

2 **TOWN OF HOPKINTON**  
4 **PLANNING BOARD**

6 **April 1, 2015**

7 **7:00 P.M.**

8 **Hopkinton Town Hall**

9 **One Town House Road, Hopkinton, Rhode Island 02833**

10 **CALL TO ORDER**

11 The April 1, 2015 meeting of the Hopkinton Planning Board was called to order at 7:00  
12 P.M. by Chairman Alfred DiOrio.

14 **MEMBERS PRESENT**

15 Alfred DiOrio, Hazel Douthitt, Carolyn J. Doyle, Amy Williams and Frank Sardone were  
16 present. Howard Walker and Donald Simmons were absent.

18 Also present were: James Lamphere, Town Planner; Scott Levesque, Town Solicitor; and,  
19 Harvey Buford, Conservation Commission.

20 **APPROVAL OF MINUTES**

22 MS. DOYLE MOVED TO APPROVE THE MINUTES OF THE MARCH 4, 2015 MEETING.

23 MR. SARDONE SECONDED THE MOTION.

24 MESSRS. DIORIO AND SARDONE AND MSSES. DOYLE AND WILLIAMS APPROVE.

25 MS. DOUTHITT ABSTAINS. MOTION PASSES.

26 **OLD BUSINESS**

28 **Comprehensive Permit – Brushy Brook – Plat 32, Lots 1 through 71, Dye Hill Road,  
29 LR 6-A Owners, LLC, applicant. Discussion of Proposed Development in Light of the  
30 Planning Board Master Plan Decision of November 23, 2010. No vote will be taken.**

32 Attorney William Landry represented the owner and recapped the discussion from the  
33 last meeting. This project previously had 270 units on 358 acres with 25%, or 68  
34 affordable units. The Planning Board approval, which was affirmed by SHAB and is  
35 now under appeal with the Superior Court, was for 93 to 116 units plus a 25% density  
36 bonus allowing for 116 to 140 units, depending on the yield plan for the project.

38 Mr. Landry said the current plan is being submitted informally, without prejudice to  
39 their appeal and without prejudice to the Planning Board's prerogatives, for 112 units  
40 with 25%, or 26 or 27 affordable units. The Board felt the original plan was too close to  
41 Arcadia which had the units around the perimeter of the site, following a roughed-in  
42 road system from the plan for a golf course and condos in the 90's. The decision allowed  
43 a smaller project leaving more area between the development and the management area.  
44 It was noted at last month's meeting that in communities like Hopkinton, where the

2 market value of houses are not as high as in other communities, the price of the  
4 affordable units is not much less than that of market rate units. In these communities  
6 the affordable units remain unsold and are difficult to market with deed restrictions in  
8 perpetuity. They have since recognized that in-law apartments and affordable rental  
10 housing is scarce in South County resulting in more than one household living on the  
12 same property. They came up with a concept to have a certain number of the houses  
14 with detached dwellings, either over the garage or beside the garage, some one level,  
16 some two levels, and presumably all one bedroom. They would be similar to in-law  
18 apartments that can be rented by a child, a relative, or friends. The occupancy of that  
20 additional unit will be deed restricted to persons of low to moderate income that would  
22 be qualified by a monitoring agent certified by Rhode Island Housing. These units  
24 would tend to be on the bigger lots.

Mr. Landry said that at last month's meeting, the Board had several questions:

1. Would these units be counted by Rhode Island Housing toward the Town's 10% requirement; how the houses are counted; and, when are they counted?

Mr. Landry said Nancy Tierney at Rhode Island Housing and Paige Blanc a former planner, were consistent in their response: the key to Rhode Island Housing's perspective is that deed restrictions are placed on the units so they cannot be occupied by anyone that has not been certified by a monitoring agent as a qualified low to moderate income household.

Secondly, there has to be a Certificate of Occupancy issued by the Town.

If the units are not occupied, or if there is a vacancy in the unit because someone has moved out or passed away, the unit remains on the list and is still available exclusively for low to moderate housing.

2. Does their proposal meet the spirit of the requirement that units be integrated throughout the development?

Mr. Landry said they would not concentrate the units with these features in any particular location and they will be spread out throughout the development. If they develop the property in phases, each phase will have 25% of the units affordable.

3. Will this work without getting too confusing for the second dwelling as to what area of the land the renter can occupy and where they are going to park?

