

**TOWN OF HOPKINTON
PLANNING BOARD**

Monday, November 13, 2023

7:00 P.M.

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

CALL TO ORDER:

In Hopkinton on the thirteenth day of November 2023 A.D. the meeting was called to order by Chairman Ronald Prellwitz at 7:00 p.m. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833.

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

ROLL CALL:

Mr. Prellwitz, Mr. Wayles, Ms. Bolek, Mr. Spencer, Mr. Terranova, Mr. Kohlman and Mr. James were all in attendance, as well as Interim Planner Ashley Sweet and Interim Solicitor Per Vaage.

PRE-ROLL FOR DECEMBER 13, 2023, PLANNING BOARD MEETING: Mr. Wayles asked why this date had been chosen for the next meeting. Mr. Prellwitz explained that Ms. Sweet was not available on December 6th, which would have been their normal meeting date, so they chose the 13th. All members indicated that they planned to attend the December 13, 2023, meeting.

APPROVAL OF MINUTES:

A MOTION WAS MADE BY MR. WAYLES AND SECONDED BY MS. BOLEK, PURSUANT TO R.I.G.L. 42-46-7(B), THAT THE PLANNING BOARD SEEKS AN EXTENSION OF THE MINUTES FROM AUGUST 16, 2023, AUGUST 24, 2023, SEPTEMBER 20, 2023, AND OCTOBER 18, 2023.

IN FAVOR: Prellwitz, Wayles, Bolek, Terranova, Spencer
OPPOSED: None

SO VOTED

OLD BUSINESS:

Preliminary Plan – Public Hearing – Major Land Development Project – **Comolli Solar** - Plat 2, Lot 73, Unit 2, 0 Chase Hill Road. Comolli Solar, LLC and Comolli Granite Co., Inc., applicant.

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

Joelle Rocha, attorney for the applicant and owner was present, along with George Comolli, Ryan Marlborough, Vice President of C2 Energy and three of the project engineers, Mr. Whitney, with Mr. Rogowski and Mr. Paradis present via zoom.

A MOTION WAS MADE BY MR. WAYLES AND SECONDED BY MS. BOLEK TO OPEN THE PUBLIC HEARING FOR THE MAJOR LAND DEVELOPMENT PROJECT, PRELIMINARY PLAN FOR COMOLLI SOLAR.

IN FAVOR: Prellwitz, Wayles, Bolek, Terranova, Spencer

OPPOSED: None

SO VOTED

Attorney Rocha provided a quick synopsis of the project noting that the property was referred to as Unit 2, over 38 acres, and was the middle unit of three land condominiums. They have proposed a 3.3-megawatt solar facility, comprising 6.1 acres of that land with a fenced area of 7.7 acres.

Solicitor Vaage noted that as part of the Town regulations for preliminary plan review, it required that a stenographer be present at the applicant's expense. Attorney Rocha noted that the meeting was being recorded and they could transcribe the recording.

Attorney Rocha continued by noting that the applicant had received a zone change from the Town Council for the solar facility back in 2020 and they received master plan approval from the Planning Board in 2021. Both of those approvals had a number of conditions attached, which they have addressed. The project has been reduced in size since master plan, as they have worked through the permitting process. She explained that since 2021 to before their submission in August, they had gone to DEM and worked with the Town's engineering consultant, to respond to all comments. They now have their DEM permit. They also worked with the Land Trust, which was a condition of approval, and satisfied their comments and concerns. The property will have a conservation easement on it should it receive final approval. She noted that the conservation easement will have two phases; there will be an easement on the property outside the fence line during the life of the solar project which is in favor of the Hopkinton Land Trust and after decommissioning, the entirety of the property will have a conservation easement on it in favor of the Land Trust. Therefore, there will not be typical reforestation plans since a lot of this area is already cleared due to the property's prior uses and because the Land Trust will use the property as public access with walking trails already there. She noted that there was a site visit by the prior Planning Board and because this area is unique, the array will not be visible.

Mr. Whitney of TRC advised that they were the engineers for this project. He explained that the Board may have some documents from ESS Engineering, which was acquired by TRC and therefore they are the same people with just a different company name. He went on state that RIDEM had reviewed the project and performed a detailed storm water review which resulted in an insignificant alteration permit being issued as well as a RIPDES authorization. The footprint of the solar array is about 6.1 acres which was reduced from 7.8 acres. The area inside the fence line is 7.7 acres. Crossman

Engineering had made some unofficial comments in March of 2022 and January of 2023, which have also been incorporated into what has been submitted. Sheet 4 is the site overview of the property and shows the new array layout. The eastern side has been pulled back about 100 feet from the property line as requested at the pre-application meeting. The array has been reduced from around 8,700 solar modules to approximately 6,900 modules in order to avoid some of the steeply sloped portions of the site in the back. The revised array does not affect any of the site line profiles that were submitted to the Board previously as part of the pre-application meeting. This project will not be seen from any adjacent roads. There will be approximately 4,700 square feet of clearing within the 100-foot commercial structure setback for detention basin 1, and there is about 9,700 square feet of clearing within the 100-foot commercial setback for shade tree clearing and trail access as well. Sheets C1 and C2 which are pages 7 and 8 of the layout materials plans, show the proposed ground cover which is a low growing grass that will be planted among the panels and there are two types of seed mixes that will be used. There will be a crushed stone driveway from Chase Hill Road into the property which will be 15-feet wide to provide access; however, near the wetland crossing it will narrow to 12-feet to minimize impacts to the wetlands. Mr. Prellwitz noted that on page C1 it showed one section of the driveway being 20-feet. Mr. Whitney believed that was to allow a vehicle turnaround, which Mr. Rogowski confirmed. Mr. Whitney next spoke about the grading and drainage plans, C3 and C4. RIDEM reviewed the stormwater as part of this process. There are three detention basins on the site. Detention Basin One is near the end of the gravel road and is a shallow depression about a foot deep. Detention Basin Two is along the western end of the array and is a long linear feature about two feet deep with a sand filter in it for water quality volume to treat .2 inches of runoff as required by DEM, and there is an overflow as well with a riprap spillway. Detention Basin Three is located in the southwesterly corner of the site and is similar to Basin Two. There is also an erosion sediment control plan which details how erosion sedimentation controls will be placed during construction and there are several sheets depicting how the solar panels will be mounted on the ground. There is also a noise impact assessment in the packet that TRC was commissioned to perform in August of this year which evaluated predicted sound levels at the property line as a result of operation of the facility. The results were that it demonstrated that the maximum predicted sound levels will likely not be perceptible above existing ambient sound levels at the property line or at any point beyond the property line and will be below the 40-decibel threshold that is in the regulations for such installations.

Mr. Wayles noted that it appeared that the space between the solar panels was ten feet or greater. Mr. Whitney advised that page C4 of the plan indicated that there would be eleven feet at minimum. Ms. Bolek asked if they had contacted the fire department as to the access road being twelve feet in one spot. Mr. Rogowski noted that the Ashaway Fire Department had reviewed the plans and had some questions which they had responded to and the large, rounded turn-around at the end of the road was requested by them.

George Comolli, a principal of Comolli Granite Co., Inc., advised that the site was originally a quarry and when the quarry started to slow down, Mr. Perry opened a junkyard. When Mr. Perry no longer wished to run the junkyard, Richard Grills decided to buy the property provided that all of the junk and debris were removed. Years later, Richard Comolli and Richard Grills decided they wished to utilize the quarry jetty stone

again; however, it was difficult due to the quality of Chase Hill Road. When Richard Comolli passed away, the Comolli family had to determine what the highest and best use of this property was and they came up with solar due to the location of the property. They approached a solar company who proceeded to present it to both the Town Council and the Planning Board and received each of their endorsements. Since then, they have worked diligently with the Hopkinton Land Trust to clean up the trails and they are going to put up a historic granite marker. He noted that none of the neighbors objected to this project, and they agreed to no more quarrying and no more junkyards.

Ms. Bolek noted that they had not received comments from Mr. Cabral of Crossman Engineering as to whether or not Crossman Engineering approved these plans. Attorney Rocha suggested that they had worked with Crossman Engineering on the current plans when they responded to comments from DEM. She had hoped that Crossman Engineering would have received the plans again when they submitted them in August, but noted that their application sat until she contacted the Solicitor's office. They did, however, take the initiative to work with Crossman Engineering after master plan approval on the plans that were submitted to DEM.

Mr. Prellwitz asked Ms. Sweet for her opinion, and she noted that the application had been certified complete and they have met all of the requirements from the master plan. It appeared that the application did not get forwarded to the Town engineer for their review; however, if the Board is inclined to wait for a report from the engineer, she would assure that it was sent over. She advised that they could add this matter to the agenda for December 13, 2023, for the Board to vote on a decision pending a review from the engineer confirming that everything is as needed.

Ms. Bolek felt that based on the fact that the Board has two new voting members and that they do not have something from Crossman Engineering, she would be uncomfortable voting tonight. She also hoped to have something in writing from the Solicitor as to their vote.

Cynthia Johnson of the Hopkinton Land Trust noted that the Land Trust was fully backing this project and it was her recollection that there were no objections from any of the neighbors.

