany and Greg Ahnrud, 11 Grancera Drive. October 12, 2021 Eric Bibler, Woodville Road with attachments. August 5, 2022 Luanne McCormick. August 5, 2022 David Gever. September 24, 2022 Eric Bibler. October 5, 2022 Eric Bibler, Woodville Road. October 17,

2022 Eric Bibler, Woodville Road, copy of letter to Town Council. December 8, 2022 Eric Bibler, Woodville Road with attachments. This listing may be incomplete we will further review the record for completeness prior to issuing the written decision.

Nineteen: The beginnings of findings of fact. The Planning Department has compiled the record on this matter and consists of the following documents to date. 694 pages of stenographic transcription of 9 public hearings, not including May 3, 2023. Applicant's documents number 1 through 62 and subparts, objector documents 1 through 18. Crossman Engineering Memorandum 1 through 3, Planning Department Documents 1 through 20, correspondence from members of the public including the abutters 1 through 36, correspondence from state agencies one through 2. This listing may be incomplete we will further review the record for completeness prior to issuing the written summary. Summary of the applicant's case and key witness testimony.

Twenty; In support of this plan the applicant presented expert witness testimony from Mark Tremblay Forrester, Edward Avizinis wetlands and soil scientists, George Gifford landscape architect, John Brown medicine man Narragansett Indian Tribe, Stephanie Kaiser professional engineer, Sergio Cherenzia professional engineer. In addition, Mr. John Schroeder as part of the applicants company also testified Mark Tremblay, Forrester.

Twenty-One: Mr. Tremblay certified Forrester, testified at the July 2, 2021 hearing. He described his forest assessment where he identified three distinct areas of the subject parcel. The northern part of the site consists of a few acres of mixed hardwoods and at the southern end of the agricultural field that will be cleared. The second area located on the southwest side of the site is mostly upland oak or mixed oak with heavy thick mountain laurel understory. He noted that the aerial images of the site show the extent of heavy gypsy moth defoliation that took place in the spring of 2016. He stated that he expected there would be additional tree damage due to the two-lined chestnut borer. The third area consists of an area predominantly white pines with some hardwoods mixed in. In this area there are a number of trails.

Twenty-Two: Mr. Tremblay continued testimony at his November 3, 2021 hearing. He explained that when reviewing the project, the first thing he does is perform a landscape scale review on how a landowner's woodlot might fit in with several other habitats. In preparing a forest management plan he would review wildlife and habitat that might be located at the site. The proposed action whether it be harvesting timber or implementing improvements is evaluated in light of the wildlife habitat. In some cases, there will be a swap of one habitat for another, creating different conditions for wildlife. Mr. Tremblay noted the alleged "unfragmented" 250 acres which had been discussed in previous meetings is quite fragmented. Immediately adjacent to the subjective partial or residential subdivision with many homes, there's an open agricultural field, a nearby lake and surrounding roads including route 3 and I-95. He describes the area as "chopped up". He

noted that while the array will require clearing of approximately 70 acres, approximately 40 acres of trees and 30 acres of agricultural field, but more than that over 100 acres of mature forest habitat will be preserved together with vegetated buffers and riparian buffers, which protect habitat. He identified a part of the site containing an old gravel bank that is starting to revegetate but that will be restored with grasses that will eventually provide rabbit habitat.

Twenty-Three: Mr. Tremblay provided additional testimony at the December 7, 2022 hearing. He noted that he is certified as a wildlife habitat technical service provider with the USDA's natural resource conservation service. He described the contents of his wildlife habitat enhancement plan, containing five types of projects that could be part of the enhancement of the habitat, not only in the vicinity of solar panels but for the overall site. These are field and forest edge plantings, plantings within the riparian buffer to enhance the understory of habitat features, structural habitat enhancements including bird boxes, bat boxes, wildlife brush piles, restoration of grassland habitat in an abandoned gravel bank and installation of pollinator habitat, including milkweed to help various bees and butterflies. He agreed the plan could be supplemented to include long-term maintenance and replenishment of various features throughout the life solar array upon examination Mr. Tremblay acknowledged his report, it did not include any habitat for large mammals; indicated that the subject parcel was at the very southern tip of a continuous corridor of land that traverses Exeter and up to Coventry. He described it as a small portion of larger habitat areas surrounding landscape of the items map contiguous blocks. He testified that any animals could get across route through will be able to traverse Skunk Hill Road and access larger forest corridors the averted that large animals will have adequate passage through and around the site despite defense solar arrays. He noted that a variety of animal species will inhabit the site. He stated that doing habitat clearings for wildlife biologists promote its trading one type of habitat for another. He further opined that while some people would be upset with clearing of mature forests, the project is creating another type of habitat and it's a subjective opinion to say which type of habitat is better. Mr. Tremblay further discussed the status of the northern long-eared bat, which has recently been determined to be an endangered species. He explained that the federal government has enacted conservation measures to protect the bat's habitat. These measures are required when there's federal funding for the project, but the bat measures include restricting tree cutting to the months of June and July. He stated that Rhode Island does not have any specific state guidelines for species. The only known hibernation for bats is Jamestown, Rhode Island in the old military forts. Mr. Tremblay indicated that his recommendation was to require the applicant to refrain from tree cutting during the months of June and July. Mr. Tremblay also discussed the construction of brush pile habitats. He further indicated that the wildlife plan submitted to date is in overall general terms and has not been fully developed. He anticipated that would come later in the process. In the issue of cutting forests and creating other habitats Mr. Tremblay testified there is a whole suite of wildlife

biologists that are out there promoting early successional habitat because there is a major decline in bird species, such as the Bobwhite and ruffed grouse. He also stated there has been a decline in the New England Cottontail because of the lack of open grassland habitat. He summarized that if one were to ask three different wildlife biologists what they think about changing habitats you'd get three different answers.

Twenty-Four: Mr. Azivinis is a professional wetland scientist and certified professional soil scientist. He first testified at the October 2, 2021 hearing and was qualified and accepted as an expert. He related that he personally performed all of the wetland flagging, 640 flags for the project. He noted that of these flags the DEM only directed that he was to relocate three of them approximately 20-feet. Other than these three flags, his flagging was appropriate. He testified that DEM did not flag any of his sight as natural heritage or endangered species program site with any critical or uncommon habitat. He noted that Linda Steer's testimony referenced this, the wildlife action plan, but advised this is not a regulatory program or plan. He noted that since there is no regulatory component there are no compliance regulations.

Twenty-Five: Mr. Azivinis identified several reasons why as a scientist he can support this project. A: Carbon Sequestration: Mr. Azivinis addressed the issue carbon sequestration which is the process of removing CO₂ from the air. He explained that much of the actual activity of carbon sequestration takes place in the soil with the microbes, where it is more beneficial to have these carbon molecules in the soil rather than the air. He noted that existing forests can act as a carbon sink to sequester the carbon, the soil also acts as a carbon sink. So, even when some of the forest is removed for the array, the soils on site will still be undertaking the carbon sequestration. He did note the research indicating younger forests are better carbon sinks than older forests. B: Soil retention, Azivinis noted that the soils are going to be retained wholly on site and distributed as minimally as possible. When the solar panels are decommissioned at the end of the project, the soil could once again be returned to agricultural use. C: greater forest retention than farming, He noted that farmers have the right to clear their land the forest right up to a wetland edge without any sort of permits or permission from anyone. In this case however, a substantial a substantial number of acres of forest are going to be retained through the requirement of wetland buffers. D: no permanent impervious surface, there will be no foundation houses or pavements, the disruption on site will be temporary in the long-term sense. Once the array is decommissioned, trees could be planted or allowed to grow back again. He stated that the sites must be viewed in the long term. He testified he could tell from the examination of the soil that roughly 100-years ago, the forest area was not there, it was plowed farmland. This is also evident by the stone walls and numerous white pines which are in an early successional species.

Twenty-Six: In addition to his support of the project, he also did rebut some of Ms. Steer's testimony. For instance, she testified that there would be four wetland crossings, when there

will only be two, and these were originally cart paths, which can be seen in historic aerial photos. Mr. Azivinis addressed Ms. Steer's concerns that part of the site is steeply sloped, which could give rise to erosion. Mr. Azivinis indicated that the DEM will require an approved erosion and sediment control plan explained that the stormwater runoff of the panels will be collected and held in some type of basin to attenuate the water to promote infiltration and treatment and to infiltrate back into the water table to maintain pre-project characteristics. Upon questioning from various members of the public, he further testified that the existing soil was preserved on site and not sold off-site. He further stated that no topsoil will be disturbed unless necessary but there will be some grading of the site. George Gifford, Mr. Gifford began his testimony at the first meeting on July 7, 2021. He explained that his task was to address the landscape planting issues specifically the woody landscapes and screening the project for the abutters. He described his recommendations; soil stabilization seed mixes the first is called meadow mix and will be used throughout the site. He described this mix as a very hardy, adaptable, and easily managed with percentage of rye as nurse seed, to establish quickly and stabilize soils. The second mix will be utilized in drainage areas so this mix will contain seed varieties, they can withstand periodic inundation. Third mix is a pollinator habitat mix in compliance with the zoning change decision. He further described the proposal, required berms which will provide a dual purpose, screening from within the north and northeast areas of the project and provide habitat for nectarine and feeding of pollinator insect species. He indicated that the seed species are all native and they will provide a blending of flowering times from early to late season. He stated they would also provide feeding of insects. On the issue of screening, he referenced a cross-sectional diagram which he prepared to illustrate the berms intended effect. He stated the berm, which is 12-feet high, will provide effective immediate screening even before the required evergreen trees are planted on top. Mr. Gifford noted that the berm along Skunk Hill Road is a mixture of four evergreen tree species to avoid monocultural issues. He stated that these species were also chosen for their density in that their branches remained from the top of the tree all the way down to the bottom, unlike some species that thin out at the bottom. He also provided selected species that were deer resistant. Mr. Gifford also spoke about the design for the entrance of Skunk Hill to screen the array from the road. He said the area did present a design challenge because the entrance could create a visual corridor from the road into the array. He said the road was designed to "wobble" in which would allow the overlap of two screening berms. He noted that where the berms could not overlap, the design provided for overlap of evergreen trees. He also described the berm along the eastern side of the property as being 80-foot wide, 12-foot high with pollinator habitat seating, topped with a mix of four species of evergreen trees. He further described the proposed screening for the neighbors in the Arcadia Road area. He stated there wasn't any room for a berm there nor any need due to existing vegetation. He stated the plan for this area is to minimize any visual impact to abutters by installing a mixture of evergreen trees along the roadways to create a dense evergreen barrier.

Twenty-Nine: Mr. Gifford provided supplementary testimony at the September 1, 2023 meeting to describe some additional detail sketches he had submitted indicated that part of part of the existing agricultural field falls within the 200-foot riverbed regulated wetland setback. Some portion of this area will be permitted to revert to a natural woodland condition. He then planned that he would add some additional evergreen trees to the berm. He also described the planting that would be added at the old gravel roadway that extends off Lisa Lane into the property. Although this area had historically been used for access it would be completely closed off.

Thirty: Mr. John Brown, medicine man of the Narragansett Indian Tribe testified at the December 2022 hearing. He stated that this area had once been a part of the tribe's village of Canonchet and that the archaeological findings would be expected to be consistent with the village of Sachem. He specifically noted the rock and outcroppings, and the tribe would have historically used the rocks. He stated that he found the proposed work would not impact these cultural resources. Mr. Brown further elaborated his concerns about granting an easement to any third party because the property would fall outside the tribe's control. He indicated he was working relationship and arrangement with the owner applicant that he would not want disturbed. Mr. Brown further advised that the tribe is qualified to perform the archaeological work recommended by the Rhode Island Historic Preservation office.

Thirty-One: Mr. John Schroder testified concerning mitigation of noise at the December 7, 2022 hearing. He stated that since the October hearing the design determined that at this next stage of review it would incorporate the following contingency measures for managing inverter noise. One; they will adjust the fans within the inverter stations. Two; they could move the inverters further away from the property lines. Three; they could install a sound wall or other measures such as a chain link fence with a mat.

Thirty-Two: Summary of the objector's case legal claims. Attorney Ryan submitted various legal memoranda throughout the course of the application. He argued that one; the application was governed by an April 19, 2021 amendment to the town's master solar ordinance, adopted 10 days before the master plan was certified complete by the town planner. Two; the applicant has failed to comply with Rhode Island General Law 45-23-61B and section 3.2 of the Hopkinton subdivision regulations precedence of approval. Three; that the board should continue to rule the application inconsistent with the town's comprehensive plan as previously set forth in the Planning Boards advisory opinion dated November 7, 2018. In addition to legal arguments Attorney Ryan resented reports and testimony from Peter S. Fredrichs AICP on the lack of consistency with the comprehensive plan and zoning ordinance. James A. who is a licensed real estate appraiser on impacts to abutting properties. Linda Steer Biosystems Inc. wetlands biologist.

Thirty-Three: Mr. Peter S. Fredrichs provided a report dated June 29, 2021 where he opined that the proposed development was not consistent with the following elements of the comprehensive plan goal, natural resources. One; to preserve, conserve and protect the significant natural resources of Hopkinton as an endowment for the future of the town. Goal conservation one to promote conservation of Hopkinton's natural resources particularly, protection of the ground and surface waters. Notes lack a vegetative buffer on Arcadia Road, lot 8. Goal H1 Hopkinton shall be characterized by safe secure and attractive neighborhoods. Goal LU1 protecting the quality of life in rural character of Hopkinton. Mr. Friedrich's further opined the Town Council aired and the amendment that it adopted was "invalid". Mr. Friedrichs argued that the proposal was not in compliance with the standards and provisions of the zoning ordinance which he argues was the ordinance adopted on April 19, 2021. He further argues that the proposed proposal was not in compliance with the zoning ordinance adopted on January 22, 2019 which limited solar arrays to 3% of a property or 3-acres. Mr. Friedrich's opined that improvements might be needed to Skunk Hill Road in order to withstand the expected construction traffic. He suggested that the public works department be consulted during the preliminary plan review. He further submitted that it appeared the proposed access road from Arcadia Road across the lot designated as plat 18 lot 8 will not be compliant with the minimum setbacks to abutting residential properties required under section 6 of the zoning ordinance. Mr. Friedrich's report was supplemented with a letter dated July 22, 2022 wherein he reiterated his prior position by referencing the reports and testimony of Ms. Steer. He concluded by arguing that the board should save all parties time energy and money by denying the project because there is no way the board can make a finding of no significant environmental impact.

Thirty-Four: Ms. Linda Steer wetlands biologist scientist, testified before the board on February 22, 2022. In addition, she submitted two documents; one, an impact evaluation for wildlife habitat and two, correspondence dated July 22, 2022. In her impact evaluation Mr. Steer stated that one half of the subject parcel is mapped within an ecological land unit "landscapes with high biodiversity that tend to be more resilient to disturbances and are able to continue delivering important ecosystem services" She further stated that the ecological land units "will become more resilient to climate change". That references an impact evaluation for wildlife and wildlife habitat at one. She described the property as containing wetland complexes, vernal pools, upland forest, and agricultural field. She identified various species of flora that would typically be found within each of the land types and how they use the features, trees, shrubs, pools, wetlands, etc. within each land type. Ms. Steer stated that the entire project has been mapped within an area of unfragmented forest greater than 250-acres but less than 500-acres. One of six such forested areas within Hopkinton, she opined at the "high value of protecting these large, forested areas is for diverse wildlife habitat protection of groundwater and surface water quality diversity of vegetation and these woodland units act as carbon sinks that aid in climate resiliency". She stated that there are a large number of larger mammals and

migratory birds that will not den, nest, or breed unless large unfragmented areas are available to them. She alleged that the project required clearing of over two-thirds of the site will create forest removal and fragmentation. She opined that the grading of the subject property would require “a lot of stone removal and possibly even blasting” and that “exposed soils on steep slopes will require correctly installed sediment and erosion controls to prevent the highly erosion prone soils from impacting downslope areas in wetlands”. Ms. Steer expressed concern that the loss of forested habitat has significant potential to have impacts on ground and surface water quality. She identified the site as being in a groundwater recharge area with a water quality rating of GA, indicating that the groundwater is presumed to be suitable for drinking water without treatment. Ms. Steer reported that Rhode Island Dem issued a freshwater wetlands program in stormwater construction permitting, ground solar mounted solar array guidance on June 2021 which states, “the clearing of forests and other green spaces including farmland for the sighting of ground-mounted solar arrays is strongly discouraged”. Ms. Steer’s July 22, 2022 letter identified eight specific policy statement documents and guidelines from various public and private planning and conservation agencies in some state governmental agencies, which discouraged but did not regulate the placement of solar arrays on sites which required forest clearing.

Thirty-Five: Mr. James Poole submitted an 11-page report dated October 5, 2021 which concluded that the project will adversely affect property values in two ways. One; a negative impact due to its visual effect on the area. Two; A negative impact to property values within the Hopkinton community because of the adverse impact on residents’ enjoyment of their properties. Mr. Poole argued that although there is “limited data on the impact of solar arrays on property values” because of the relative newness of these arrays, “there is substantial information available showing diminution of value base on proximity to other industrial or power generating uses. He argued that despite the lack of data the conclusion that there will be a negative impact is strongly supported by the fact that most other communities favor locating solar arrays away from residential areas. He references the zoning codes and preferences of other communities. He notes that despite the zone change for the subject parcel, the array will still be located within a residential area. Although, he noted that solar arrays can have positive benefits, they are quiet, do not produce significant glare, are efficient, do not generate the same dangers as wind turbines and require low maintenance. These are offset in a rural residential setting because of the direct visual impact of the arrays. He concluded that there will be a diminution of value although unquantified to residential properties. A substantial portion of Mr. Poole’s report focuses on arguments as to the alleged inconsistency with the comprehensive plan. Mr. Poole submits a value analysis that the proposed solar farm would undoubtedly have a negative impact on both the town’s existing natural resources and its rural character. In support of this conclusion, he stated that “the proposal involves cutting down a large swatch of trees within unfragmented forest in order to put up thousands of solar panels on a 169-

acre parcel”. This he opines “is an immediate detriment to the scenic beauty of the natural environment”. He notes that the proposal offers little to no benefit to the town but the benefits flow primarily to the developer. In the conclusion of his report, he references a recent hedonic study published by Professor Corey Lang of the University of Rhode Island who concluded that within one mile of solar arrays property values were shown to decrease an average of 1.7 percent and that within .1 miles the negative impact was 7%. Mr. Poole then provided a calculation that claimed a decrease in property values for 64 residential abutters of an average of \$21,000 each. On July 22, 2022 Mr. Poole submitted a supplemental report which reviewed sales data from areas within solar arrays including Maxson Hill Road Hopkinton, Alton Bradford Road Hopkinton, and several in West Greenwich and Portsmouth. He concluded that this data established that homes near solar arrays will suffer a diminution in value. Crossman Engineering peer review on behalf of the Town of Hopkinton.

Thirty-Six: Steve Cabral PE was consulted by the town for a review of the proposed site plans early in the master plan review process on November 1, 2021. He issued his first report to the board and concluded “since the level of detail at the master plan stage is conceptual in nature our comments are more focused on the drainage design approach and concept and based on the data presented, we are not in a position to offer a favorable opinion on the application. A review of the data presented indicates that potential stormwater impacts are not fully identified or addressed”. As a result of this report, changes were made to the plans on January 20, 2022. Mr. Cabral received a revised master plan package for review with a hearing scheduled for February 2, 2022. On January 25, 2022, Mr. Cabral issued a memorandum which called out and discussed the following topics phase one archaeological survey recommended by the Rhode Island Historical Preservation and Heritage Commission rare and endangered species recommendations concerning the northern long-eared bat storm water analysis does not agree that good meadow should be used as a modeling basis panel spacing and orientation and the need for more stormwater control measures preservation of soil layer A horizon to be identified and preserved to promote vegetation growth and minimize change to runoff conditions. The risk for concentrated runoff due to panel size and orientation, proposed trenches and panel berms may be insufficient. Swales and culverts details of peak flows capacity and velocity not found can be resolved at preliminary. Panel-sized cascading runoff, matting may be insufficient. Stormwater pond freeboard minimum level needs to be increased can be addressed at preliminary future access with panel spacing so tight a discussion on access for maintenance is recommended access drives clarification of amount of crushed stone required containment measures more detail required. On April 8, 2022 Mr. Cabral attended a site walk with Town Planner Jalette for a site in West Greenwich to observe site conditions of an array with similar size panels as proposed by this project. Mr. Cabral’s July 18, 2022 report with accompanying photos document a site with a fair amount of erosion and storm water management issues. According to the report, the photos demonstrate past problems

that are supposedly being addressed by the same features as presented in this application. Mr. Cabral notes that throughout the review process the applicants' engineers have made a significant effort to address each concern and that the latest version of the plan represents the outcome of numerous iterations. He stated, "recognizing that the project is at the master plan stage and recognizing that final design details will be further refined and evaluated during preliminary plan stage we can state that the proposal does address our drainage concerns in general". Conclusions of Law Section 3.2.2 of the Hopkinton Subdivision regulations implements Rhode Island General Law 45-23-61B and states "where an applicant requires both Planning Board approval and Town Council approval for a zoning ordinance or zoning map change. The applicant shall first obtain an advisory recommendation on the zoning change from the Planning Board as well as conditional Planning board approval for the first approval stage for the proposed project which may be simultaneous then obtain a conditional zoning change from the Town Council and then returned to the Planning Board for subsequent required approvals". In the present case the applicant did not receive conditional Planning Board approval for the first stage of the project master plan prior to proceeding before the Town Council on its zone change petition. The Town Council approved the zone change petition without the Planning Board's conditional approval for the master plan stage. On July 20, 2021 the Rhode Island Superior Court, Justice Carter issued an order which granted the Town of Hopkinton's motion for summary judgment as to all counts of a complaint brought against Hopkinton challenging the zone change issued by the Town Council. In the order the court stated "Count 3 as to Rhode Island General Law 45-23-61B the precedence of approval statute does not apply to the Hopkinton Town Council's passage of chapter 266 amending the future land use map of the comprehensive plan of the Town of Hopkinton in chapter 277 a text amendment to chapter 134 of the Hopkinton Town Ordinance alternatively even if Rhode Island General Law 45-23-61B did apply which the court finds that it does not, a violation of 45-23-61B would not invalidate the enacted ordinance". Since the Rhode Island Superior Court has specifically ruled that Rhode Island General Law 45-23-61B does not apply to the zone change granted for this project, it regrettably follows the local regulation implementing this statute section 3.2.2 of the Hopkinton Land Development and Subdivision Regulations, is likewise inapplicable. Most respectfully, the board does begin to understand why this statute is not applicable, but the board is required to follow the court's ruling in this matter. Two; the Hopkinton zone change ordinance with all its conditions of approval is the primary governing law for this application. The subject zone change ordinance purported to identify the version of the general zoning ordinance by which the solar array project would be evaluated. Section 12 of the Hopkinton Zoning Ordinance provides that applications which are substantially complete and have been submitted for approval to the appropriate agency prior to the amendment of the zoning ordinance shall be reviewed according to the regulation applicable in the zoning ordinance at the time the application was submitted the Hopkinton Zoning Ordinance does not require

any staff level administrative certification of the completeness of an application. Three; the issue of the consistency with the comprehensive plan and extensive expert opinion testimony concerning that consistency and the impacts to surrounding properties from the change in use while compelling to the board are issues that speak to whether the property zoning should have ever been changed. This is not an issue within the board's control or jurisdiction to review. The zone change decision was unsuccessfully challenged so the board must implement and adhere to the zone change ordinance. Four; the claims and testimony on the amount of tax revenue or lack thereof to be generated by this project were mixed. However, the issue of tax revenue or changes there too after the adoption of the zoning ordinance are not an issue within the Planning Board's legal jurisdiction to address or alter. Five; the zone change ordinance contains detailed conditions of approval including, amount of deforestation and forestation, viewscape from abutting properties, access during construction, hours of operation and other limitations and requirements. These conditions are items that significantly impact or hamstring the Planning Board's normal regulatory ability to review this master plan application. While there was competing expert opinion on whether the subject property was included in an unfragmented forest or not. The Town of Hopkinton adopted the Wood Pawcatuck Wild and Scenic River Stewardship Plan and incorporated into the Hopkinton comprehensive plan by reference that stewardship plan noted the existence of the high density of unfragmented habitat cored within the watershed as one of the driving factors in its designation as a federally recognized wild and scenic watershed. Therefore, this board finds that recognizing respecting the rights of private landowners. It is still compelled to exhaust all reasonable measures to encourage the retention of such habitat cores. The board does not find that characterization of the property to be relevant because there are no state regulations or laws except erosion control measures that restrict the ability of a private landowner to cut trees on private property. The various opinion and policy papers on the preservation of unfragmented forests do not enjoy the force of regulatory authority. As such, the board may not, within the context of a development application, impose a policy as if it were a regulation. Additionally, in this case a portion of the site will be altered from forest habitat to accommodate the solar array. There are no local or state regulations that prohibit altering a site from one type of habitat to another type of habitat. Seven; when the proposed zone change for this project came before the Planning Board, the board found that a zone change would not be consistent with the Hopkinton comprehensive plan and issued a negative advisory opinion to the Town Council. The Town Council did not follow the Planning Boards advisory recommendation. The Town Council amended the future land use map and further found that the zone change was in fact consistent with the comprehensive plan and approved the zone change. Although, the Planning Board does not agree with the Town Council's findings as to consistency with the comprehensive plan. The board does not have the authority to overrule the Town Council. However, in the good conscience the board cannot affirmatively adopt the Town Council's findings. Therefore, the board specifically

declines to make any findings on this issue. Eight; since the zoning was changed by the council the development's use code is now permitted to use. The applicant's application seeks no zoning relief and is therefore compliant as to the Hopkinton zoning ordinance as amended. Nine; the board cannot find at this master plan stage of review that there will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval simply because this is not the final stage of review. Ten; the final project as proposed is not a subdivision and will not result in the creation of individual lots with such physical constraints to development that building on those lots. According to pertinent regulations and building standards would be impractical. Eleven; this proposed land development has adequate and permanent physical access to public streets including but not limited to Skunk Hill Road. Twelve; the proposed development provides for safe circulation of vehicular and pedestrian traffic on site, in part because the applicant has not increased the internal driveway width to 20-feet as required by the fire department. Additionally, the plans now have turnarounds at the Skunk Hill and Arcadia Road entrances, these features contribute to safe circulation within the site. However, the issue of safe circulation of vehicular and pedestrian traffic on Skunk Hill Road or other surrounding approach roads has not been addressed at this stage of proceedings and is deferred to the preliminary stage of review subject to the conditions below. Thirteen; the board finds that the proposed development has for this stage of review satisfactorily addressed the preservation of natural historical and cultural features through its work with the Narraganset Indian Tribe. Further work is required to finalize the preservation of goat rocks as required by the zone change ordinance. This further work is appropriately deferred to a later stage of review. Fourteen; the board finds that the proposed development has just barely provided sufficient evidence of surface water runoff control in general terms. The town's engineer has expressed satisfaction with the many changes that were made throughout the master plan review. However, this finding is limited to the master stage of review and the general concepts of stormwater control. As such, the issue of surface water runoff control has been adequately addressed for this master stage of review. Only the work on this issue shall continue as part of the conditions below. Fifteen; the board finds that the issue of design and location of streets and building lots is not applicable to this application. Sixteen; the board finds that the design and location of utilities minimizes flooding and soil erosion because they were moved out of a wetland area and will be underground to the extent possible. Seventeen; the board finds that the proposed drainage improvements shall minimize flooding and soil erosion because they have been designed to accommodate a 100-year flood. The site design amendments including reducing the grade of the site inclusion of drip edge mats and stone trenches will minimize flooding and soil erosion to some degree. Additional work on these designs shall continue at the preliminary stage of review. Eighteen; the board finds the evidence to date in the master plan only marginally assures that design and location of the solar array improvements if they function as claimed minimizes flooding and soil erosion. The board

is concerned with the amount of impervious surface which has been identified as 80% within the fenced areas. However, the board cannot find at this stage that the proposed size, spacing, and orientation of the building sites for the solar arrays is completely suitable or unsuitable and defers this issue for the preliminary plan stage of review subject to the conditions below.

Conditions of approval: The following abutter protection conditions 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 via the abutter's permanent well-being, safety, and enjoyment of their properties.

One – Viewscape: the board finds that abutting property owners had a reasonable expectation when purchasing their properties that no commercial or industrial scale activity could be located on the subject adjacent property which was then zoned residential. The Town Council's zone change contained conditions, numbers 13 and 14, requiring screening via a 12-foot-high buffer to screen the view of the solar array from the first-floor levels of the abutting properties. The board considers the Town Council's viewscape condition as a floor and not a ceiling. The buffer designed as submitted is simply not adequate to fully screen this development. Therefore, the design for screening is not approved because it is wholly inadequate to protect the expected and required rural viewscape. If the applicant proceeds to preliminary plan, it shall redesign the vegetative screen to be of sufficient height, depth, and opaqueness to completely screen the solar array from all levels of abutting properties during all seasons of the year commencing prior to construction of any panels on site and to be assessed and confirmed by the town's engineering consultant. Additionally, the proposed berm at Skunk Hill Road while minimally compliant with the council's requirement that the solar panels be shielded from Skunk Hill Road. The board again finds the council's requirement as a floor not a ceiling. The board further finds that the berm as required by the council's decision is inadequate to prevent the solar array from impairing the rural viewscape from Skunk Hill Road for preliminary plan. The applicant shall redesign the buffer and berm if necessary to provide complete screening from passersby on Skunk Hill Road to assessed and confirmed by the town's engineering consultant.

Two – Buffer and Screening Timing and Maintenance: The purpose of the buffer or screen is to shield the unsightly industrial solar panels permanently and completely from surrounding residential properties and the traveled way of Skunk Hill Road. The redesigned

enhanced buffer shall be fully installed prior to any construction of the solar panels or tree removal to shelter the abutters and public on Skunk Hill Road from the construction activities. The applicant shall provide a detailed maintenance plan that describes how the plant materials shall be watered and maintained permanently in good health in light of the Town Council's condition number 11, which prohibits the use of chemicals and herbicides. The Planning Board may consider the requirement of a performance bond at a later stage of review to ensure the long-term viability of the plantings. At the February 2, 2022 hearing, Mr. Gifford suggested that the plant material in the berms would be warranted for a one-year period. This is inadequate for the purposes of the berms. The applicant, its successors and assigns shall be required to fully maintain the plant materials in the berm itself, throughout the life of the project and throughout any subsequent decommissioning period. Further at the February 2, 2022 hearing, Mr. Gifford conceded that this is a situation where there probably is going to be some pretty dense shade for the majority of the daylight time, so a careful selection of seed mix is critical to ensure adequate growth under the panels. A preliminary plan the applicant shall be required to demonstrate with reliable probative evidence that its seed mix will indeed perform and grow satisfactorily in shade conditions on a long-term basis and under southern Rhode Island weather conditions.

Three – Panel Setback: The Town Council's decision provides the setbacks from solar panels to abutter property lines near Lisa Lane, Francis Barber Drive, Beverly Ann Drive, and Grancera Drive, shall not be less than 300-feet. The Planning Board finds that it would be infeasible to provide a panel setback of not less than 300-feet to some abutters and not others. As such, the Planning Board finds this condition to be a floor and not a ceiling and directs that panel shall be set back not less than 300-feet from all abutting property owners.

Four – Stormwater Design: The board finds that the most recent stormwater management plan represents a substantial improvement over the initial filing due primarily to the successful implementation of the peer review process with Mr. Cabral. Nevertheless, the board hereby expresses its significant concern over the photos that were presented from the April 2022 site visit to another site. These are the very erosion and runoff issues that give rise to concerns for the abutters to this project. It is not clear from Mr. Cabral's report whether the mitigation features in this application are going to be implemented to correct these problems or whether the problems exist in spite of these mitigation features. Regardless, the conditions in these photos are unequivocally unacceptable for Hopkinton solar arrays, regardless of location. A design that would result in these conditions is a failed design. More work must be done to establish without doubt that storm water management techniques will be successful across this site. Therefore, the applicant shall be required to explore and use even more conservative design modeling conditions as part of the preliminary submission. The applicant shall also provide detailed procedures and a plan for each type of repair that might be necessary to the storm water management system over the life of the system. At the February 2, 2022, a hearing identified the fact that orientation

of the panels could lead to channeling of water instead of sheet flow. You further identified that heavy equipment in the construction process will compact the soil which might create additional runoff for which the design does not account. Mr. Cabral suggested that hand tilling should be considered as a possibility to mitigate the possibility of compaction. The board agrees based upon the outstanding issues identified in Mr. Cabral's July 2022 report. The board is not convinced the panel placement as proposed is appropriate or workable because they are not parallel to the topography in many areas. The board is not approving the panel-sized spacing or orientation at this time and is deferring that issue to preliminary plan. At preliminary plan the applicant shall identify and develop a soil preservation plan for the preliminary stage of review to preserve areas on site with greater than 12-inches of A soil layers to promote vegetation growth and minimize change to runoff conditions conduct complete hand tilling or scarifying of all other soils project-wide after construction including to aisles and under panel areas to address concerns about compaction. Develop a plan for the optimal design continuous observation and cleaning corrective actions for the stone trenches that will be created as a means to create sheet flow but could become ineffective if they fill with sediment from the solar field. Present a mechanism and or options for how to access for repair of erosion or rutting would be provided given the current panel spacing.

Five – Trees and Clearing: The Town Council's decision states of the approximately 98-acre parcel designated as plot 18 lot 14 after the completion of clearing of trees necessary for that parcel's array there shall remain approximately 42.5 acres of forested land, on the approximately 70.6-acre parcel designated as plat 18 lots 13 and 8. After the completion of clearing of trees necessary for that parcel's array there shall remain 46.1-acres of forested land. The board finds that the council's directive is a floor and not a ceiling and that the applicant could increase the number of acres of trees with efforts at additional reforestation in areas that would not impact the function of the solar array facility. The applicant is directed at preliminary plan to submit a tree augmentation plan identifying all possible locations, especially near abutting properties where trees can be planted.

Six – Traffic Road Impact Study: Town Council number 16 provides "logging and debris removal will be done primarily onto Skunk Hill Road. No offloading of machinery is allowed in the public roadways". The Planning Board finds the level of activity and the frequency of heavy trucks and machinery have the potential to substantially impact the condition of Skunk Hill Road. The master plan submission was devoid of any traffic study or controlled plan for traffic or the impact of the construction traffic on Skunk Hill Road or existing conditions of Skunk Hill Road. As part of the preliminary plan submission, the applicant shall submit the study or assessment of the current conditions of the pavement of Skunk Hill Road as well as operating conditions. Consultation with the towns DPW Director is recommended prior to any construction the applicant shall be required to post a bond, the amount of which shall be determined at a later stage of review that shall be

sufficient to repair any damage cause to town roads or properties as a result of the construction of this project. As agreed at the November 2021 meeting – note on page 18, the entrance off Arcadia Road shall not be used for heavy equipment. All heavy equipment shall enter and exit through Skunk Hill Road.

Seven – Decibel Compliance: Town Council condition number 7 states “while operating the noise levels from the inverters within the solar array shall not exceed World Health Organizations standard of 40 decibels measured at the property’s boundary lines where the solar arrays are situated. The applicant shall pay for an independent qualified company selected by the town to conduct appropriate sound testing before logging and construction have commenced and again after the project is completed and operational.” When questioned about what would be done to mitigate any violation of this requirement Mr. Schroeder testified that fencing or other sound blocking materials could be placed around the inverters to block noise. The board finds that this measure should be implemented as an item of prevention. As such, the preliminary plan submission should incorporate this prevention measure.

Eight – Wildlife and Habitat Enhancement Plan: The board finds that the wildlife and habitat enhancement plan lack sufficient schedules for maintenance and renewal or restoration of all proposed and installed habitat enhancement structures and measures. The preliminary plan shall include an amended wildlife and habitat enhancement plan that addresses these deficiencies.

Nine – Tree Harvesting Restrictions: The forest of the subject property provides the type of habitat that could be used for nesting by the Northern Long-eared bat an endangered species which has been found in hibernacula in Jamestown Rhode Island. The applicant shall be prohibited from undertaking any development activity on the subject property during the months of June and July in accordance with the recommendations by USDA Natural Resources Conservation Service and the Federal Government.

Ten – Safe Circulation: The record developed to date has not addressed the issue of safe circulation during construction and after construction for inspection purposes. The board finds that this issue must be addressed in detail after consultation with the Police Department at the preliminary stage of review. The applicant shall prepare and submit a detailed plan for traffic control for vehicular and pedestrian traffic, including the installation of advanced roadworks signs. The issue of safe circulation of off-site pedestrian traffic has not yet been satisfied but will not be addressed by the applicant at preliminary plan. The traffic study referenced above shall also incorporate measures to ensure safe pedestrian travel during all periods of construction. The study shall include all town roads that provide access to the site. Review of this issue is deferred to the preliminary plan stage.

Eleven – Driveway and Road: The internal driveway and road shall be redesigned to be a width of 20-feet not 18-feet. The applicant is directed to consult with the fire official to ensure access throughout the entire site is adequate to submit the results of that consultation.

Twelve – Utility Lines: As represented by the applicant on November 3, 2021 hearing all utility lines shall be placed underground.

Thirteen – Goat Rocks: The method of preservation of and access to Goat Rocks has not been determined at this time and shall be deferred to a later stage of review.

Fourteen – Decommissioning: The applicant shall present a full decommissioning plan at the preliminary stage of review.

Fifteen – Peer Review Recommendation: All recommendations of the town's peer review engineer are incorporated herein by reference as conditions of approval.

A MOTION WAS MADE BY MR. WAYLES AND SECONDED BY MR. DIORIO THAT THE PLANNING BOARD MEMBERS HAVE REVIEWED ALL OF THE ITEMS IN THE RECORD INCLUDING ANY MEETINGS ONE MAY HAVE MISSED.

IN FAVOR: Shumchenia, Wayles, DiOrio, Bolek, Prellwitz

OPPOSED: None

SO VOTED

NEW BUSINESS:

None

SOLICITORS REPORT:

None

PLANNERS REPORT:

Mr. Spellman wanted to remind the board that they have acquired town e-mail addresses for each member and to contact the IT Director, Mr. Frenette to obtain this.

CORRESPONDANCE AND UPDATES:

This Office is in receipt of and is responding to two APRA requests. Both filed of the Planning Office this past week, both reference to the recent Brushy Brook decision. One filed by Mr. Joseph Moreau of Old Depot Road, and one filed by Ms. Sherri Aharonian of Dye Hill Road. Response is being prepared and information requested acquired.

PUBLIC FORUM:

There was no public comment.

DATE OF NEXT SCHEDULED MEETING:

Meeting date will be October 18th, 2023 at 7:00 PM unless the Board is unable to decide this matter and a date is chosen to continue the Skunk Hill Matter.

ADJORNMENT:

A MOTION WAS MADE BY MS. SHUMCHENIA AND SECONDED BY MR. DIORIO TO ADJOURN.

Michael Spellman
Town Planner