Mr. Landry said that as part of the approval process, the Applicant would submit proposed forms of leases, rules, regulations.

4. Will the owner be able to have some of the second dwelling configurations be market

2 rate as opposed to affordable?

4 Mr. Landry said it is likely that many of the units would include the feature of  
6 having an in-law apartment, whether it is deed restricted for affordable housing or  
8 not. They would add value to the market rate units, as well as the affordable. It is  
their plan to not limit the extra dwelling to affordable units.

10 5. Can an owner decide, after purchasing one of these homes, that they don't want the  
second dwelling to be affordable anymore?

12 Mr. Landry said that is not possible. The deed restrictions have to go on for a  
14 minimum of 30 years and can be as long as 90 years under certain subsidy programs.  
They are proposing to make them into perpetuity, if that is the Town's preference.  
16 The owner will not have the ability to no longer be affordable without the approval of  
the Town and would have to come before the Planning Board to modify the  
18 conditions of approval.

20 Mr. Landry said the Applicant has an active appeal in the Superior Court and have  
written their brief in that case. If they move forward at the Preliminary plan stage, it  
22 would be without prejudice to that appeal. They would work with the Town's Counsel  
to provide for a reasonable briefing schedule, but they don't have the luxury of either  
24 dismissing that appeal or leaving it on the shelf. If they are approved at Preliminary,  
one of the conditions of that approval could be that they dismiss the other, and not  
26 pursue the appeal of the previous project. They will not go forward with two projects,  
but they would proceed to the next level without prejudice to their appeal.

28 Mr. Sardone asked if the owner had an affordable unit that he wanted to make a market  
rate unit, how would that effect the 26, 27 number?

30 Mr. Landry said they wouldn't be able to do it. The deed restrictions would go on as  
32 part of the approval.

34 Mr. Sardone said the 26, 27 is guaranteed?

36 Mr. Landry said yes, absolutely. There could never be any less than that.

38 Mr. DiOrio asked if the applicant what he is looking for as there is not going to be a vote  
this evening. Are you looking to walk away with a consensus as to how the Planning  
40 Board members feel about the concept?

42 Mr. Landry responded, right. We have a long way to go in the process. His client  
doesn't want to waste his time if this is not a concept that the Planning Board would like  
44 to try to work through. If we have real show-stopper issues, he would prefer to know

2 that now and not come back until after we have exhausted the exercise of the appeal on  
the other project. They are looking for guidance.

4

Mr. DiOrio said then to reiterate, if they don't hear a show-stopper, then they are okay?

6

Mr. Landry said that would be a good way for us to part tonight. Yes.

8

10 Mr. DiOrio put his concerns on the table for consideration. Up to this point, he has  
focused on this new affordable perspective and has not looked at depth at the rest of the  
12 concept. He wants to be very clear that if they walk away with the idea that we are okay  
with this, that as they flush out the rest of their proposal, specifically the engineering  
14 details, that all of the provisions of the Planning Board decision are still applicable.

14

Mr. Landry responded absolutely. Common septic, common wells, no question. They  
16 wouldn't be trying to modify any of that.

16

18 Mr. DiOrio said that at our last meeting, there were still some concerns from the  
abutting property owners. From the comments he recollects, from Mr. Duhamel  
20 specifically, there might be a different perspective now because you don't have  
individual systems and individual wells. He wants to insure that the applicant is  
22 prepared to address the concerns of the abutting property owners as they come forth  
with their revised proposal. The Board will be paying a lot of attention to those  
24 concerns and they should be adequately addressed.

24

26 Mr. Landry said they will work at that. He thought they had eliminated the multi-  
family units in an earlier proposal. He knows they tried to make some kind of  
28 accommodations for folks near the entrance of the development.

28

30 Mr. DiOrio believes that in the original proposal there were some separation distances  
between the abutting properties and the closest developed lots. That separation distance  
32 has been diminished and the representation was that they were now going to common  
systems, common wells. Maybe that separation distance need not apply. The Applicant  
34 should be prepared to address the concerns of these folks.

34

36 Mr. DiOrio said he wants to be clear on the status of the appeal: they are going to be  
running two projects until the Board issues Preliminary, and then might be agreeable to  
38 a condition to dismiss.

38

40 Mr. Landry said that is true. They are not running two projects. They are not running  
any projects until they have some type of approval from the Planning Board.

