

**TOWN OF HOPKINTON
PLANNING BOARD**

**Wednesday, October 2, 2019
7:00 P.M.**

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

CALL TO ORDER:

In Hopkinton on the second day of October 2019 A.D. the meeting was called to order by Chair Alfred DiOrio at 7:00 P.M. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833.

MEMBERS PRESENT:

Al DiOrio, Amy Williams, Ron Prellwitz, Keith Lindelow, Carolyn Light, Emily Shumchenia and John Pennypacker.

Also present were: James Lamphere, Town Planner; Kevin McAllister, Town Solicitor and Marita Murray, Deputy Town Clerk.

APPROVAL OF MINUTES:

A MOTION WAS MADE BY RON PRELLWITZ AND SECONDED BY KEITH LINDELOW TO APPROVE THE MINUTES OF THE SEPTEMBER 4, 2019 MEETING.

IN FAVOR: DiOrio, Williams, Prellwitz, Lindelow, Light

OPPOSED: None

SO VOTED

OLD BUSINESS:

Setting of Reforestation Bond – Major Land Development – Photovoltaic Solar Energy System – AP 4, Lot 25 – 310 Main Street – Maxson Hill LLC c/o Anthony DelVicario, applicant

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

Town Planner Lamphere recapped to the Board that he had given them a letter produced by Nicole Mulanphy dated September 19th which accompanied the initial reforestation plan which was prepared in June of 2018 and which included the actual bond assessment. They followed up in November with an assessment of existing vegetation.

Marc Tremblay, the consulting forester who prepared the reforestation plan dated June 19, 2018, stated that he had prepared that plan by looking at the terrain, the soils, making

assumptions that the top soil would be placed back over the site during the construction process, and believing that there would be soil good enough to grow trees. He believed that during the process of decommissioning, when they would be removing the poles from the ground, those would be appropriate locations for tree planting. He continued that he had made a lot of assumptions about what trees to plant thirty years from now and came up with a schedule of trees and shrubs to plant in various locations of the property depending on the soil and slope; he came up with the number of trees and shrubs per acre and a present day cost. He derived the cost from the USDA which included the vegetation and trees, tubes that covered the trees so deer would not eat them, labor, overhead and equipment. He used their numbers and came up with a present day cost of replanting the 67.5 acres that will be cleared for the solar array. He believed that the number that he provided the Board could be used to calculate the bond for the thirty year timeframe.

Mr. DiOrio asked Mr. Tremblay for a quick recap regarding the reforestation plan. He asked how and when it was implemented and if at the end of twenty-five years or so, would the reforestation plan occur immediately. Mr. Tremblay advised that it should happen immediately following the removal of the array. Mr. DiOrio asked what if the owner of the facility wished to extend the life of the facility for another twenty-five years, is the reforestation plan delayed for twenty-five years? Mr. Tremblay stated yes and advised that the bond money would continue to accrue interest. He also felt that whoever implemented the reforestation plan in thirty, fifty or one hundred years from now, would really need to update the recommendations of plantings. Mr. DiOrio asked, what if the owners of the property or people leasing the facility decide at the end of life of the project, that they have no interest in putting the forest back, but wishes to convert the property to residential or commercial, is anybody obligated to implement the reforestation plan. Mr. Tremblay believed that would be entirely on the requirements are put in place by the Planning Board or the Town. Mr. DiOrio asked who is making the promise or representation that the reforestation scenario is even worth considering; Mr. DelVicario advised that it was the Planning Board or the Town. Mr. DiOrio recapped by stating that the reforestation plan was simply a possibility, there was no promise. Mr. DelVicario explained that the cash was there and available at the Town's option. In thirty years, whatever the conditions on the bond are at that time, they can make a decision to either use the money for reforestation or they could put a condition in the bond that if the Town decided to, they could keep the money and use it for some other purpose. Solicitor McAllister indicated that the purpose of a cash bond, which is required by condition 3 of the Council's decision, is to make sure that there will be a reforestation plan implemented and that there will be money there to do it regardless of whether or not there is a willing applicant or land owner to actually implement it. It serves almost as a lien on the property and it is a guarantee that the Town's wishes for a reforestation plan be implemented. If a landowner, twenty-five to thirty years down the road, wants relief from that condition they would have to apply to the Council, who he assumed would want the input of the Planning Board, but they would have to get relief from the ordinance which has allowed them to put up a solar array in the first place. This was a guarantee that this is going to get done unless and until the Town Council says otherwise. It is guaranteed to get done because the Town controls the money that was put in escrow. Mr. DiOrio reiterated that this was a condition set by the Town Council; and, he questioned if at the end of twenty-five years whoever was managing the facility decides

to disassembly the array and take all of the poles out of the ground, would the reforestation plan get done and Solicitor McAllister stated yes. Mr. DiOrio asked if at the end of the twenty-five years whoever is managing the facility decided they want to continue their efforts for renewable energy, would they need to return to the Council to get relief of this condition and Solicitor McAllister stated that if they wanted to continue their operation they would either leave the existing panels in place or replace them with some updated version of them. Mr. DiOrio indicated that as was indicated in the workshop of the previous night, in all likelihood the footprint of the solar array would be smaller. Solicitor McAllister did not see this as something we could perfect because we do not know what is going to happen in the future, but the solar leases typically have extension clauses built in. The bond would remain in place and continue to grow, so it is as safe as it can get. If the land owner does not want to perform the reforestation, the Town will be able to because they hold the bond. Carolyn Light asked the Solicitor if there was a mechanism in place for the Town to know that the agreement has been extended and that no one has walked away from the project and left the panels. Solicitor McAllister felt the Town administration should keep a tickler system as to when these projects are scheduled to end. Mr. Lamphere stated that the Town Council did not put in limited restrictions for these projects; they rezoned the property for a solar array ad infinitum – until it ceased to exist and he questioned whether there was a need to monitor these projects. Solicitor McAllister advised that the zoning was changed for that specific use and no other use and was in effect for the life of the project. He felt the Town should still have a ticker system in place to review all projects to assure that they are continuing. Mr. Lamphere felt that in twenty-five years or more, when the project was discontinued, someone may purchase that property and he felt that they would not buy it to create open space and wish to reforest it. He envisioned a future Town Council relieving the next property owner from having to reforest the property. Mr. DiOrio felt, depending on the property's location, that it might become commercial, and the Town could take the money and incorporate additional landscaping into the new project. Mr. DiOrio questioned bare root plantings and what the survival rate was. Mr. Tremblay advised that if it was done properly it worked and was a very common practice. He advised that there usually was a planting contractor and planting crews who traveled around the country with a planting program. There would be a guarantee and if there was a certain percentage of failure, they would come back the following year and replant. Mr. DiOrio indicated that he did not see that stipulation in the documentation. Mr. Tremblay indicated that was not in the documentation and typically that was the industry standard and implied. Mr. DiOrio requested to have that spelled out in the document. He also questioned the dollar amount and stated that they were trying to put money aside today to cover materials and labor, and they are expecting there to be a return on the money being held by the Town, so in twenty-five years from now there would be adequate funds to complete the job. Mr. Tremblay suggested that whenever there was a cash bond, the Town would have to invest that money to keep up with inflation. Mr. DiOrio wished to assure that there would be enough money in twenty-five years to implement the plan. Solicitor McAllister indicated that this was something the Planning Board needed to look at and the bond rates change almost daily and the bond would have to be insured and guaranteed. He suggested that there be a provision in the motion that would allow for adjusting situations to obtain the highest interest rate after discussion with the Finance Director. Amy Williams questioned the estimate of labor and asked Mr. Tremblay, who had indicated that he determined his estimate from the USDA, if he had used the

northeast region. Mr. Tremblay stated yes, and advised that the USDA had a set of plantings specific to each state. Mr. Lindelow questioned if those numbers were just pure labor or if they included the planters' travel and other expenses. Mr. Tremblay was unsure about this, but felt it should include traveling expenses. He felt the numbers were labor and overhead expenses. Mr. Lindelow also questioned how long it would take to complete the plantings. Mr. Tremblay advised that this was normally very quick, several days. Ms. Williams indicated that she thought Mr. Tremblay had done a good job with his report. Mr. Prellwitz asked Mr. Tremblay if he took into consideration existing fields on the site and if they would return those areas to fields. Mr. Tremblay stated that he went with the assumption that all of the acres that held solar panels would be replanted with trees; leaving areas as fields would be up to the land owner. He would hope that some of the land would be used for an agricultural purpose. Ms. Light asked about topsoil and what the level of confidence was that the topsoil would be good enough to sustain plantings. Mr. Tremblay stated that this was largely determined by how the site was prepared and there would be many years of cut grass which will be mulched into the ground and at the end of the project; as long as there are disturbed spots with loose soil to plant trees in, it should be okay. The amount of topsoil that is there will be determined by what happens initially when the project is installed. Emily Shumchenia felt that the budget for this project was a huge under-estimate. She advised that the plan indicated that the access roads should be retained for future use as wood roads. She asked who would maintain the wood roads during reforestation. Mr. Tremblay stated that these roads were typically gravel roads and after being driven on for thirty years or so would not just disappear. Eventually the grass will start to impede and it will be up to the owner of the property to maintain the roads. Ms. Shumchenia stated that the plan also mentions that reforestation efforts or practices implemented in the Appalachian mining reclamation efforts must be considered for this project. She stated that she researched what that was and found that it was an enormous effort to regrow the forest on areas in Appalachia that have been strip mined and they are having great success with this. They developed a lot of approaches for reforestation which they call FRA, forestry reclamation approach, and it has 70% to 80% success when implemented properly. She stated that Mr. Tremblay's plan doesn't reference or adopt any of those practices and the cost of implementing those practices is suggested to be \$4,923 per acre which is over three times the amount proposed for this plan. Mr. Tremblay indicated that when he made that reference he was making a comparison of the reclamation efforts that take place, but that it was not apples to apples, since in the strip-mining case there may not be any topsoil and there should be topsoil when putting in these solar arrays. He felt that he should not have made that comparison in his plan. Ms. Shumchenia also indicated that the plan stated that someone would determine what adequate reforestation was when it occurs; and asked what exactly that meant. Mr. Tremblay stated that statement was regarding the survival rate of plantings, supervision of plantings, and he felt maybe there should be a little more money in there for the Town to hire a consultant and a foreman who will supervise the plantings; to have an increased level of supervision. Ms. Shumchenia indicated that at the end of Mr. Tremblay's plan there were a lot of contingencies and she felt that the cost estimate really didn't reflect any of those, some of which were necessary site preparation; control of any non-native or invasive plants; replacement of dead or damaged seedlings throughout the five year inspection period, etc. and she felt there should be something added to cover these contingencies. Mr. Tremblay suggested that this could be worked in, but there will be a lot of unknowns and he cannot put a number on it; however, maybe

there could be a certain percentage added on, such as 10% to cover contingencies. Ms. Shumchenia also asked Mr. Tremblay to add into his plan the time of year that the inspections should occur. She also felt it would be a good idea to have someone in 2050 reassess the plan and determine whether it was still viable. Mr. Tremblay stated that he would refer to that in his plan. He indicated that it was impossible to come up with all of the specific costs which was why he had used the USDA cost figures that included supervision and consultation in their analysis. Mr. DiOrio stated that the Planning Board did not want to drop a significant budget item. Mr. Lindelow asked if there was a plan in place for decommissioning as to who was to do that, how, and what the property should be left like; Mr. Lamphere indicated that the applicant or the owner of the system is responsible for removal of the system which is spelled out in the decommissioning bond. John Pennypacker questioned the environmental engineer's finance numbers which he felt was too small. He spoke of the inflation rate and suggested that there may be circumstances in the future where there may be tax prohibitive tariffs placed on solar panels and then there could be a devastating environmental act, like a hurricane; it was possible that after ten years of operation it could be cost prohibitive to rebuild and continue business, so should the Town prepare for decommissioning ahead of the twenty-five to thirty year life cycle. Mr. DeVicario injected that the requirement on these state projects was for them to have catastrophic event insurance on the panels, to include business interruption and catastrophic event insurance which would pay for the cost of replacement and rebuilding. Mr. Pennypacker indicated that he has seen other environmental programs that are insured, and he mentioned Storm Sandy, and though places were insured, some of the payoffs were less than what was expected. He was just wondering if the Town should be prepared for that contingency. Mr. DeVicario advised that the project was loaded with insurance to assure that the project would be rebuilt. Mr. Lamphere read the condition that the Town Council had put forth directing the applicant to prepare a reforestation plan which will be approved by the Planning Board and post an additional cash escrow bond in a reasonable amount to be determined by the Planning Board, designed to ensure implementation and completion of the reforestation plan, so approved. He felt that the only chance for that property to go into open space would be if a conservancy agency or land trust purchased it, in which case whatever dollar amount was put in place could be used to reforest the land and keep it as open space; but his guess was that in thirty years or so someone will purchase this property and it would become residential, commercial or manufacturing. He suggested that the Planning Board embed in this reforestation plan that the cash bond accrue and at the end of the life of the project will either be used to reforest the property as in the plan or to be used for the landscape plan to be approved by a future Planning Board. The current proposal suggests that they put \$90,000 in a cash bond and they are hoping that by the end of the project that money grows to \$200,000. Mr. DeVicario felt that once the bond is put in place, that money would be the Town's to do whatever they wanted with it. Solicitor McAllister advised that the purpose of the bond was to guarantee, with surety, performance. If the owner goes bankrupt, the money is there and the Town controls it, and it has that degree of protection. Also, at the end of the project, the bond may be worth \$200,000 and if it only costs \$100,000 to meet all the conditions in the reforestation plan the owner would get the remaining money back. Mr. DiOrio indicated that he is hearing the applicant say that it is the Town's money and Solicitor McAllister say that if there is no reforestation that takes place, they have to give the money back, and inquired which was correct. Solicitor McAllister advised that the Town controls the

money until it decides to give it back if there is anything left to give back. It is just collateral for the owner to do what they promised to do. Mr. Lamphere explained that they needed to provide enough money to implement the plan, whatever plan the Planning Board agrees to and whatever stipulations they put in the reforestation plan. Mr. DiOrio asked if it was reforestation or they get their money back. Solicitor McAllister answered that if they don't do it then the Town has the money to do it, but if it costs the Town less money than they have on hand, they will have to give the remaining money back. Ms. Williams advised that she would like to see a consultant fee added into the plan; she would also like to see an add-on of 10% to 20% over the final amount after consultation with the Finance Department. Ms. Light suggested rather than having the project end in so many years, that it be the end of life of the project that the reforestation plan would go into effect. Mr. DiOrio advised that it was suggested that as soon as the panels come out of the ground the reforestation plan would take place.

Eric Bibler commented that he was a bond trader twenty years ago and wished to comment on the issue of the escrow amount compounding interest. The budget that Mr. Tremblay was proposing was \$90,000 to cover planting and then they applied a 2.6% inflation rate to derive the \$197,000 figure which is what they are saying will be needed thirty years from now for reforestation. His plan states that the thirty year bond yields 3.33% and they thereafter take the \$197,000 and discount it by 3.33% and are suggesting they only need to put \$73,000 in escrow and not \$90,000. Mr. Bibler stated that a thirty year bond might have yielded 3.33% in November of 2018, but on October 2, 2019 it yields 2.09%. Mr. DeVicario suggested they would not be using thirty years bonds, they would use ten year bonds which Mr. Bibler stated are currently 1.6%, so they would have to put up even more money. He felt that they should collect whatever amount of money is adequate today to perform the reforestation. Interest rates are the lowest they have ever been and the rates on interest bearing instruments are not keeping pace with the rate of inflation. Mr. Bibler asked if the Board had set an amount on the decommissioning bond and Solicitor McAllister stated that Paragraph 2 of the solar ordinance decided on by the Town Council sets the decommissioning bond at \$264,500. Councilor Davis suggested that based on the uncertainty, she would suggest that the Planning Board not discount the value of the cost and as Ms. Shumchenia had suggested, she favored the amount of \$4,900 per acre or approximately \$300,000 that they should ask for from the developer. Mr. DiOrio stated that there was an admission that this was not the intended value and he did not want to pull a number out of thin air. Councilor Davis felt they should be closer to the \$300,000 then \$200,000. Councilor Capalbo stated that almost all construction projects that she has worked on have always had a 10% to 15% additional fee for contingencies and she would request that whatever number the Planning Board comes up with they add on an additional 15% to 20%. Mr. Bibler asked who was going to invest the bond money and how, since a savings account earns next to no interest these days. He felt possibly buying an investment policy from an insurance company or some other financial institution may be best. Mr. Tremblay stated that he is only the forester who comes up with the plan and how much it might cost to implement the plan. He is not qualified to come up with what the contingency might be. Mr. DiOrio asked Mr. Tremblay if in his plan he is already making contingencies. Mr. Tremblay indicated that he would add into the plan what contingencies were included. Ms. Williams suggested that the Solicitor had stated that if they did not use all of the money being held, they would have to give it back; so, why not hold the entire amount of \$197,000 and if they

don't spend it all they would just give it back. These developers are making millions of dollars so why not hold the entire amount so we don't have to worry about not having enough. Solicitor McAllister stated that the Council had asked the Planning Board to set a bond in a reasonable amount. The money will be in an interest bearing account so the amount will grow. He felt that the court may not find that amount reasonable and it would be highly challengeable. He suggested that the Board request the input of the Finance Director and also ask the developer to come back with a more current estimate of cost that includes the additional contingencies; and, he suggested that they have the developer present that to the Finance Director through the Planner in advance of the next meeting and then there should be a basis to ask for a reasonable amount that would hold up in court. Mr. DiOrio indicated that they will wait for the new numbers from the applicant. Mr. DelVicario stated that they would add in a 15% contingency on the numbers and he was corrected that the Board wished it to be a 20% contingency. Mr. Lamphere stated that the applicant has prepared a reforestation plan dated June 19, 2018 and the job of the Planning Board is to (1) either approve the plan or amend it; and (2) come up with a reasonable amount to implement the plan that the Board approved. Mr. DiOrio reiterated that the Board would receive a new plan with updated numbers and they would seek some financial guidance from the Town's Finance Director. Ms. Light stated that the only confirmed decision that they had made was that there should be a 20% contingency added. Mr. Lamphere suggested the applicant prepare an updated reforestation plan and submit it to the Board and then the matter will be scheduled for another meeting. It was discussed that Mr. DelVicario would speak with the Town Planner to have this matter placed back on the agenda.

NEW BUSINESS:

None

SOLICITOR'S REPORT:

None

PLANNER'S REPORT:

None

CORRESPONDENCE AND UPDATES

None

PUBLIC COMMENT

Eric Bibler asked if the Board knew how many panels or megawatts the 310 Main Street project was expected to be. Mr. Lamphere advised Mr. Bibler that the application was not on the agenda and they could not speak about it. Mr. Bibler wished to speak of the topic of decommissioning and indicated that he felt the decommissioning reserve was far too low. He wished this matter be placed on an agenda so it can be discussed. He believed there was a huge global problem of how to dispose of the solar panels due to the

tremendous pace of installations. There is an agency that a lot of countries belong to called IRENA (international renewable energy association) which performed a study in 2016 and at that point in time there were 250,000 metric tons globally of solar panel waste. They projected that by 2050 that is going to grow to 78,000,000 metric tons. All solar panels contain lead and copper and various other hazardous materials, so they cannot go into landfills because if they are damaged they can cause the condition that causes leaching. Clearway Energy was asked if they had ever decommissioned anything and their answer was no, never. Mr. Bibler stated that he obtained four quotes from solar panel recyclers. All the quotes came back in the range of \$22.00 to \$25.00 per panel. Three quotes calculated the amount in terms of weight of panels and one was a flat fee. He indicated that he had spoken with the recycler who charged the set fee and he indicated that for a large quantity of panels he would charge \$15.00 per panel; however, shipping costs were expensive and Mr. Bibler did not believe the cost would be less than \$20.00 per panel after everything was added. He went on to state that the Alton-Bradford Road site was a 20 mw project and the reserve was \$325,000 for decommissioning. To recycling those panels at \$20.00 per panel is \$1,000,000. He believed these projects are grossly underfunded. He urged the Planning Board to read the letter that he had sent them on October 1st. All these projects are owned by limited liability companies and the only assets they own are the assets on the ground. He feels this issue needs to be addressed, for whatever the Town Council has stipulated regarding the decommissioning reserve, he wants to be able to say that he informed the Planning Board and documented the fact that the decommissioning reserve is nowhere near adequate based on objective information. Mr. Bibler felt that if a company obtains a performance bond and then goes out of business, it may be that the performance bond doesn't carry over to the new owner; there could be insurance issues. He urged the Board to make sure that their performance arrangements for decommissioning with these projects will take care of 100% of the risks from day one. He requested the Conservation Commission not write any more ordinances on planning and zoning issues; but the Planning Board should work with the Town Council and identify these risks and problems and consider ordinances that make new requirements for the developer to provide proof of adequate insurance and on an annual basis have the developer provide proof that the decommissioning fund is adequate. Mr. Prellwitz asked if Mr. Bibler would come back and speak at another meeting and Mr. DiOrio indicated that he would like this to be an agenda item. Mr. Bibler indicated that he is not putting himself forth as an expert on these matters; he is just advising the Board of what he has found to make them aware of these issues. Ms. Williams felt this should be an agenda item and informed Mr. Bibler that they have thought hard about decommissioning and an amount that would be reasonable and they did not just pull a number out of the air. Mr. DiOrio indicated that this new information deserved to be reviewed and if the Board as a group decides that it is worthy of further consideration, they can take action with the Town Council; and, if they determine that there are flaws with the information they don't have to take it any further. Ms. Light acknowledged that new information comes to light when people talk to them. She welcomes new information and wants to make an informed decision. The Planning Board really has not had the opportunity to be active in the role of establishing the decommissioning funds. Ms. Williams indicated that in the past the Planning Board had set some decommissioning bonds. Mr. Lamphere advised that they did struggle with the amount of the decommissioning fee initially. Now they have the solar ordinance which was their guide in coming up with the amount of the bond. The ordinance says - that the

applicant shall submit a fully inclusive estimate of the cost associated with removal, prepared by a qualified engineer licensed in the State of Rhode Island; and verified by the Town engineering consultant. The decommissioning fees that this Planning Board has imposed to date have been reviewed by the Town's engineering consultant, Crossman Engineering, as being reasonable. If new information is coming to light, we should consider it. Mr. DiOrio felt Mr. Bibler was trying to advise them that there might be a different perspective for how they view the cost associated with decommissioning and while they did follow those instructions they might have to admit that the applicant's expert and maybe even the Town's experts are not as well versed as they could be. It is a brand new field. Mr. Lamphere stated that this is all new ground and they will not know what it will cost 30 years from now. He stated that they do know that the Town Council is interested in generating some revenue and it might be difficult to put in decommissioning fees for these big projects; and, we have to decide whether we want these projects in town or not. Mr. Bibler stated that he believed they may be violating the open meeting law by adding deliberation onto his comments. Solicitor McAllister stated that the Board was getting into an area that he was very uncomfortable with. He recommended to the Board that they should set this matter down as an agenda item or have a workshop, but it was not on the agenda tonight it should not be discussed, though he did not feel deliberations had taken place. Mr. Lamphere advised that this should really be set down as a workshop because they have to arrive at a number. Mr. DiOrio agreed that a workshop was fine. They want to be presented with the information and have time to digest the information; that way if they have questions they can ask the person presenting the information. Ms. Light suggested that they limit the length of the workshop. Ms. Light asked if the workshop would inhibit their responsibility to come up with a reforestation bond and Solicitor McAllister advised that the workshop would have nothing to do with the reforestation bond.

DATE OF NEXT REGULAR MEETING: November 6, 2019

ADJOURNMENT:

A MOTION WAS MADE BY AMY WILLIAMS AND SECONDED BY RON PRELLWITZ TO ADJOURN.

SO VOTED

Marita D. Murray

Deputy Town Clerk