Joe Moreau wished to echo what Ms. Johnson had stated, noting he has been involved with this project from the beginning. It seemed to him that they have cooperated with all requests that were made; however, he did agree with Ms. Bolek that they should wait to receive something from Crossman Engineering, which is standard practice. He also noted that he did not know how the meeting would be transcribed for at times it is difficult to hear what is being said because not everyone goes up to the podium to speak. He was unsure if a stenographer needed to be present but suggested that they look into this.

There was discussion about continuing this matter to the December 13th meeting. Ms. Sweet asked Attorney Rocha to provide something to her in writing from the fire department noting that their concerns were satisfied. Attorney Rocha advised that she would get that to Crossman Engineering and copy Ms. Sweet.

Mr. Wayles asked Ms. Sweet when the application was certified complete, and she noted it was certified complete by default. She stated that there was a submission date of September 6th, but Attorney Rocha injected that it was August 28th. Attorney Rocha noted for the record that she would agree to an extension if one was needed to get them through the December 13th meeting. Attorney Rocha also indicated that there was a representative from the solar company present if the Board had any questions for him. There were no questions.

Ms. Sweet advised that if the application was submitted on August 28th, it would have been certified complete on September 22nd, and therefore they would have until December 21st to make a decision.

A MOTION WAS MADE BY MR. WAYLES AND SECONDED BY MS. BOLEK TO CONTINUE THE COMOLLI SOLAR MAJOR LAND DEVELOPMENT PROJECT PUBLIC HEARING FOR THE PRELIMINARY PLAN TO DECEMBER 13, 2023.

IN FAVOR: Prellwitz, Wayles, Bolek, Terranova, Spencer

OPPOSED: None

SO VOTED

NEW BUSINESS:

Proposed zoning ordinance amendments and advisory opinion to the Town Council in response to legislative changes effective January 1, 2024.

The Planning Board may discuss, consider, and possibly vote on a recommendation to the Town Council on the proposed zoning amendments.

Ms. Hahn provided an overview to the Board members. She noted that they have a series of zoning amendments in front of them that are in response to a package of bills that were passed in the General Assembly this past session. These amendments were passed in June before the session ended and a majority of them, with the exception of two, have effective dates of January 1, 2024. The notice bill is already in effect, so they are already doing notice differently, and the changes to the comprehensive plan act do not take effect until March. The rest of these changes take effect January 1st. The set of language that the Board members had in front of them was in response to those bills that changed the enabling legislation at the state both for zoning and for subdivisions. The Planning Board controls the subdivision regulations so they will have to vote and approve those changes at a public hearing. The Town Council votes and approves the zoning regulations so the Planning Board will make a recommendation to the Town Council on text amendments and map amendments to the zoning ordinance. The Town hired Attorney Karen Ellsworth to help draft those amendments and she has gone through and responded to the requirements in the enabling legislative changes to make the zoning ordinance compliant with the new changes.

Attorney Karen Ellsworth stated that when she went through the zoning ordinance, she updated language to make it consistent with the legislation and she also updated the portions of the zoning ordinance that were out of date. This is not unusual, for the

legislature makes minor changes almost every year and sometimes those changes do not get put into the ordinance. Ms. Sweet had reviewed Attorney Ellsworth's drafts; however, she did not receive Ms. Sweet's comments until a few hours ago. She suggested that instead of going through each chapter line by line, they just talk about what she felt were the important policy decisions that the Council will have to make and that they will be looking to the Planning Board for advice on. She felt there were basically three important issues: (1) what to do with the inclusionary zoning ordinance; (2) what to do about special use permits; and, (3) what to do about development plan review. She asked the Board what they would like to talk about and what questions they had.

Mr. Wayles handed Attorney Ellsworth a piece of paper. She noted that she had written it herself many years before. She was a consultant with a group that was hired by the community consortium to update all of the zoning ordinances in South County, and she just happened to randomly be assigned to Hopkinton, so she drafted the original version. For some reason this did not get put into Municode with the rest of the ordinance. That ordinance was originally intended to require developers wishing to do regular residential development projects to add a small percentage of low- and moderate-income housing so that when new residential buildings were built, so that the town did not drop below its percentage of affordable housing. The statute and the ordinances were not intended to make a lot more affordable housing, they were intended to keep everybody even when new market rate units were built. The changes that were made by the legislature earlier this year drastically changed the enabling legislation. She believed they basically took the inclusionary ordinance and turned it into another form of comprehensive permit development. It would require very substantial increases in density for every single residential development that they approve, not just comprehensive permits, not just developments that are major, so the inclusionary requirement kicks in, but all of them. The increase would be roughly thirty-five or forty percent in density for all developments. She recommended that the inclusionary ordinance be repealed and that way they would not have to worry about it at all, especially in a town like Hopkinton where they are pretty close to having ten percent already. This was a policy decision that the Town Council will have to make but the Planning Board will have to provide a recommendation. Secondly, she wished to talk about special use permits. A special use permit is a conditionally permitted use that the Zoning Board can approve if the applicant can satisfy the requirements in the zoning ordinance for that particular use. The Zoning Board looks at not only the particular use involved, but the location that is proposed and the specific requirements for that use. Then they decide if the applicant has met those requirements and whether the location is appropriate. The change in the enabling legislation earlier this year requires that each special permit use in the zoning ordinance have specific objective criteria. There is no such thing as specific objective criteria for special use permits because they are by nature discretionary. That is the law not only in Rhode Island but throughout the United States. She felt that the legislature basically eliminated special use permits and now the only thing they have are uses that are permitted, some of them with a lot of development performance standards and uses that are not permitted. She did not see how it would be even remotely possible to draft a special use permit ordinance for any kind of use that has criteria so objective and specific that they leave the Planning Board or the Zoning Board with no discretion at all. This did not make any sense to her. One option of how to handle this would be to go through the

use code table in the ordinance and look at all of the special permit uses and decide which ones could be made permitted uses and which ones could be made permitted uses with specific development standards attached to them. That way no one would have to ask for a special use permit. Until December 31st, this is a problem that only the Zoning Board will have to worry about, but after that the Planning Board will have to worry about this because legislature has also decided that unified development review is now mandatory throughout the state. This is a procedure where if someone has to go before the Planning Board for approval of a land development project, who needs zoning relief, either a special use permit or a variance, they will ask the Planning Board for the zoning relief at the same time that they ask for approval of the project. The third issue is development plan review which is review of a site plan for a permitted use. That version of the statute no longer exists. They have made it into another form of land development approval and the particular characteristics that they have given make it almost identical to a minor land development project. There is virtually no difference. There is some disagreement about whether the legislature made this new form of development plan review mandatory for cities and towns for there is one section that says it is required and another section that says it is not required. She noted that if the Board decided they wished to have this just to be safe, she would be happy to draft that for them. This was a policy decision that they have to make.

Ms. Sweet stated that Rhode Island Housing had hired Weston & Sampson to draft templates for changes to the enabling legislation, so her firm had worked on this. She agreed with Attorney Ellsworth's assessment about inclusionary zoning, that it was taken from a tool that was supposed to be a way to maintain ten percent and it added excessive density requirements in certain areas where the Board may find them totally inappropriate. In some cases, they may not be able to approve an inclusionary zoning application because it is not consistent with your comprehensive plan. She felt that it was in the town's best interest to remove that tool from their toolbox. Regarding development plan review, she knew for a fact that this was intended to be optional, and this was a drafting mistake and hopefully gets fixed. She felt the Board had to adopt development plan review because the Zoning Enabling Act says that they have to have development plan review and a conservative reading of that is that the zoning enabling trumps the subdivision law and you have to have development plan review. She recommended that they assign it to the minimal category of development application possible so that they really shrink the bucket that it applies to until hopefully the General Assembly fixes the drafting error. Development plan review now has two types of applications, administrative and formal. Administrative is done administratively by the administrative officer, there are no steps to the review process. Formal development plan review is two steps (same as minor land development), it is a preliminary and a final application. Final must go to either the administrative officer or the technical review committee, which is a committee that they currently do not have. She believed they should have development plan review and should assign it such that administrative is the adaptive reuse with no extensive exterior construction; and the formal is adaptive reuse with exterior construction so that they just narrowly focus what development plan review applies to until they can get this better figured out. Lastly, special use permits have been a major issue with municipalities. The problem with the way the legislation is telling them to deal with special use permits is that it has to be the same, even if the circumstances are vastly different. They are required to have definitions to fit every

circumstance that a special use permit may be requested and for every category. She discussed several scenarios and possible outcomes; however, noted that many of these theories have not been tested. Possibly, they can buy time by stating that all current uses allowed by special use permits will not be allowed until they can figure things out. Ms. Sweet asked the Board to implement a technical review committee (TRC). She realized there would be challenges with it but felt they should recognize that the other thing that came out of this legislation was a tremendous shift in responsibility from the Planning Board to the administrative officer (in Hopkinton that would be the Town Planner). Applications that previously went to the Planning Board for review and discussion at a public meeting will not happen anymore. Minor subdivisions are now nine lots or less; they used to be five lots or less. Any minor subdivision that does not create or extend a road and does not need road relief from the zoning ordinance will not come to the Planning Board. You can have a six, seven or eight lot frontage subdivision that meets all of the requirements, and it will not come before the Board, it will not be on a public agenda, the abutters will not know about it, and it is the administrative officer's responsibility to review and approve that application independently. The technical review committee has been established in the state law for a while; however, is optional. This review committee typically consists of police, fire, engineering, building, zoning and planning. The administrative officer sits as the chair and it will be their responsibility to hold the meeting, chair the meeting, run the meeting and get the applications out to the technical staff that sit on the TRC. They function as a review body and they make recommendations to the permitting authority, whether that is the Planning Board or the administrative officer. The meetings can be public with an agenda and the public could submit comments in writing. This takes some of the responsibility off the shoulders of the administrative officer to review the application and make a decision.

Ms. Bolek stated that she liked the idea of having a technical review committee. Mr. Wayles noted that they have a hard time getting a response from some of the people that were supposed to sit on this committee, and he did not know if they would be interested in attending these meetings. Ms. Sweet felt this committee would be appointed by the Town Council and if someone was appointed to a board by the Town Council, it was not up to them whether or not they felt like doing what the role and responsibility of the technical review committee was; they have been appointed by the Town Council as part of their job to serve on the technical review committee in an effort to ensure that proper and informed decision making is happening for land development projects. She noted that she has not met an applicant yet who told her that they did not like going before the technical review committee; they actually prefer this so that when they get to the Planning Board most things have already been worked out and the Planning Board has a written report from the committee to review. Ms. Bolek felt that this committee would be a benefit to the town. Ms. Sweet advised that the town needed to find ways to ensure that there is a public component to make sure that decisions are being made with all of the information available.

Town Manager Brian Rosso was present via zoom and noted that the Fire Chief and fire officials were not town employees, and they could not make them do anything. Town staff can be asked to be a part of this committee, but the police are different... not to say that they wouldn't be willing to participate, but it is not something that we could mandate. He also noted that the staff was unionized and he hoped that there would not be

any pushback for this falls outside of their job description. He felt this could be problematic and worth mentioning.

Mr. Prellwitz asked Ms. Sweet how she would initiate the technical review committee. Ms. Sweet noted that they would have to establish her opinion and she would want the Solicitor to confirm, but her opinion was that they would have to enable this in the zoning ordinance, the Town Council has to appoint, and then the Planning Board is responsible for establishing the rules of procedure. If they enabled this, it did not mean they would have to proceed with it.

Interim Solicitor Vaage felt that at this point it was a recommendation to the Town Council as to whether or not to enable the technical review committee and if the Town Council legislates a TRC then it will come back to the Planning Board to implement procedures that the committee will have to follow. Mr. Prellwitz felt that it would be in everybody's best interest to recommend to the Town Council to initiate language on this and to get the conversation going. Ms. Sweet recommended that they give this a shot because this committee will play a valuable role.

Alfred DiOrio of Woodville Road noted that he had sat before a technical review committee in the past, so he has some familiarity with how it works. The folks that serve on the technical review committee for the most part, know more than the Planning Board members do. Technical review is not just about the turning radius of fire trucks, it was reading plans, recognizing how projects unfold, and recognizing how projects are developed. There needs to be people on that committee that speak that language. In the recommendation for the group of people to sit on this committee, he did not see anyone with those qualifications. Some of the staff people do not really have the depth of a bigger community, such as South Kingstown. He asked that as they thought about populating that technical review committee, they considered appointing people that speak the language. Secondly, he believed there had to be a buy-in from the Planning Board with regards to a TRC. An applicant goes before the TRC and they work out all of these great details; when the applicant comes before the Planning Board in those instances where it is required, the Board better be prepared to approve it without question because they cannot set the applicant back saying they did not agree with the TRC or this will defeat the entire purpose. The whole idea is that the TRC refines the application so that all of the bugs have been worked out and then by the time it gets to the Board there is almost an implied approval. This is a dramatic departure from what the Planning Board has done here in town. If they were okay with that, that was great, he just wished them to be prepared to put themselves in that position.

Ms. Sweet noted that the TRC can be advisory on any application that they wanted to send to it. She noted that Mr. DiOrio made good points; however, she felt they should consider the recommendation. The TRC's recommendation is not binding on the Planning Board. Mr. Kohlman asked if previously they stated that the Town Planner would have to approve these projects on their own, with the TRC helping them. Ms. Sweet stated that there was a shift in responsibility. Some of the applications that previously went to the Planning Board are now going to go to the administrative officer. Right now, the administrative officer has no approval authority in state law except for an administrative subdivision which is where somebody moves or removes a lot line. Any

creation of a new lot or a development project, the administrative officer has no approval authority currently. In places where a TRC is already established, they advise the Planning Board. Her suggestion was that if they establish a technical review committee, the TRC provides a recommendation to the administrative officer so that they are not making this decision alone; they have the advice of technical staff. They could also have the committee make recommendations to the Planning Board; however, they do not have to. Ms. Bolek asked if it could be written in such a way as to limit the scope of what would be sent to the technical review committee. Ms. Sweet advised that they would receive a full application; however, they are a technical review committee, they are not necessarily going to talk about street trees, benches and landscaping unless it somehow impacts drainage, access or public safety. They are not going to get into design standard or building materials and how it looks, or how it impacts the neighborhood. They are just going to look at the technical aspects of an application. Ms. Sweet noted that what the Board was doing tonight was reviewing the language that has been provided to them as a response to the enabling legislation for recommendation to the Town Council. Any language in front of them is up for discussion. Attorney Ellsworth advised that if the Board did want to recommend the establishing of a TRC to the Council, she would be happy to draft something for them to review. She also noted that this issue with the technical review committee is a perfect illustration of the fact that almost all of this new legislation is conceived and drafted with cities and large towns in mind, not rural areas. Most rural towns do not have the people that are needed to have a technical review committee.

Joe Moreau of Old Depot Road noted that it was very difficult to get residents to join committees. The Economic Development Commission has just recently been made active, and he was on the Charter Revision Committee which had been inactive for many years. There are quite a few boards and commissions that are inactive because you cannot get residents to participate. He did believe this was a good idea for certain cities and towns. He stated that he was also on the hazardous mitigation committee where the Town Manager assigned residents to participate but it was just a temporary thing. He thought it would be very difficult to obtain the people needed for this committee. Mr. Moreau noted that the Charter Commission has just about completed their review of the Charter and they were almost ready to present their requested changes to the Town Council. He asked if there were any changes being made that might pertain to the Charter, that they be informed as soon as possible so everything could be presented at once.

Mr. Wayles stated that he was inclined to agree with removing the inclusionary zoning. Regarding development plan review he noted that he had written down de-scope it or shrink it down to a very manageable thing and if they find that they shrunk too much they could go back and grow it at some point. Regarding the technical review committee, it seems like a good idea and they should not be worried about the logistics of it. He believed they should ask for it. Mr. Kohlman asked if it just was to take the Town Planner out of the hot seat, but Mr. Wayles believed that it would assist the Board as well. Ms. Sweet acknowledged the difficulty in getting people to volunteer and she understood that the fire department is not a town department, but the law is wide open as to who can sit on a technical review committee. The majority of members would be town staff but Planning Board members were also allowed to sit on this committee but they

could not constitute a quorum, so it could be one or two members. Mr. Prellwitz felt if they start the language on enabling this committee there needs to be some sort of criteria, almost like a job application, which only allows people with certain qualifications to be on this committee for this needs to be kept technical. Ms. Sweet noted that they could also state who sits and add 'or their designee'. Therefore, if the Fire Chief could not come then somebody else from their department could come in his place. Mr. Prellwitz felt that they should schedule a workshop at some point to start talking about what they were going to do and how they were going to do it. Ms. Sweet believed there was a question about what needed to be put into the zoning ordinance and because this was an appointment by the Council, asked if they wished the zoning ordinance to say who should be appointed. Most of the language that she is seeing enables the technical review committee to exist in the zoning ordinance and indicates who the membership shall consist of, with a core list of member's roles or designee. It may also include things like a conservation commission member or land trust member to look at some of the other aspects of an application. Ms. Bolek asked if there was a time limit on establishing the technical review committee and Ms. Sweet replied that everything becomes real on January 1st. Mr. Wayles asked if they had to dot all of the "I's" and cross all of the "T's" on their advisory opinion or could they just say in their letter to the Council that they think a technical review committee was a good idea and that the Council should consider it. Ms. Bolek felt that they needed to do something to mitigate the State House choosing our town to house all of their people. Attorney Ellsworth advised that they did have to send the Town Council a recommended draft technical review committee ordinance which would not be difficult to draft. She noted that the deadlines involved in this project are completely unrealistic and they just have to make the best of this.

There was discussion regarding special use permits and Ms. Sweet advised that previously the thinking had been that if something was not in the use table then it was prohibited; however, this is not the case anymore necessarily. There is now a requirement that you have to have a process by which a use that is not listed can be brought to either your zoning official or your zoning board for consideration on whether there is a similar use of type, character and impact that is allowed by a special use permit and if that use can be categorized under that category. Attorney Ellsworth noted that this was completely contradictory to the new language that they have to follow for special use permits. If it is not discretionary, how can it be similar to another one? Solicitor Vaage added that if they did not articulate the specific and objective criteria in the ordinance then it is permitted as a matter of right. That is why they have to determine if special use permits should be permitted or not, to avoid that situation of having something that is an "S" in the zoning ordinance for special use permit, being granted as a matter of right without any input from anybody. Ms. Bolek asked if the recommendation was to strike all special use permits. Attorney Ellsworth felt that someone with evil intent put this into the legislation. She felt that it was put in to scare people into making special use permits more specific. Someone would have to apply for a special use permit, be denied and then take an appeal to Superior Court and make the argument that they do not have specific and objective criteria so this must be permitted. That will take two or three years from now. This is something that has to be addressed, but she did not feel that it had to be addressed right now. They could take their time and decide what they wanted to do with this. Ms. Sweet felt the reality was that someone would come and apply for a special use permit and they would tell them that they need to go to zoning and their lawyer will argue

that there is no specific and objective criteria, it is not a special use permit, it is a permitted use. Attorney Ellsworth felt that this would take even longer. Mr. Wayles asked if there would be a benefit to mark every special use permit as not permitted and Ms. Sweet responded that they would avoid that lawsuit initially. Attorney Ellsworth did not recommend that they make all special use permits prohibited. She recommended that they look at all of them and then make some of them permitted uses. Some of them should have some kind of limitations on them and for those they could come up with specific performance standards. They could make them permitted as long as someone could meet the performance standards and then there is no discretion involved. Either they meet the standards or not. That drafting takes a little bit of time, but she believed they had that. Mr. Wayles asked in the list of definitions why they crossed out the conservation commission. Attorney Ellsworth noted that definitions were there so that they explain a word or phrase that is used in the ordinance. When she revised the definition section, she performed a word search of the entire document to see if that word or phrase was used anywhere in the ordinance and if it wasn't then she struck it out. Attorney Ellsworth noted that if they had questions, they could send them to her and she would respond; however, they had to be careful not to reply "all" for it would violate the open meetings act.

Solicitor Vaage asked the Board if they had any recommendations at this point. Mr. Wayles stated that he felt very good about using Attorney Ellsworth's words for deleting the inclusionary zoning and for using Ms. Sweet's words for descoping the development plan review. Attorney Ellsworth indicated that she could draft that for the Board, as well as the technical review committee language. Mr. Prellwitz did not believe they could vote on this yet and Attorney Ellsworth recommended that they wait until they could review the actual words. Ms. Bolek also advised that she would like to see Ms. Sweet's comments. Ms. Sweet noted that she had sent her comments to Attorney Ellsworth and most issues were resolved. Attorney Ellsworth noted that she would forward the Board her new drafts, noting that she would highlight the changes. Ms. Sweet explained that the Town Council had scheduled a hearing for this on December 18, 2023, so the Board would need to review the changes and make their recommendations at their December 13th meeting.

The Board decided to go through the changes starting with definitions, page 1. Mr. Prellwitz noted that he has always had an issue with the accessory dwelling unit instead of accessory family dwelling unit. Attorney Ellsworth noted that this was because of the change in the law. It was determined that the definition section was acceptable. The Board went through all of the proposed revisions. Regarding Sections 5, 9, and 10, there were no comments. Regarding Section 13, Mr. Wayles noted that they had to determine whether this should be ten percent or fifteen percent. Currently the maximum modification block covers zoning ordinance ten percent, and the amended legislation sets a minimum of fifteen percent. They will either need to move this to fifteen percent or eliminate it. It was agreed that this should read fifteen percent. Section 14 was fine and Section 37, planned unit development, was fine. It was agreed that the section on development plan review would be descoped and reworded. Mr. Wayles advised that he wished he could add something to Section 31 but did not know what. This was a section about height exceptions. Ms. Bolek felt this was for someone who did not want their view impeded. Next was comprehensive permit developments and Attorney Ellsworth

indicated that this was another one where they did not have much choice and they are being made to do this. Ms. Bolek asked about getting to the ten percent, noting that they were getting rid of inclusionary zoning. Attorney Ellsworth believed that what Ms. Sweet had said was that they needed to come up with some other way that they can maintain that ten percent, but inclusionary was not the way to go because of the changes that they made to that law. Mr. Wayles asked if that section referred to the affordable housing plan and Attorney Ellsworth indicated yes, that was in the comprehensive plan. Section 39, adaptive reuse was brand new. Ms. Bolek noted that Attorney Ellsworth had stated that it was impossible, because of the way the ordinance was written, to know what the residential density requirements were and the ordinance can either establish a maximum or can say nothing and the Board can approve any reasonable residential density the developer proposes. Attorney Ellsworth noted that the problem was that they created two different categories of kinds of developments, and one is that the developer will receive a density bonus for having affordable units, fifteen units per acre. The other has no affordable units and the only limit is the size of the rooms in the minimum housing code. Her question was how they were supposed to use the minimum room size in the housing code to come up with a residential density per acre. It was Ms. Sweet's belief that the applicant would have to come in with a full architectural floor plan. Whatever the minimum housing standards are regarding size, your toilet has to be this far away from the sink, your stove can't be next to the water (whatever the code says) that is how you design a minimum housing unit. The way that the legislation is drafted, it essentially gives the developer two choices. It is a minimum of fifteen dwelling units per acre if you have approved water and septic. They would have to provide twenty percent low to moderate income units and be within the existing footprint. If the developer decides that they do not want to include low- and moderate-income housing, their alternative is their maximum density of whatever number of units are allowed under the minimum housing standard. No one will know what that actually is without doing an actual architectural floor plan laying out all of those units and telling the municipality that they meet the minimum housing requirements. Ms. Bolek noted that this was for adaptive reuse, so they were talking about buildings such as old mills and Ms. Sweet noted that they were talking about anything that is not residentially used. Ms. Sweet felt that the way the legislation was written did not provide the Board any wiggle room to change it. This is also regardless of the zoning district that the building is in and fifty percent of it has to be used for residential units in order to qualify; this will be a permitted use by right. Ms. Sweet noted that if the Board did not address this issue it would default to state law, so their best bet is to try to mitigate this as best as they can. She believed the Board should also state what process this would have to go through. It is a development application so it will have to go through major development. The other thing to think about was the standards that apply to this in terms of mitigating impacts. There should be something in there that talks about lighting, buffering and landscaping. Those kind of design standards live in the subdivision regulations, which the applicant is essentially sent and it should show the adaptive reuse standards that they have to follow.

Mr. DiOrio asked what the requirements were for water and sewer and Ms. Sweet responded that there needed to be approved water and sewer, whether it was tying into a public system or obtaining an approval from DEM. Mr. DiOrio asked if the Planning Board would have the authority to push an applicant to produce evidence that they can in fact produce water prior to an approval and Attorney Ellsworth and Ms. Sweet both

answered yes. Mr. DiOrio asked the Board to remember a prior application where prior to the Board's serious consideration of the project the applicant had to go out and prove that they had water. That applicant spent a lot of money producing that evidence, so that may dissuade some people if they realize that the Planning Board is going to actually require them to produce the water before they consider the application seriously.

The Board went on to discuss photovoltaic solar energy systems. Attorney Ellsworth noted that the only change that she had made to that was to take out all references to development plan review. Mr. Wayles advised that they do not allow large photovoltaic solar energy systems in the town. Attorney Ellsworth noted that her change was not making any substantive change, it was just striking the reference to development plan review. Attorney Ellsworth stated that by the time these go to public hearing there will be copies of every section of the ordinance which shows the context that was struck out. Mr. Prellwitz went on to Section 8, Nonconforming development, and Section 7, Standard lots of record and there were no questions. Regarding Section 10, Special use permits, Attorney Ellsworth advised that until the Board decided on how they wished to handle this, people were going to come in and ask for special use permits and the Board was going to have to have some criteria, even if it was not specific and objective. Section 11, Special conditions seemed to mirror special use permits. Next was Section 12, Creation of vested rights and Attorney Ellsworth noted that the legislation, in their infinite wisdom, decided to confuse vesting of rights with expiration of approval. She tried to word this as simply as she could. There was no discussion concerning Section 16, Zoning ordinance adoption and amendment or Sections 17 and 19. Mr. Wayles asked if the Zoning Board and Zoning Board of Review were in fact the same Board and Attorney Ellsworth indicated that was correct. Mr. Wayles read the following statement: 'The appeal shall be filed within a reasonable time of the date that the aggrieved party knew or should have known the order requirement, decision or determination.' He asked if they wanted to set that date or just leave it open. Attorney Ellsworth noted that this was a combination of the language in the enabling legislation and the language that was taken from case law. There were no questions until the Board came to Section 30, Number of structures allowed on a lot. Mr. Wayles asked if trailers and mobile homes counted as structures. It was noted that the town was not allowing mobile homes anymore; however, they are a grandfathered use. Next, they spoke about Unified development review and Attorney Ellsworth explained that if someone needed zoning relief and land development project approval, the Planning Board would have to hear the request for zoning relief instead of the Zoning Board.

Consideration and setting of public hearing date for adoption of amendments to the subdivision regulations in response to legislative changes effective January 1, 2024.

She advised the Board that they would also need to hold a public hearing for the changes to the Land and Subdivision regulations and dates were discussed. December 14th was decided on for finalizing the advisory opinion and holding their own public hearing.

SOLICITOR'S REPORT:

None.

PLANNER'S REPORT:

None.

CORRESPONDENCE AND UPDATES:

Ms. Sweet noted that there are quite a few items scheduled for the December 13th agenda. She noted that December 14th will be the public hearing regarding the subdivision regulations.

PUBLIC COMMENT

No one spoke during public forum.

DATE OF NEXT MEETING:

December 13, 2023 at 7:00 p.m. in the Council chambers.

ADJOURNMENT:

A MOTION WAS MADE BY CHRISTINA BOLEK AND SECONDED BY CECIL WAYLES TO ADJOURN.

SO VOTED

Marita D. Murray, CMC
Town Clerk