42

Mr. DiOrio said, running it in the sense that there are literally two projects before us?

44

2 Mr. Landry said there is only one project before the Board. The first project was out of  
the Board's hands two years ago. It was appealed to the State Housing Appeals Board.  
4 Mr. Levesque and Mr. Landry have had it in their hands for a long time. Mr. Landry  
wrote a very long brief, a legal exercise, that will determine something. It is not like they  
6 are coming before the Planning Board to review that plan. You probably are never  
going to see it again.

8

10 Mr. DiOrio asked, is it probably or is it definite because just as your client doesn't want  
to waste time, he doesn't want to waste his Board's time either, pursuing this long road  
that we have ahead of us on this new concept. Somebody pulls a rabbit out of a hat and  
12 suddenly this other project is now back before us.

14 Mr. Levesque said when they last spoke about this, it was his understanding the  
applicant was going to basically stay the appeal in Superior Court, proceed here,  
16 hopefully get their Preliminary approval, and if that happens, the appeal goes away. It  
gets dispensed. It sounds to me like that is what you are proposing this evening.

18

20 Mr. Landry said he doesn't know about staying. He would like to continue to have that  
appeal working its way forward, at least finish up the briefing process, then it's going to  
sit there until a judge makes a decision. He does not have the authority to freeze the  
22 appeal. They have filed their brief and are looking for the Town to file its brief. It will  
then be months before a judge renders a decision on the case. He would just assume  
24 have that time ticking off so they don't have to start that process all over, if for some  
reason, this exercise breaks down. He does not believe that they are required to forfeit  
26 their appeal rights to proceed to the next level of review on what the Board has  
approved. He assumes that if there are external reviews that are required by outside  
28 parties the Board will ask them to pay for those. They will have to go through DEM on  
some of these issues to make a Preliminary plan submission. There is engineering work  
30 ahead with DiPrete over the next several weeks, possibly the next couple of months.

32 Mr. DiOrio said you have a couple of months working on your new concept and you  
have a couple of months for your appeal process. Are we going to have a collision in  
34 space with these?

36 Mr. Landry said he doesn't see that. They may not be able to file the Preliminary plan  
application for a couple of months while they will be developing a plan. He would like  
38 to get the Town's briefing in the next couple of months, then, while it is sitting with a  
judge, they would come in with their proposal and no one's wasted any time. At that  
40 point, that other project will be off of their plate as well.

42 Mr. DiOrio said he would at least like to have his concern on the table. It may not be  
resolvable this evening. In concept, we don't have any track record for the new  
44 thinking, but generally what he sees he likes so far.

2 Ms. Douthitt questioned whether this an instead of or as well as? What he just  
presented is instead of what he had before or as well as what he had before?

4

Mr. DiOrio said that would be his interpretation as well.

6

Mr. Sardone said they should address the entrance first and the residents that are there  
now.

8

10 Mr. Buford said that in the Pleasant View development of 50 or so houses, the project  
closest to this, they have not identified anyone living in that development that came  
12 from Hopkinton. Everyone who lives in this project will probably be a new resident of  
the town, so it is entirely a new population coming in. There has been further interest  
14 from entities interested in preserving the property.

16 Mr. Landry said he gets calls on that and nothing has materialized. The density they are  
now proposing is the density that the Planning Board looked at and approved.

18

20 Mike Friel, 116 Dye Hill Road, said the plan that was approved has a buffer zone behind  
his property of 350 feet and has been subsequently reduced to 100 feet. The original 350  
feet was not based on environmental concerns, the wells, the septic; it was simply to  
22 mitigate the visual and audible adverse impacts from the development and thinks that  
the 350 feet should be restored. The attitude that if you build it they will come, is  
24 completely out of touch with recent history in Hopkinton. They will need the buffer  
zone because whatever is built we will be stuck with. He fears it will degenerate into a  
26 project atmosphere. He requested that the Board recognize and abutting property  
owners' interests, protect those interests, and preserve the quality of life.

28

30 Andrea Gardiner, 105 Arcadia Road, said Mr. Landry said something about not limiting  
the extra dwellings for affordable housing. If that is true, why are they getting an  
affordable housing bonus?

32

34 Mr. Landry said in addition to the market rate units they have to meet to the minimum  
number of affordable apartments. These 26 or 27 of these in-law apartments will be  
deed restricted and affordable only. There may be some in-law apartments that are not  
36 deed restricted which will be available to anybody.

