

## **HOPKINTON PLANNING BOARD HYBRID MEETING**

**SEPTEMBER 6<sup>TH</sup> , 2023 AT 7:00 P.M.**

**1 TOWNHOUSE ROAD HOPKINTON, RI 02833**

### **CALL TO ORDER:**

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

### **ROLL CALL:**

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

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

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

### **APPROVAL OF MINUTES:**

Ms. Shumchenia made a motion to approve the July 24<sup>th</sup> and July 31, 2023, minutes and grant an extension of the minutes from August 16<sup>th</sup> and August 24, 2023. Her motion was seconded by Mr. DiOrio. Chairman Prellwitz, Ms. Shumchenia, Mr. Lindelow Mr. Wayles and Mr. DiOrio all voted to approve.

### **OLD BUSINESS:**

Master Plan- Public Informational Meeting- Major Land development Project- Atlantic Solar – Plat 7, Lot 31, Plat 10, Lot 87, Plat 11, Lot 35 0 Main Street, Atlantic Solar LLC; applicant

Mr. Prellwitz questioned Attorney Craven on his thoughts about Atlantic Solar. Attorney Craven noted that there is a change in the engineering staff, Woodwind and Corwin is no longer associated with the project. He stated that Sergio Serena will be handling the presentation, and he received a file from Woodwind and Corwin and is currently reviewing it. Attorney Craven questioned Sergio Serena on his best time estimate and he responded that it may take a month or two. Attorney Craven felt that the worst thing for him is to plan something and then it does not happen. He noted if the board wanted to plan something that is more convenient with their schedules for December or January, this would be okay with the applicant as well. Mr. DiOrio wanted to recuse himself from Atlantic Solar if there was a motion to amend the agenda. Ms. Shumchenia noted that the motion that is being considered is to continue the meeting for Skunk Hill Solar and Atlantic Solar to a date suggested and mentioned Mr. DiOrio may need to be recused from that motion. Mr. DiOrio recused himself. Planner Spellman mentioned that January would be preferable for the meeting. Mr. Prellwitz questioned if this worked for Attorney Craven, he responded that it did. He noted the suggestion of slowing down a little bit on a new

project of this nature and if meeting in January would be a better time, then he would be happy to do that. Solicitor Hogan wanted to clarify that the meeting date in January would be January 3, 2024, and at the present time the intent would be to have him give a presentation at that meeting, it would not be a decision night. Solicitor Hogan mentioned giving the board another month thereafter to decide and meet on February 7, 2024, with February 14, 2024, being the extended decision. Attorney Craven noted that he takes a vacation the second week of every February and would not be able to attend the February 14, 2024, meeting but could the week after. Solicitor Hogan recommended the motion be to continue the matter of Atlantic Solar to January 3, 2024, for hearing purposes, with a potential continuation date to February 7, 2024, and extending the time for a decision through the 21<sup>st</sup> of February 2024. She mentioned that this could be modified at a later point in time but for now there would be clarification for the extension date of the decision. Attorney Craven noted that this would just be an estimate right now, but the first two dates would be okay. Solicitor Hogan wanted to clarify that the first two dates would be for hearing purposes only, and the third date would be to make an extension or decision. Attorney Craven agreed.

Ms. Shumchenia made a motion to extend the Atlantic Solar Master Plan-Public Informational Meeting until January 3, 2024, at 7:00 P.M; Reserve February 7, 2024, to continue that hearing if necessary, and extend the decision deadline for this master plan for Atlantic Solar to February 21, 2024. Her motion was seconded by Mr. Wayles. Ms. Shumchenia, Mr. Wayles, Mr. Lindelow, and Chairman Prellwitz all voted to approve the motion.

Mr. DiOrio was recalled.

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 Road Solar LLC., applicant.

Solicitor Hogan noted that a legal issue was raised by a member of the public that the agenda for this matter was identified as a master plan, and then the action item referenced it as a preliminary plan. She noted that she had a conversation with Mr. Craven the previous evening as to whether he wished to continue, and asked if he felt that notice rendered any deficiency in which would give him concern with the application. Attorney Craven stated that Rhode Island law pertaining to the subject matter of notice, public notice is clear in the sense that notice only be proven that it was given to what the meeting was about. He stated that the agenda said one thing right the first time, and then the second time it was wrong, that did not eliminate the fact that the agenda itself does indicate the meeting was for the purpose that it was intended for. He felt that if there were an appeal, the appeal would be for some other reason.

Solicitor Hogan had reviewed the video of the June meeting, when the board had an extensive discussion on this matter, the first thing she wanted to note was that some of their voices were had to hear so she wanted the board to be aware of this. Secondly, she mentioned that at the end

of that meeting, it clarified in her mind that the intent was to have the board come back a second time for additional discussion and she wanted to get some consensus of where the board was with the decision to be rendered at a future meeting. She noted that they had to cancel prior meetings on this matter and reschedule. She had spoken with Attorney Craven about the date for the decision being extended so that the board did not have to worry about a decision tonight. She believed that they had selected a date and needed to know if the board agreed to it. She asked everyone to check their calendars for September 14, 2023, and everyone on the board agreed they could attend. She noted, if possible, to complete the discussion this evening, and be able to give some direction to her on a decision for next week. This would depend on whether the board got through everything needed this evening. Ms. Shumchenia questioned what the current decision deadline is for the project. Solicitor Hogan noted that the decision deadline is September 13, 2023, therefore, there will need to be a motion to extend to September 14, 2023.

Mrs. Shumchenia made a motion that the board extend the decision deadline for the Master Plan for Skunk Hill Solar to Thursday, September 14, 2023. The motion was seconded by Mr. DiOrio. Mr. Lindelow, Mrs. Shumchenia, Mr. DiOrio, Mr. Prellwitz and Mr. Wayles voted to approve the motion.

Attorney Craven noted that public hearing is closed, therefore, cannot answer any questions or give additional testimony but if there is anything that brought query to any members, he and solicitor Hogan can speak and figure out if it's something that is not substantive, and doesn't violate the fact the meetings closed. He gave an example of the location of a document or something of this nature.

Mrs. Shumchenia explained what she was thinking overall, she had not read the latest draft of the travel of the application, she had reviewed an earlier draft, the latest one was received that afternoon. She felt confident that the previous draft included some key passages that she was looking to see summarized. She had approached this task before them thinking very concertedly about potential conditions of approval if the board were leaning in that direction to approve this project. She felt the board's previous discussions had trended in that direction. She also felt that they should be concentrating on conditions of approval, so that there is control over different portions of this application, and they are able to set criteria on things they want to see at the next stage of review, which is preliminary. She noted that because she does not know how everyone is thinking about voting, she is positioning herself to lay out what she would like to see in conditions in the event they make positive findings and approve it. She had been thinking defensively about it, questioned what deficiencies are in the current application, and what does she want to see at preliminary. She mentioned that she had sent some of these thoughts to Solicitor Hogan and is willing to walk the residents through them as well. She noted that this is how she is feeling about it, but this did not mean she is convinced that the project had met all the criteria, and conclusions that they need to make. Mrs. Shumchenia had put together a document of potential conditions of approval that were given to the members. She felt the things that were important and being incorporated were related to the wildlife and habitat enhancement plan,

adding schedules for maintenance, renewal, restoration of all the proposed and installed habitat enhancement structures and anything else described in that plan. She mentioned that this had been something pointed out in previous meetings that was currently lacking, which she felt needed to be a condition. She noted she listed the rest of her potential conditions in the document to reduce the likelihood that they would find significant negative environmental impacts from the project, at the final stage of review. Recognizing that they cannot find if there are significant or no significant negative environmental impacts, because they are not at the final stage of review. She thought about what would make her feel that there is a lower chance of that finding, what can they do now to reduce anything that she saw as a potentially significant negative environmental impact. Tree clearing was one that was talked about previously, and that she had pulled into her thought process. The density of the panels and their spacing, she had some ideas about how they can mitigate the soil preservation and the water movement on site as a result of this panel spacing. She had a section in the document about protections for the abutters, in specific, thoughts on the structure and function of that set of berms that they know are incorporated through the Town Council's zone change conditions, but they have the ability to add to it. She noted that she would be happy to go through any of the conditions in more detail if the board wanted to talk about them. Mr. DiOrio noted that Ms. Shumchenia mentioned tree clearing and used the term density of panels, so he thought a potential solution to this is a reduction in the scope of the project. He thought abutters' visibility protection was important. Ms. Shumchenia commented on the reduction in the scope and density, and when she first thought about this, she had recalled a previous version of the master plan, which had different panel spacing in a different panel density that was lower in scope than what was shown on the current version. She noted that her recollection was incorrect, this had not changed throughout the travel of the evolution of the documents they had received. She had checked the applicants other project Atlantic Solar, to see what the panel spacing was in that project, and it's the same high density. She mentioned there was testimony from Steve Cabral discussing how this project had some of the highest density, lowest spacing between panels that he's observed. He mentioned how he, the applicant, and the Town Planner at the time had gone to a site in West Greenwich to look at a Solar Field that had a similar spacing of panels. To also look at the implications of that on the landscape, and how that has degraded some of the conditions in and around the panels in terms of water runoff, pulling topsoil, causing rutting, and generally poor conditions for stormwater management. She had looked through that testimony and those reports and everything in the record around that issue to try to find a quantitative way, threshold, to add to a condition of approval, to say we want you to increase the distance between the panel to another amount. A safer amount for water management, and all these other effects that come from having tightly spaced panels. However, no such number exists in any of the testimony or the record that they have. He noted that Mr. Cabral did not give an example of more desirable spacing, he did not suggest a number that would be better than the 4.7 feet that these panels are spaced. She mentioned that his testimony was that the applicant had gone above and beyond in their stormwater and water runoff design to accommodate this higher density. It was Mr. Cabral's

opinion that they've done an adequate job addressing that high density of panels, but the challenge will be making sure it gets built correctly. He had felt confident that if built correctly, the problem could be mitigated. Ms. Shumchenia felt that she did not have a basis for requesting that the applicant increase the spacing because it just doesn't exist in the record. It would be an arbitrary number that the board would make up. Mr. Prellwitz agreed and felt it was something that had to be researched, documented, and qualified with an engineer. Mr. DiOrio felt the way they handle that if they were still in the review process, is to talk to the applicant and let them know that the proposal did not work right now, send them back to the drawing table, and then they would come back after some analysis and make another presentation. He mentioned that the board did not have this luxury. He felt at this stage there was no other way to do that, because you can't send them back to the drawing board, there needed to be a decision. Mr. Prellwitz mentioned that Steve Cabral, the town's engineer, liked the way that the current plan is, and he did not feel qualified to challenge his point of view. He thought that might open themselves up to if not litigation, speculation from some of the people asking his credentials to challenge the engineer. Mr. DiOrio noted how he felt about DEM looking over projects. Mr. Lindelow questioned if it was too late to discuss a clerk of the works (COW) on this project as a condition. He mentioned that the board was concerned with the project not being built correctly and asked what the safeguards are against that. Mr. DiOrio thought it was a great idea and did not think it was too late. He thought that it was one thing for the engineer to say he agreed with that, but another thing to work toward assurance that the project would be built correctly. Mr. Lindelow thought this would be the ultimate accountability to the plans, the abutters, and to the town. Mr. DiOrio noted that there is already structured language to address this. Ms. Shumchenia questioned if they could request additional information at preliminary to provide us with more positive evidence regarding the spacing of the panels or propose different spacing to reduce the likelihood that they would see adverse impacts like that observed in the West Greenwich site. She also questioned if the board would defer approving that part of the plan until preliminary. Solicitor Hogan noted that yes, there is a combination of things that can be done. She mentioned that they could state, while a solar array in this general area can be approved, we are not approving the spacing size of the panels because of the doubts that have been brought forth as a result. Primarily, as she understood because of the April site walk and the report that Mr. Cabral had written, in the documents that were provided to the council, the testimony wasn't clear whether the mitigated techniques were being used on that site, which they said were going to be used in this one, were failing, or they were bringing them in to fix the problem. She noted that the board had the flexibility to say, the issue of the spacing and the size of the panels will be deferred until the later stage of review, where they have confidence that the spacing is going to work. She mentioned that they could also require the applicant to provide sufficient evidence, a supportive documentary evidence at preliminary that the spacing is recommended and works in other locations because it didn't work in the location that Mr. Cabral and Ms. Gillette went to. Ms. Shumchenia was concerned about the testimony at the West Greenwich site is that they do not know what the spacing was. She thought they would need clarification on this before they

could proceed with approving that kind of spacing. Mr. DiOrio thought they needed to question the additional space between the panels because it might be a double-edged sword, as far as the runoff. He noted that the engineers needed to figure this out. Mr. Prellwitz thought that the clerk in the works is a good idea, in having someone go there occasionally to look things over, it gives everybody a little bit of assurance. Mr. DiOrio noted that he agreed with the idea but wanted a revisitation of spacing because the fallout of increased spacing could be a reduction in the scope. Mr. DiOrio questioned if they had language to this effect, and Ms. Shumchenia noted that this would be the next step. She also noted that there may be something in the draft that Solicitor Hogan provided a couple hours prior. She felt that having the conversation on the record is going to be helpful for Solicitor Hogan's benefit to be able to go back and craft language that will accomplish what they want in the conditions. She agreed that the wording of solar panels can exist in this space generally, but the board is not going to agree at this stage on all those details which have documentation to defend that orientation, spacing, and extent. Mr. DiOrio noted that essentially the board is saying yes, you could have panels here, but they might need to be reconfigured to be more parallel with the scope or language they will insert, Hence, they may end up with less panels. Solicitor Hogan wanted to bring attention to the supplemental document in which she had figured out some of the language that the board was talking about. Mr. DiOrio thought it was great language but wanted to ensure it was all equally as clear as to the ramifications of what that might mean, IE less panels, so there is no misunderstanding to what the board believed the implication of that language could be. Solicitor Hogan noted that she was writing down as many thoughts as she could, but it would be up to the Planning Board to decide. Mr. DiOrio mentioned she could address his concern in the third paragraph of the document by elaborating the board where it stated, the board is not approving the panel location, or panel orientation at this time and is deferring the issue to the preliminary plan. He mentioned that she could elaborate panel orientation, panel density, and number of panels then he would be okay with this. Ms. Shumchenia mentioned that the following paragraph mentioned compaction of the soil, because of this high density of panels, and installing them so close together. Mr. Cabral had suggested that hand tilling should be considered as a possibility to mitigate potential compaction. Ms. Shumchenia also pulled this out from Mr. Cabral's testimony and wanted to see that in a condition of approval areas of the site have been preliminarily identified as having very deep soils, A horizon, which are organic, rich, and very deep meaning greater than a foot deep. These are areas where water will absorb readily because the soil is of good quality and deep depth. She would like to see mapping done more extensively throughout the site, and those areas avoided for disturbance and compaction. Following installation of panels, the idea of aeration or tilling to bring the compacted soils back into a condition where they can readily absorb water, and they're not going to cause further runoff, which they have heard testimony about from other solar projects around town. She would like to see this as a condition. Ms. Shumchenia noted that she would like to see the applicant identify and develop a soil preservation plan for the preliminary stage to preserve areas on site with greater than 12 inches of soil layers to promote vegetation, growth, and minimize change to runoff conditions, conduct complete tiling of all other soil after

construction, including to aisles and under panel areas to address concerns about compaction. She noted that some of this is a direct quote from Mr. Cabral's memos where he suggested the same. Mr. DiOrio questioned the areas where there are deep A horizons, and where the location will be. Solicitor Hogan mentioned that Mr. Abazinis testified to this to a degree. He only indicated that they were out there, not necessarily where they were. Mr. Prellwitz questioned if there was a plan submitted that had no patience about soil condition, and in the notes A, B, C, and D, where it stated exactly where each letter was. Ms. Shumchenia mentioned that there is a soil map, where soil names are usually letters. She noted that this is different in the sense that the A horizon is a vertical unit, it's the top part of a soil profile, so you don't usually see that labeled with shapes and such on a map. She thought Mr. Abazinis report seemed to suggest that they weren't extensive because they were notable. There are some areas of the site where the A layer is 13 to 15 inches deep, which led Ms. Shumchenia to believe that this is not extensive areas, this is select pockets, which she thought could be avoided. She felt another request for preliminary may be better mapping of these high-quality soils, so the board could decide if they wanted to preserve them or not. Mr. DiOrio noted that a direction of condition would have to have the applicant go forth, do some soil testing, find these deep A horizon areas, and report back to the Planning Board on the next version of the mapping. If they find that the area mapping is too big then the board could potentially decide that doesn't rise to the level of preservation. Mr. Wayles questioned the infiltration rates, and potential for soil. Ms. Shumchenia noted that in general soil classification of soil types, will clarify what kind of content it contained, such as organic content, grain size, or typical infiltration value. She mentioned that this was specific to this site. They took samples of A horizon, which is like every soil that contains A horizon, the board just needs to know how many inches it is. The applicant took samples of that soil horizon across the site and gave the board precisely the organic content value of the soils on this site. Ms. Shumchenia mentioned she was looking for an expansion of Abizini's report to completely map these soils on the site that have greater than 12 inches of A horizon. Solicitor Hogan noted that in the July 18<sup>th</sup> Crossman report it stated, Our IDM also recommends the depth of existing A soil layer, the organic topsoil be preserved. Soil test holes numbers one through four by Edward Abizinis, indicate that some areas on site have 13 to 16 inches of A layer. These areas should be identified and preserved to promote vegetation growth and minimize change, to runoff conditions. The response to comments indicated that there are areas identified on the plan, but the locations were not readily apparent. The goal is to provide similar depth upon completion. Ms. Shumchenia raised a point that the applicant develops a plan for preliminary stage of review for the optimal design, continues observation, cleaning and corrective actions for the stone trenches that will be created as a means to create sheet flow off the panels, but that could become ineffective if they fill a sediment from the solar field. Those stone trenches are proposed by the applicant because of the tight spacing, large panels, and the water runoff that is going to be generated from this. She referenced Mr. Cabral's memo stating that if these structures aren't built essentially perfect to do their job, they'll be ineffective and if they aren't maintained, over time they could become ineffective even if built correctly they will fill with sediment. She thought that with such a scale

of the site, the board needed to ensure that the clerk of the works job would make sure everything is installed properly and would function optimally upon installation, but there also needed to be a plan from the applicant about how they are going to monitor. Ms. Shumchenia brought up the issue raised by Mr. Cabral with putting the panels less than 6 feet together, how would one get in there with equipment to fix anything or maintain anything that would need maintenance. She felt that there are a lot of implications of the panel density and the design that is proposed that could cascade. Ms. Shumchenia noted her last condition is to present a mechanism or give the board a plan and options for how the applicant is going to access in between the panels for any repair, and address erosion or rutting, given that the current panel spacing is so small. In Mr. Cabral memo it mentioned checking with the fire official to make sure that spacing provided adequate access throughout the site which the board currently does not know at this stage. Mr. DiOrio did not understand why the board could not just state that the paneling did not work, and the applicant needed to fix it. Mr. Prellwitz believed it was not up to the board to make that judgment, it would be up to the engineer and Fire Marshall. Mr. DiOrio noted that he was not trying to dispute the engineering behind it but mentioned the board had spent a lot of time talking about this concern, and it would be easier to say no, because the board had all these concerns. Mr. Prellwitz noted that if they went that direction, they would have to justify why they said this. Mr. DiOrio is concerned that the applicant would tell the board they would come in with a golf cart to access the panels, and then this would satisfy the condition. Mr. Prellwitz noted that there is a request to be presented with a plan at the next stage of review, and if the applicant stated this can be done, then show them how it will be done. Mr. DiOrio felt that he did not have a doubt the engineer would figure out the problem, because this is what their job consisted of, but he wanted to raise his concern. He also felt if this was a small project without the ramifications that he foresees, he might not have as big of a problem. He was not comfortable with the uncertainty because the board cannot see this on a plan, therefore he is apprehensive. Mr. Prellwitz understood where Mr. DiOrio was coming from but noted that the board will ask the applicant to show the board how this will work. Mr. Wayles felt that if the applicant were to reduce the density it would alleviate concerns. Ms. Shumchenia questioned if this is what the board had to give as direction at this stage because the question about consistency with the comprehensive plan on whether you can build a solar field on this site is taken out of their hands, and they do not have the option to overturn that. Mr. DiOrio questioned if this solar project be installed on this site. Ms. Shumchenia mentioned that the aspects of this project do not work for them, and they have listed the reasons why, with evidence from the engineers. Mr. Lindelow questioned if the applicant is to tell the board what they thought the right decreased number in size should be. Solicitor Hogan mentioned that it is not necessarily identifying a number, but it is the entire scope. They can figure out the number of panels depending upon the size of the panels, but the concern of the board had to do with the proposed orientation of the panels, the size, and their proximity to one another. She noted that the board is deriving satisfaction, or affirmance of those concerns particularly from the July 20<sup>th</sup> Crossman report, which had the photos of the site out of East Greenwich which are illuminating. Mr.



Prellwitz mentioned that the board is going in the direction of asking the developer to show proof, and evidence that this will work perfectly. Ms. Shumchenia noted that at preliminary the board will get a plan with panels space at 5.74 feet and a long list of plans for how they're going to address all their concerns. Solicitor Hogan advised the board to direct the applicant with additional things they would want to see at preliminary plan, such as less aggressive spacing because the evidence that the board sees in this application to date is that the spacing did not work. She advised the board that they could also address the issue of the orientation of the panels as well, because Mr. Cabral had mentioned in his report that these are not parallel, which is one of the reasons to get erosion, runoff, and water problems due to the orientation of the panels in relationship to the topography of the land. Mr. DiOrio questioned if they could ask for an iteration that showed the panels parallel to the contours. Solicitor Hogan agreed that they could. Mr. DiOrio noted that the applicant could show more conventional panel spacing and panels only oriented parallel with the contours. Ms. Shumchenia mentioned that the members had previously discussed adding a condition that would build on the Town Council's own condition with this requiring that the berm be built so that no abutter would see the solar array from any location in the home. Mr. DiOrio also suggested no one traveling from the roadways see the solar array. Ms. Shumchenia noted that she does not take the berm issue lightly, because she does not like it. She also mentioned they heard from some abutters who were mortified by this concept but at the end of the day, and after hearing Mr. Cabral quote, nothing is better than an evergreen berm, this is the strongest offer to abutter protections for this project to make sure they are not visually impacted on a day-to-day basis and require that it is established before construction even begins. Mr. DiOrio agreed and suggested the applicant be required to put a berm on their project, while also acknowledging the applicant has a right to build. He believed the project should be screened from all abutting property owners' views and any person traveling the roadways. He mentioned that the industry standard for vegetation is about a year, and then you replant but the board may have to do something a little different because this is a pivotal element of the project. He also mentioned a berm of that size could change the drainage pattern such that an abutting property owner is now taking on water, which would need to be addressed at the design of the berm. If the berm would then have to be moved from the boundary lines, such that retention, detention, and infiltration can be inserted between the berm and the abutting property line, then this is what needed to be done. Mr. Prellwitz wanted to bring everyone's attention to the AZ building, where there are arborvitaes along the top of it and the building is invisible. Mr. DiOrio mentioned that site the board worked hard to make that happen and it was a relatively easy fix, because the topography worked in their favor as the road is high and the building is set low. Mr. Prellwitz wanted to bring this up to the board to show that there are ways to make this happen. Solicitor Hogan noted that issue was in fact addressed in his testimony, and one of the abutting property owners opposed having a berm, he was concerned about the impact of runoff and wildlife diversion. Mr. Crossman had replied to not discount the benefits of a good berm with drainage features associated with it. She advised that the key component to this would be to always screen the project, for the life of the project, from all abutters and wanted the board to look at the

suggested language that covered this issue. It also addressed the view from the road entrances. She noted that there needed to be identification of how the applicant would maintain the viability of the plants on this berm, when they can't use herbicides, pesticides, and fertilizers. Ms. Shumchenia wanted to incorporate a condition to limit the time of year when tree clearing could occur to protect the habitat of the northern long eared bat. She mentioned that there is testimony that referenced specific months they can clear. She questioned how this can be addressed to request the applicant to put trees that are removed back somewhere on the site. She recommended they amend the current landscaping plan to reflect the new addition of trees comparable with the number of trees removed from the project site. Solicitor Hogan recommended giving the reasoning behind the proposed condition. Ms. Shumchenia noted that the board cannot say they have imposed the same condition on other projects, but they have limited tree clearing and encouraged addition or retention of trees. She stated that this project needed to relate to the integrity of the landscape to function as it does now, which is retaining water, resources, providing habitat, providing attractive landscapes that are consistent with the rural character of Hopkinton. Mr. DiOrio mentioned that Hopkinton regulation ordinance is clear that its preference is toward a cluster type of project, essentially preserving some of the natural features of a site. Mr. Wayles was less concerned with what they were going to put in but how much they were going to be clearing. Mr. DiOrio mentioned that there is a spot for the applicant to plant trees, so the board would not be setting an unrealistic goal for them. Mr. Wayles thought that in a lot of places, they would have to cut down trees, then build the berm and put trees back on it. He would like to see the greatest number of trees on the property at the end of the project. Solicitor Hogan recommended the board consider an analysis of sapling that comes down and suppose there is a large tree that has been there a hundred years, is this approach the same or should they be looking at trees that are more important to them because they provide more to the landscape. She felt there were more complications with tree for tree and wondered if there was another way to get to the same place that the members would want. She mentioned Mr. Trembly, who was the forester referred to mapping and the color maps, had talked about how one could see dead trees from the gypsy moth infestation of 2016. Mr. DiOrio recommended if there was a two-acre spot of trees to be cut down, then another two-acre spot of trees is to be put in, but the board did not need to be specific in what type of tree to replant. Mr. Wayles mentioned that there might be some areas that are currently not vegetated, and the board might recommend that be filled with trees. Solicitor Hogan wanted the board to keep in mind the decision of the Town Council that talked about the number of acres of trees that will be preserved and the area that can be cleared. Ms. Shumchenia questioned if there can be more trees saved than the 42.5 acres of forested land. Mr. DiOrio noted that the premise is to maximize the number of trees that are on the site after the project is completed. Solicitor Hogan mentioned that in the testimony there were going to be 40 acres of trees cleared, and there were 30 acres that were going to be adjusted, not necessarily cleared because there were no trees on them. Ms. Shumchenia questioned if more information could be asked of the applicant to provide for the board to review. Solicitor Hogan clarified that they could to some degree but would need to identify the areas in which the board

believed were lacking in tree coverage post construction. Mr. DiOrio questioned if the board could structure a condition that instructed the applicant to come back with a plan that honored the Planning Board's objective. Solicitor Hogan explained that the board needed to identify what it is about the post construction plan in their minds that would require the replacement of the trees that have been removed, because otherwise it is just a quantification number. Mr. DiOrio expressed that if they wanted to have the greatest number of trees back on the site post construction, is this a suitable direction for the applicant when they construct their plan. Solicitor Hogan questioned the objective and felt that the board did not give adequate direction to the applicant. She mentioned that the board had to quantify and identify where the areas that they did not like, in order to require the installation of additional trees. Ms. Shumchenia questioned if areas the board knew were not going to interfere with shading of the panels, in the open space in the plan that is situated to the north of the arrays, can open spaces be filled. Solicitor Hogan recommended the board decide on the plans and identify those areas, and if needed attached this as an exhibit to the decision. She also recommended the board state certain areas that they would like to be covered with trees. Mr. Prellwitz would want to add in a short phrase, reasonably achievable as far as the berm goes.

Ms. Shumchenia noted the Town Council's decision provided the set back from solar panels to abutter property lines shall not be less than 300 feet. She continued to state the Planning Board found it would be inequitable to provide a panel setback, if not less than 300 feet, to some abutters and not others. As such the Planning Board found this condition to be a floor, not a ceiling, and directs that panel shall be set back not less than 300 feet from all abutting property owners. She mentioned this was something requested in an abutter's testimony. Mr. Wayles mentioned that he would like to see a decommissioning plan at the next stage.

Solicitor Hogan noted concerns expressed by neighboring property owners about the traffic on Skunk Hill during construction. Mr. DiOrio questioned if the language used in the Brushy Brook Project can be used for this project as well. Solicitor Hogan noted that the impact for this project is construction impact only, there are no homes going in. She mentioned there are regulations regarding subdivisions that talk about procedures for managing traffic on a daily basis, and the Town Council had limited construction from Monday through Friday 8 A.M. to 5 P.M. She stated that there had been no presentation on traffic at this level, and there is a requirement that the board will have to address at the master plan. Mr. Prellwitz noted that the window of activity is very narrow, as this will not be forever but only a few months. Mr. Wayles mentioned limiting the number of people that go on and off the property, this did not seem appropriate, but also, he did not want everyone parking on the road. Mr. Prellwitz mentioned there is a staging area for workers typically, but the board can ensure this is identified.

Ms. Shumchenia mentioned that some fencing or other sound blocking materials could be placed around the inverters to block noise. The board had previously found this matter should be implemented at minimum prevention. As such, the plan submission should incorporate this prevention measure.

Solicitor Hogan had mentioned the ordinance that they are subject to, talked about decommissioning components in the town's regulations, but the board had not addressed the whole concept of decommissioning at the master plan, because that would be at preliminary. She believed that there was testimony in the record that stated they had submitted a document with the application, but the applicant did not spend any time presenting it, and the board had yet to discuss it. She recommended this issue be deferred to the preliminary plan, and that the board expects to see a full proposal at that time. Mr. Lindelow was hesitant with decommissioning because in theory if the board gave master plan approval, then get to another stage and everyone on the board cannot agree on the decommissioning, how would they then put the brakes on the project once the board had already given the approval. He felt they were on the verge of insanity to allow a project, any size, that is going to generate energy for 25-30 years, then at that point someone will be stuck with the management of decommissioning. He noted that the board had not talked about renewing these projects, and all that is talked about is the end of the project. He questioned how they are going to replace this energy. Mr. Prellwitz felt this was going down a different path. Mr. Lindelow felt there is never one project talked about that is to sustain. Mr. Prellwitz noted that the board is not looking at what is going to happen to the property afterwards. Mr. Lindelow noted that there is no precedent of what happens to all projects, things are just decommissioned. He felt hesitant to start the project because of the future outcome of the property in 25-30 years. He did not want to have trees cut down and millions of dollars spent just to have it decommissioned in the future. Solicitor Hogan interjected that she felt Mr. Lindelow was struggling with the whole concept of putting up a solar array to generate energy. Mr. DiOrio expressed that technology is going to improve, there will be an increased need for energy, and did not see the applicant not renewing this project in the future but noted that the board cannot commit to a lifetime agreement. Mr. Wayles noted that the board is trying to protect the town from having the property abandoned. Mr. DiOrio felt they would not disagree that decommissioning is important. He questioned if the details would be at preliminary, and Solicitor Hogan suggested that they would be, and that it has not been discussed at this level. She mentioned that it is required by the Town Council's Ordinance that the decommission plan be created. Ms. Shumchenia mentioned that the board is not adopting anything but deferring it entirely as they want to see a full plan at preliminary.

Goat Rocks – Method of preservation and access not been determined at this time shall be deferred to a later stage of review. Mr. Wayles noted that there was discussion about the rock being given away because they did not want it on their property due to insurance liability. He thought that if the board required 300 feet from property lines, they'd be less inclined to give away parts of the property and it would cut down the amount of space that they would have, which increased the likelihood that no one would have access. Solicitor Hogan noted that the development is to provide the preservation of natural, historical, and cultural features that contributed to the attractiveness of the community. Ms. Shumchenia mentioned she had raised concerns and drafted conditions with the purpose of being to make this finding at final. She felt that if the conditions that she previously discussed were not implemented, then there would be

significant environmental impacts. Mr. DiOrio noted he previously indicated that he had reservations regarding this component as well, but conditions that were discussed this evening combined with the fact that his concerns are focused on what he sees today and not the final plan, led him to the conclusion that he may be able to find this plan positive at the final plan. Mr. Prellwitz mentioned that the master plan is a conceptual plan, and the board is finalizing which direction they would like to go.

Solicitor Hogan read the document pertaining to pedestrian vehicular traffic, surface water runoff control for suitable building sites, preservation, and natural historical cultural features, which she noted were broken down into subsections for the board to address. Mr. Wayles felt each subsection would be dependent on the conditions. Solicitor Hogan recommended the board to discuss the issues and then reference the fact that there are conditions of approval. Mr. Wayles would like to have a requirement for cars not being able to park on the street. Solicitor Hogan mentioned that she identified things to support this such as increasing the driveway to 20 feet suggested by the fire department, and turnarounds at Skunk hill and Arcadia Road. She noted the board could state they were directing that the preliminary plan state all parking be on site, and this would contribute to the safe circulation of vehicular traffic.

Ms. Shumchenia noted that a large point of concern for the board is that measures be taken to address surface water runoff control, and the conditions are aimed at finding solutions to that. Mr. Wayles questioned if the board would need to make a finding about negative environmental impacts currently, and state that this is a concern to them and this is why they have these conditions.

Solicitor Hogan mentioned that the board is to be contemplating an approval of the master plan with their conditions, and if a member did not want that to happen at the present time, there needed to be discussion. Mr. DiOrio mentioned that an approval with significant conditions is a preferable place to be. He noted that an outright denial puts the board in a tentative, precarious position as this could lead to all the conditions they would like could go away. Ms. Shumchenia mentioned that this is a unique application to them in the sense that the decision about comprehensive plan consistency was not left to them. She wanted anyone listening to the meeting to know that the board is not approval happy. Solicitor Hogan expressed that when this came before the board it issued a negative advisory, and they do not necessarily agree with the council's decision, but they did not have the authority to overturn it. Nevertheless, the board is not adopting that position, and they make no additional findings on this. She mentioned that this is an appellate issue, and someone could appeal against that and state that the board did not make a finding on this, and in result cannot approve this. She noted that the Town Council mentioned that this project had to come before the Planning Board to get approval, but they decided on things that the board would normally decide. She also expressed that someone could appeal with the fact that the board is not making any additional findings consistent with the comprehensive plan and that the board is contemplating an approval. Mr. DiOrio questioned if any court had addressed this type of issue, and Solicitor Hogan did not believe so. Mr. DiOrio noted that the

Hopkinton Planning Board could not be the only ones in this predicament. Solicitor Hogan mentioned that the Town Council had made a map amendment to change the future in use map to state that this could be rezoned. She noted that an argument could be that the council did not make a finding of consistency with the comprehensive plan for this project. Mr. DiOrio liked the idea of not endorsing the Town Council's actions. Ms. Shumchenia read of a part of the document which stated, the proposed zone changes for this project came before the Planning Board, the Board found that the zone change would not be consistent with the comprehensive plan issued a negative advisory to the Town Council. The Town Council amended the future land use map and further found 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 good conscience, the board cannot affirmatively adopt the Council's findings. Therefore, the board declines to make additional findings on this issue. Solicitor Hogan mentioned that the board did not find any positive findings, so you cannot approve, this would be the argument. This had been brought to the board by various abutting properties. Mr. Lindelow mentioned that they would want to go down the road of approval because then they could put restrictions in place.

#### **NEW BUSINESS:**

None

#### **SOLICITOR'S REPORT:**

She noted that she is working on the final version of the Brushy Brook decision.

#### **PLANNER'S REPORT:**

Mr. Spellman noted that he had given a compliment to the board, that will be included in the minutes, for their diligence and recent weeks, and the hard work that has been done by the chair and complimented solicitor. For a volunteer board, he is impressed by the integrity, work ethic, and compassion for the community.

#### **CORRESPONDENCE AND UPDATES:**

None

#### **PUBLIC FORUM**

Ms. Bolek, who was in attendance via zoom, wanted to apologize for not being at the meeting in person but felt the board did great.

Mr. DiOrio questioned if it would be a good idea to elaborate on how much time is allowed to finalize the decision for Brushy Brook. Solicitor Hogan noted that there is a 20-day period that is allowed by law for the department to finalize this matter and have it recorded.

**DATE OF NEXT SCHEDULED MEETING:**

September 14, 2023

**ADJOURNMENT:**

Ms. Shumchenia made a motion to adjourn the meeting that was seconded by Mr. DiOrio. Ms. Shumchenia, Mr. Lindelow, Mr. DiOrio, Mr. Prellwitz and Mr. Wayles all voted to approve the motion. There were no votes in opposition or abstentions.

Meeting was adjourned at approximately 9:30 P.M.

Michael Spellman

Hopkinton Planner