TOWN OF HOPKINTON
PLANNING BOARD

Tuesday, March 26, 2024
7:00 P.M.
Hopkinton Town Hall
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.

CALL TO ORDER:

In Hopkinton on the twenty-sixth day of March 2024 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.

ROLL CALL:

Mr. Prellwitz, Mr. Wayles, Ms. Bolek, Mr. Spencer, Mr. Terranova and Mr. Kohlman were all in attendance, as well as Interim Planner Ashley Sweet and Solicitor Scott Levesque. Edwin James was absent.

WORKSHOP FOCUS: Growth Management Ordinance (GMO) Discussion

The purpose of the Workshop will be to resume the discussion of the Hopkinton Growth Management Ordinance begun at the March 6, 2024, Planning Board meeting. The Board would like a better understanding of the formula used to determine the number of residential building permits each quarter, in order to recommend changes, if any, to the Town Council by June 2024.

Topics may include:

- *Review of the current formula*
- *Evaluation of formula components*
- *Use of the formula with current data, if available for the Workshop*
- *Discussion of inputs other than school enrollment which might be used, possibly referencing GMOs from other communities*
- *Discussion of how the quarterly review/re-calculation process should work*
- *Evaluate the potential for hiring an outside firm to conduct studies to form the basis of any ordinance updates*
- *Next steps*

Mr. Prellwitz welcomed Sherri Desjardins, Zoning Official. Ms. Sweet hoped that Ms. Desjardins could shed some light on the growth management ordinance and noted that Ms. Desjardins has been working with the Town Manager and they have contacted the school district in order to obtain updated data; however, they do not have that information at this time. They have also been looking at this from the perspective of the impact fee which is directly related to the growth management ordinance. Ms. Sweet noted that Ms. Desjardins had provided her with a copy of a needs assessment, copies of which would be

distributed to the Board. She explained that this was the assessment used to establish the growth management and impact fee ordinances.

Ms. Desjardins explained that this ordinance was enacted in 2000 and she started work in 2001. In all those years the impact fee has been $1,533.75 per dwelling. This has never changed and about ten years ago she started looking into this. She noted that the fee that they are currently collecting is the sample calculation fee in the ordinance and she was unsure if that was even based on actual numbers from the school district. Going forward, they were unsure if they should obtain current information from the school district and plug those variables in to recalculate the amount or amend the ordinance. In Rhode Island General Law 45-22.4-4 under calculation of impact fees it states: in order for a municipality to continue assessing and collecting impact fees, an assessment shall be conducted every five years. Solicitor Levesque added that this was a directive and is something that is required. Ms. Desjardins believed a needs assessment would need to be done in order to continue to calculate or reassess the impact fees and building permit cap. She added that in August of 2022 the Council amended this ordinance, noting that it was to be reviewed by the Planning Board for an advisory opinion by June 30, 2024, with a deadline to have the ordinance adopted by December 31, 2024. She has noticed that a lot of municipalities have gone from calling these fees "impact fees" to "fair share fees" or "development impact fees". When reading the needs assessment and the ordinance itself, Ms. Desjardins felt the language became contradictory because it notes that they can use those funds towards public facilities, meaning schools, town buildings, police, infrastructure, roads and things like that; however, the last section of the ordinance seems to suggest that this can only be used for schools. Ms. Sweet advised that usually when impact fees are being collected, the impact fee is only allowed to be spent on school facilities because the schools were the only ones that have a capital improvement program that lays out its capital needs which is the foundational element of collecting an impact fee. If the town does not have a detailed capital improvement program that states what the expected capital needs are, then they would not have a basis to spend the fees locally. Ms. Desjardins believed that was where the needs assessment came into play. Ms. Sweet did not know if the town had a capital improvement program. Ms. Sweet felt that the only clear path forward would be to completely update the needs assessment and the growth management ordinance. Mr. Wayles added that he watched the Town Council meeting where they extended this ordinance to 2024. The Planning Board at the time indicated that they wanted someone to look at this and the Town Council was vehemently opposed to that. Ms. Sweet advised that their job was to make a recommendation to the Town Council about what to do and she could not see any other logical way forward. They will be obtaining updated information from the school district, and they can plug the numbers in and see what it looks like. Mr. Wayles noted that the formula in the ordinance was to be calculated every ten years, but he felt this should be calculated every year, which Ms. Desjardins agreed with, noting that this was one of the recommendations in the assessment and it also stated in the ordinance that they are supposed to receive information from the school district on a quarterly basis with respect to the building permit cap and on a yearly basis with respect to the impact fees. Ms. Desjardins advised that there was a definition under the impact fee act in the Rhode Island General Laws for capital improvements which indicated that capital improvement meant improvements with a useful life of ten years or more which increases or improves the service capacity of

a public facility. A public facility is defined as a water supply, production, treatment, storage or distribution facilities, wastewater and solid waste collection treatment and disposal facilities, roads, streets, bridges, including rights-of-way, traffic signals, landscaping, local components of state and federal highways, stormwater collection, parks, open space areas, recreation facilities, police, emergency medical rescue, fire protection facilities, public schools and libraries, and other public facilities consistent with the community's capital improvement program. If this language could be added to the ordinance, the town would be in much better shape. It was noted that this money goes into a restricted account and must be spent on capital improvements. Mr. Wayles wished the growth management ordinance and impact fee to be dynamic. It was noted that they will need to ask Mr. Rosso whether the town has a capital improvement program in terms of the what the town is doing, for they will need to make sure this meets the minimum requirements for what would be considered capital programming. Mr. Terranova suggested setting a date for reviewing the formula and the Board felt that this should be looked at every third year and reassessed every fifth year. Ms. Sweet noted that based on the workshop discussion they would put together a memo from the Planning Board to the Town Council explaining their reasoning for making the recommendation that the needs assessment get fully updated and as a result of that assessment, that the impact fee and the growth management ordinance be evaluated for compliance. They can add in language regarding the potential for expanding the impact fee beyond the school. Ms. Sweet noted that this would be added to the Planning Board's May meeting. Multiple members of the Board noted that they wished to attend the Town Council meeting when this matter is discussed so they could comment. Mr. Wayles did not agree with multi family dwellings being exempt from the growth ordinance. There was discussion on whether or not they should make proposed changes to the ordinance without knowing whether the Council would agree to a new needs assessment. Ms. Desjardins asked Solicitor Levesque if the town had to comply with Rhode Island General Laws which were pretty straightforward when it states that in order for a municipality to continue assessing and collecting impact fees a needs assessment shall be conducted every five years. Ms. Sweet felt that language was very clear, but her concern was that the Council did not ask for an opinion on impact fees; they put the permit cap in the growth management ordinance in front of them. Solicitor Levesque added that the longer their assessment for the purpose of having the permit cap goes out in time, the less valid the evidentiary basis for having the cap is and the more susceptible the town would be to collateral attack when they tried to cap a permit. If this is thirty-three years old and the assessment in part was to cap permits, then it needs to be updated. Ms. Sweet noted that she would do her best to tie the growth management ordinance and impact fee together because they are connected. Page 18 of the growth management ordinance suggests that if the town wants to do the capital improvement program, the ordinance explains how to do that. The Town Administrator, the Town Treasurer and the Town Planner are the ones who do that and there is a sample form provided which would go out to all departments to be completed. Mr. Wayles noted that in addition to the growth management ordinance there had been a study conducted for the development of growth management, which was called the comprehensive community plan, entitled the "Town of Hopkinton, Rhode Island Growth Management Program, Element 1", which was adopted by the Town Council on October 25, 2000. The Town Council found that the study, together with the footnote, established the basis for the town's growth management program and this was incorporated by reference.

Mr. Wayles asked if the Board should talk about what they would like to change in the ordinance and then submit it as required. He believed that the calculation in the calculated quota and throughout the entire ordinance is based on the idea that this was a static ten-year quota, which he would like to be dynamic. He noted that he was able to figure out all equations other than where it stated that the amount was to be divided by 1.067. He did not know what the 1.067 was. He advised that there was another calculation that used 36.93%, which was the percentage of the school that belonged to Hopkinton at the time that they originally came up with this calculation. Ms. Sweet suggested that it was good to have a formula but there needed to be an understanding of where the values came from. It should be clear in the language of the ordinance what the values are and why they are being used. Mr. Wayles wished to recommend a study be performed; current numbers added in the quota section; and to have the ordinance continue yearly with a current recalculation of the figures. Regarding the exemption from the quota section on page 3, he wished to remove any reference to the Reserve at Brushy Brook Planned Unit Development because that is not planned anymore. Mr. Terranova referenced page 3, 13-5(d)-93, Exemptions from Quota, (1) and asked what vested rights were, for it noted that vested rights are an exemption to construct a dwelling. Solicitor Levesque advised that if you are vested when this ordinance is enacted, then they would be grandfathered in and this would not apply to them. Mr. Wayles did not know why they would want to have multi-family dwellings exempt from the quota. Ms. Sweet guessed that the reason for that was because they are either a studio or one-bedroom unit not exceeding 800 square feet and a significant portion of those are not going to have children and this ordinance was based on school impact. If it is a multi-family that is two-bedrooms, that unit would not be exempt. There was discussion on what was a multi-family home. Regarding the issue of impact fees, Ms. Bolek asked why they would exempt adult communities or elderly housing. Mr. Wayles suggested they would be exempt from the quota, not the impact fee, and Ms. Sweet agreed. Ms. Sweet noted that they would have to go back and look at the impact fee ordinance separately and see if there are exemptions for impact fees that they might want to reassess if they were to expand the use of those fees. Mr. Wayles asked if subdivision phasing was always exempt and Ms. Sweet indicated yes, that was how this was written. Mr. Wayles noted the way this was written, if a builder wanted to build 100 homes in five years, they would receive 20 permits a year and it would not affect this ordinance. Ms. Bolek noted that she would like this removed. Mr. Wayles believed they would run into a problem because if they told an applicant that they could build something and they have five years to do it and then only allowed them five per builder per quarter, or 20 a year, we would have told them contradictory information. Solicitor Levesque noted that there was a sunset provision in the last part of that section which indicated that it was only effective for two years from the date of such lot or unit is permitted to be built. Ms. Sweet reiterated that if she phased the subdivision and she did not build her phase 1 units within two years, then she would be subject to the cap. Mr. Wayles agreed and thought this would apply for the rest of the phasing. Solicitor Levesque suggested that the triggering would be when the lot or unit was permitted to be built, sold or recorded. When any of those things occur the two years would start to run and if they did not seek a permit within the two years then they would be subject to the quota. Ms. Sweet believed this to be only for that phase. Solicitor Levesque explained that phasing was a legal term and just because you are building every unit at the same time in a subdivision did not mean you were phased; you have to present a plan that includes phases, and that has to be

presented at master plan and approved and all of the infrastructure has to be constructed during phase 1. Phasing is a choice made by the developer at the time of application where each part of the subdivision is divided into whatever increments and happens at different times generally, but certainly is a different phase. Ms. Sweet added that the main reason for phasing is that if there is a large subdivision with 100 lots, they may not wish to record all 100 lots at the same time because they immediately become subject to taxation on 100 lots. They break the property into chunks in hopes of selling some of the homes before they build more. Ms. Sweet felt that leaving this language in the ordinance would create the necessity to track these to assure that in two years whatever is remaining becomes part of the cap. Mr. Wayles asked if this would put the town into a legal liability for they would have the potential to approve a project and then essentially deny them from building because there were no permits available. Solicitor Levesque believed Mr. Wayles' concern was that this would potentially grant a large number of units that are not counted in the quota. Whether this was phase 1, phase 2 or phase 3, if it was a 300-lot development and phase 1 is 100 units, then there are potentially 100 units that could be permitted and built within two years and never counted towards the quota, and then phase 2 and then phase 3. These would not be accounted for under the quota. Mr. Wayles asked if they removed this provision, there would be a limitation on permits and no more than five permits shall be granted to any applicant, owner or group of owners within a quarter, so they could receive twenty per year. Mr. Terranova asked who decides if a subdivision can be put into place besides the Planning Board and if there was a checks and balances somewhere in the process of going through preliminary plan, master plan and final plan process that would account for this to determine why it would be exempt. Was there something else saying that they would have to pay a fee in order to build this. Solicitor Levesque indicated that he would not assume that there was another mechanism that captures the impact on the town for expenses for these units. Ms. Sweet noted that the Planning Board is authorized by state law to approve development applications and they have criteria by which they must do that. Solicitor Levesque added that they always need to keep in mind that there is a mechanism called the comprehensive permit approach that throws all of these things out the window and the new law is pretty strong about imposing fees on projects like that. Even assuming you remove subdivision phasing, there may be a way for an applicant to come in with a large project under a comprehensive permit approach and ultimately avoid those fees. Ms. Sweet felt there was an easy argument on behalf of an applicant with a comprehensive permit that they are not subject to the town's impact fee and potentially even the quota toward the affordable units. Mr. Wayles noted that he had a problem with the quota because we can easily overload our schools. It was noted that it would be extremely difficult to impose a cap on a project that included low- and moderate-income housing. Solicitor Levesque felt that a comprehensive permit project had its own rules and suggested that the way he would design this ordinance would be to simply make it an ordinance that applies across the board and let the law regarding comprehensive permits take care of itself. He wished the Board to be aware that projects like this have a high probability of being argued that they are not subject to this growth management ordinance. Ms. Bolek wondered if they should get rid of the subdivision phasing and Mr. Terranova noted that none of the surrounding towns seemed to have it. Mr. Wayles asked if someone came before the Board with a comprehensive permit, received their approval and started work but took longer than two years, would they be subject to the quota. Solicitor Levesque stated they would not. It was agreed to take this out of the ordinance. Mr. Wayles asked about the

procedure to issue building permits. It was his understanding that they were not issued building permits in excess of the quota unless such units were exempt; however, since they cannot deny those permits, they should just come off of the total for the next quarter. Solicitor Levesque asked Mr. Wayles what his basis was for not being able to count accessory dwelling units, other than it being stated in 13.5-93-6, as an exemption currently under the quota. If his concern was that he wanted to be able to count them, they should take it out of the exemptions. Ms. Sweet explained that if she had a piece of property and her lot was fully conforming, she had the right to come in and get a building permit for a single-family home. An ADU does not have to be exempt. Ms. Bolek and Mr. Wayles both asked that this be removed from the exemptions. Solicitor Levesque added that the law is currently being changed and he did not see anything in the proposed new law that would prevent them from counting this as one of the permits under the quota. Mr. Wayles asked what would happen if someone showed up for a permit and the town did not have any left for the quarter. Both Solicitor Levesque and Ms. Sweet responded that they would have to wait until the next quarter. Ms. Bolek asked what the definition of community residence was and Solicitor Levesque advised:

"**Community residence.** A home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This does not include halfway houses or substance-use-disorder-treatment facilities. This does include, but is not limited to, the following:

(i) Whenever six (6) or fewer children or adults with intellectual and/or developmental disability reside in any type of residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All requirements pertaining to local zoning are waived for these community residences;

(ii) A group home providing care or supervision, or both, to not more than eight (8) persons with disabilities, and licensed by the state pursuant to chapter 24 of title 40.1;

(iii) A residence for children providing care or supervision, or both, to not more than eight (8) children, including those of the caregiver, and licensed by the state pursuant to chapter 72.1 of title 42;

(iv) A community transitional residence providing care or assistance, or both, to no more than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8) persons, requiring temporary financial assistance, and/or to persons who are victims of crimes, abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days nor more than two (2) years. Residents will have access to, and use of, all common areas, including eating areas and living rooms, and will receive appropriate social services for the purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living situation."

Mr. Wayles stated that he did not see any reason why this should be exempt from the quota. Solicitor Sypole noted that section (i) troubled him a bit because it stated that by law all requirements pertaining to local zoning are waived for these community residences. Ms. Sweet added that they could not prohibit a community residence. Lastly, Mr. Wayles noted that where it states, "the limitation of permits issued" it said equally

distributed amongst qualified applicants, no more than five building permits for dwelling units should be granted to a single applicant, owner or group within any quarter if doing so would result in denial of a permit for another applicant. He wished to take out the last part, but when they put the new numbers in the formula five may need to be changed. He would like to make this a dynamic number, possibly a third of the total. Solicitor Levesque felt that it would be better for the town if this was a percentage of the whole available for any period of time. Mr. Terranova suggested it be 25%, which was agreed to by all. The Board also wished to have language similar to Exeter's ordinance that suggested that someone could not take several permits and have family members take more. Ms. Sweet asked the Board if they wished to send a revised draft ordinance to the Council with their advisory opinion and Mr. Wayles did not feel that would be appropriate. They wished it to be revised and then they wished to review it again. Ms. Sweet stated that the Board's advisory opinion and/or revised ordinance could be placed on their May agenda for review and approval and thereafter sent to the Town Council. She thought the Town Council would have this on their June agenda and if they decided not to update the needs assessment, they could use the revised ordinance. The Board did not wish to submit the revised ordinance to the Town Council, only their advisory opinion.

It was noted that the next Planning Board meeting was April 3, 2024.

ADJOURNMENT:

A MOTION WAS MADE BY CHRISTINA BOLEK AND SECONDED BY STANTON TERRANOVA TO ADJOURN.

SO VOTED

Marita D. Murray, CMC
Town Clerk