38

Marnee McNamara said she is a new business owner in town and has been here for 15  
years trying to keep the quality of God's country that we have left and hopes people  
40 would try to work to save it.

40

42 Debra O'Leary, 44 Pleasant View Drive, a member of the Conservation Commission,  
asked if the affordable units are going to be above the garage?

44

2 Mr. Landry said that was their idea but at the last meeting somebody asked about the  
4 handicap or elderly at ground level. They thought that was a good idea. There will be  
dedicated parking near the garage.

6 Ms. O’Leary said it sounds like some of these units that are going to be affordable are  
8 not going to be for family members, so it will be a rental unit. How do we justify the  
cost to the owner? Do they pay tax on the entire property?

10 Mr. Landry said these units will probably be rental units possibly for sale through a  
12 condominium structure. This might be someone that could not buy the property in the  
first place without an income stream and with the extra income from the apartment can  
14 now afford it. It is an attached multi-family duplex.

### Discussion of Comprehensive Plan Update

#### 16 ■ Status of Survey

18 Ms. St. Amour said they have selected SoGoSurvey to develop and compile the results  
of the survey. It should be ready to be placed on the website next week. She asked  
20 how long the Board would like the survey to be available to residents. It was decided  
five weeks should be sufficient time to get the results we would like.

22 Mr. Lamphere said he would like to get the results back, meet with the boards and  
24 Commissions, and work up a draft by Labor Day. He would then send the draft to  
Statewide Planning for their comments and then get a consultant. The second draft  
26 would then go to a public hearing with the Town Council and would hope to get the  
consultant in 2016 with approval in 2016.

28 The Board would like the survey to go out without delay. Ms. Williams will contact  
30 the Superintendent of Schools to see if notice could be sent home with the weekly  
newsletter in the schools. The Westerly Sun and the Charlestown Times will also be  
32 contacted to run an article on the availability of the survey.

34 **NEW BUSINESS:** None

36 **SOLICITOR’S REPORT:** None

#### PLANNER’S REPORT

#### 38 **Planner Approval of Amendment to Approved Development Plan – Bank Street Solar** 40 **Farm – Plat 28, Lot 122, Bank Street. Megawatt Energy Solutions, LLC, applicant.**

42 Mr. Lamphere said this amendment was prompted by the applicant’s finding that the  
amount of grading, cutting, and filling that will be necessary to do their plan was going  
to be cost prohibitive. Also, the Fire Department wanted an outside of the gate turn  
44 around for their trucks. To lessen the grading they compacted the development and  
married a couple of rows together, so instead of single rows they have double rows. The  
driveway that was internal to the gate around the perimeter of the solar farm has been

2 eliminated and is now centrally located. They put an outside turn around by the gate  
4 which was approved by the Fire Marshall. The landscape appears sufficient to buffer  
the neighbors.

6 Mr. Lamphere said he looked at this as a minor amendment that is consistent with what  
8 the Board approved and might actually be better since it is a compact plan. He gave the  
Board copies of the plan.

10 **CORRESPONDENCE AND UPDATES:** None

12 **PUBLIC COMMENT**

Ms. Williams said it has been very difficult to get information through the drop box.

14

Mr. DiOrio said he noticed a little lag on the landscaping plan.

16

Ms. Doyle said the hatching takes a lot of space.

18

Mr. DiOrio said that wasn't a big package and his concern is he can't do it with a large  
20 file.

20

Ms. Doyle said to reduce the size. She finds it handy and to bring to a meeting. This not  
22 working as well as she had hoped.

22

24

Mr. Sardone said he couldn't print the landscape plan. It came out in pieces.

26

Mr. DiOrio said it is wonderful for folks to look at our agenda from afar, who are not  
28 responsible for reviewing it. From that perspective he thinks it is successful. He does  
not see it as working for the Planning Board members.

28

30

The Board will return to getting packets in the mail. Size of the plans will depend on the  
32 complexity of the project.

32

34 **DATE OF NEXT REGULAR MEETING:** May 6, 2015

36 **ADJOURNMENT**

MS. DOYLE MOVED TO ADJOURN. MS. WILLIAMS SECONDED THE MOTION. ALL APPROVE.

38

The meeting was adjourned at 8:08 P.M.

40

Attest: \_\_\_\_\_

42

Lynda St. Amour, Planning Board Clerk

44

Approved: