

**TOWN OF HOPKINTON  
PLANNING BOARD**

**Wednesday, December 4, 2019  
7:00 P.M.**

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

**CALL TO ORDER:**

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

**MEMBERS PRESENT:**

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

Also present were: James Lamphere, Town Planner; Attorney Sean Clough in place of Kevin McAllister, Town Solicitor and Marita Murray, Deputy Town Clerk.

Absent: Carolyn Light

**APPROVAL OF MINUTES:**

A MOTION WAS MADE BY RON PRELLWITZ AND SECONDED BY KEITH LINDELOW TO APPROVE THE MINUTES OF THE NOVEMBER 6, 2019 MEETING.

IN FAVOR: DiOrio, Prellwitz, Lindelow, Shumchenia

ABSTAIN: Amy Williams

OPPOSED: None

SO VOTED

**OLD BUSINESS:**

1. Approval of Reforestation Plan and Setting of Reforestation Cash Escrow 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 approving the Reforestation Plan and the setting of the Reforestation Cash Escrow Bond at this meeting.*

Attorney John Mancini was present on behalf of the owner and the applicant. He stated that the issue that remains is the reforestation plan and the reforestation bond. Crossman Engineering reviewed their plan and submitted a report which they have no issues with;

however, they do not agree with the suggested amount of the case escrow bond. They would like to have a discussion with Crossman Engineering to determine how they came up with their numbers. Since there was not a representative of Crossman Engineering present to discuss this matter, Attorney Mancini asked that the Planning Board approve the plan; however, leave the bond amount open until there was a meeting between their engineer and Crossman Engineering and if they could not come to an agreement, that they determine a third independent engineer to determine what amount would be appropriate. Mr. Prellwitz agreed with Attorney Mancini's sentiment. Mr. DiOrio stated that he liked the idea of a third party review and asked that the town play a role in the selection. Ms. Williams felt that the Board should not approve the plan tonight since there was a huge difference in values and even though on the surface it seemed like they were in agreement, she wasn't sure if they really were, due to the large monetary difference and possibly the plan might need to change. Attorney Mancini indicated that it really didn't matter if they didn't approve the plan tonight. Ms. Williams did note a few differences in the plans and Ms. Shumchenia also noted some substantial differences, including in Crossman's plan a much greater term of active management and a much more involved active management line item. Ms. Williams asked about the soil and if any testing of the soils would be included and when. Attorney Mancini indicated that there were two levels of review, the periodic review concerning the construction phase and then once the system was plugged in, there would be monthly maintenance reports produced and continued monitoring to assure that the inverter is protected. Ms. Williams questioned if there would be soil monitoring. Attorney Mancini stated that in part 1 of the conditions they presented a wildlife mitigation narrative from Scott Roubideaux of National Resource Services and in that report he described the soil; however, he didn't believe there was anything specific about periodic monitoring or testing of the soil. Attorney Mancini indicated that the construction portion of the project has more recurring inspections than once the project is up and running. Mr. Lindelow asked if the decommissioning plan might discuss that aspect and it was believed that it did not. Attorney Mancini indicated that the reforestation plan is focused to the reforestation when it takes place in 2050. At that point the plan takes into account that the soils are ready to accept vegetation. Ms. Shumchenia asked if retention ponds and drainage ditches would be filled, remediated or put back to their natural condition and noted that there should be some provision in the plan that all of these drainage structures be put back to their natural state. Attorney Mancini advised that this would be assuming the property looks like it did before the solar panels were installed and possibly those retention ponds may be used for some other type of development in the future. He didn't believe it was fair to say that in 2050, the developer had to put the property back to what it looked like in 2018. Mr. Prellwitz felt that the soil should be tested every year during the yearly inspection of the property. Attorney Mancini indicated that the town's yearly inspections were not limited and they could dig test holes and check the soil and the cost of the inspections would be covered by the owner of the project. Mr. DiOrio stated that they would not approve the plan tonight and would need to decide on the bond. Attorney Mancini suggested that he would have their consultant reach out to Crossman Engineering and they would keep Mr. Lamphere up-to-date.

A MOTION WAS MADE BY AMY WILLIAMS AND SECONDED BY RON PRELLWITZ TO CONTINUE THE DETERMINATION OF THE REFORESTATION PLAN AND BOND UNTIL JANUARY 8, 2020.

IN FAVOR: DiOrio, Williams, Prellwitz, Lindelow, Shumchenia  
OPPOSED: None

**SO VOTED**

Mr. Bibler asked, if there was a third party engineer that looked at the plan, would he be able to make additional recommendations to the plan or would it be just to decide on the amount of the bond. Mr. DiOrio did not know how anyone could come up with a number without looking at the plan, so he would presume that they will handle the plan at the same time. Mr. Bibler felt that environmental hazards would not come from the solar panels degrading and dripping onto the soil, but from broken panels coming in contact with the ground and being left there. He felt the environmental hazard would come from the risk of abandonment of the solar panels and if the amount of money that the town was holding for decommissioning was not adequate, who would be responsible for any shortfall. Mr. Bibler believed the appropriate form of the financial security should be that the developer pays the premium to a Property and Casualty Company or some other bonding institution and the town receives a contract which states that the insurance company will guarantee that the plan will be implemented. Another issue is that the town will have to invest the cash bond in some fashion and cannot guarantee a rate of return for the thirty years and he didn't believe a municipality should take this risk. Mr. Bibler also mentioned the PSES Ordinance, Section (d)(6) which states that the Planning Board has to approve the financial security. Sharon Davis questioned Crossman Engineering's report and wished to assure that they were not using any chemicals or herbicide. On the Crossman report it suggested there would be soil monitoring and testing and she wished to assure that this would be included in the reforestation plan. Mr. DiOrio advised that those questions would be asked of Crossman Engineering and they would get those answered. Barbara Capalbo responded to Mr. Bibler's proposal and felt it was interesting, but would it be expanded to all commercial enterprises, every building and house and if you do this for one commercial enterprise it should be done for every commercial enterprise. Mr. Bibler responded that the difference is that when other commercial buildings are built, there is no condition that they be removed at the end of their useful life. The PSES Ordinance requires that these projects be decommissioned.

**NEW BUSINESS:**

None.

**DISCUSSION:**

Discussion of status of project conditions set forth in the Amended Decision of the Town Council adopted at the October 22, 2018 Hopkinton Town Council Meeting and the Hopkinton Planning Board approval of May 1, 2019 pertaining to the Photovoltaic Solar Energy System – AP 4 Lot 25 – 310 Main Street – Maxson Hill LLC c/o Anthony DelVicario, applicant.

Mr. Lamphere suggested that the Board members look at the Amended Decision which includes 14 conditions imposed by the Town Council and then also the Decision by the

Planning Board on approval of this project which has 24 conditions. In all, there are a total of 38 conditions and he has spoken to the applicant and with the exception of the reforestation bond, they have complied, to the extent that they can, with all conditions. Some of the conditions are conditions that have to be adhered to during the course of the project, so that is an ongoing process and some conditions cannot be monitored until after the project is built, such as sound decibels. They are working on erosion control along the farm road and temporary sediment traps have not been installed yet but Crossman Engineering believes this should be one of the next things done.

Mr. DiOrio advised the audience that this was the time for them to ask questions. Ms. Williams wished to address a comment that she has heard from the public in the past, and advised that the Planning Board, in their attempt to do due diligence, placed condition 19 on the project regarding vegetative screening, which stated: “That at any time during the project construction, the town may inspect and/or review the quality and effectiveness of the proposed vegetative screen including in conjunction with the town’s consultant for this purpose. In the event that the town makes the determination that said quality and/or effectiveness of this screening is inadequate, or fails to screen the project from any viewing perspective, the town may contract a registered landscape architect currently licensed or authorized to practice in the State of Rhode Island and at the applicant’s and/or current project owner’s expense, to review said screening and recommend solutions to rectify the inadequacy and/or failure.” Ms. Williams advised that they have within their provisions, relief if things have been cut down that shouldn’t have been in order to have a barrier. Mr. DiOrio stated that Condition No. 9 of the Planning Board’s conditions, stated in part: “...all appurtenant structures and equipment shall be screened from view by vegetation enjoined or clustered to avoid adverse visual impacts to any abutting and/or adjacent property that is residentially zoned;” but clearly this condition does not really happen at this stage of the project’s implementation. That will happen at the end when the landscaping that has been approved has been put in place. Steve Moffitt of Diamond Hill Road asked how Condition No. 19 would be addressed and who would the residents speak to in this regard. Mr. Lamphere advised that he is working on that and has reached out to the landscape architect and asked him to see if there was any way to embellish the landscape plan, in particular near the Reynolds property. Mr. Lamphere advised that all conditions must be met before this project became operational. Mr. Bibler indicated that the property’s zone had to be changed from residential to commercial special before this project could take place, Chapters 259 and 260. Chapter 260 says that the ordinance will take effect upon passage, subject to the fulfillment of all the conditions set forth in the ordinance as well as Exhibit A.” The reforestation escrow and the plan have not been met yet. Mr. Lamphere stated that until the applicant complies with all of the conditions, the project doesn’t go anywhere and the zone does not change. Mr. Bibler asked the Planning Board if they were able to approve a project that does not meet the requirements of the PSES. Mr. Bibler asked how the building permit could be issued before all of the details of the project have been agreed on. Technically this property is still zoned residential and the applicant is installing a commercial operation on a residential parcel. Mr. DiOrio stated that if someone feels that a building permit was issued improperly there is a procedure they need to follow. They should go to the Town Clerk’s Office and obtain the form, fill it out and start the process; he did not want to hear anything further about the building permit as it was not before the Board. Mr. Bibler also stated that a condition of approval was that the applicant submits

a fully inclusive estimate of the cost associated with the removal prepared by a qualified engineer and he has not seen any such report in this file; however, he did find one in the Alton-Bradford Road project which he believed to be totally inadequate. Sharon Davis asked about No. 5 of the Town Council's conditions which states that the petitioners shall prepare and submit to the Planning Board for approval a reasonable plan designed to sustain the native animal species in and around the solar array facility during its construction and its operation until the facility is closed. Mr. Lamphere stated that Natural Resource Services did prepare a plan and report and he would provide her with a copy. Ms. Davis also asked if the applicant was providing meter credits to the town and Attorney Mancini indicated that he did not know the answer to that question. Ms. Davis questioned whether the applicant had received assurances from National Grid that they would approve this project and Mr. Lamphere stated they did and he had that in writing. Ms. Davis asked if penalties were built into the ordinance regarding any conditions that the applicant does not meet or comply with. Mr. Lamphere stated that for the most part the applicant is adhering to the Monday through Friday 8 a.m. to 5 p.m. condition, though a mechanic may get to the site early and start working on equipment. Ms. Davis also asked what the \$270,000 performance bond was for and Mr. Lamphere stated that it was to insure completion of the project; to assure that the project was built according to the plans and he was monitoring the project with Crossman Engineering to assure that everything was being done. Ms. Davis asked if RI Renewable Solar Energy, LLC sold the project to 310 Main Street. Attorney Mancini indicated that this was a legal question and Ms. Davis explained that she was just trying to understand how ownership and responsibility travels from the developer and the applicant to the person who is doing the building and does the owner keep responsibility. Attorney Mancini stated that the approval and all of the conditions and plans run with the land; so the owner is irrelevant. Ms. Davis indicated that she would like to know when those changes happen and who those owners are; Attorney Mancini advised that when there is a sale of the property a deed is recorded at the Town Hall and it is public information. Lastly, Ms. Davis questioned Planning Board Condition No. 9 in that there was going to be a redress for the abutters; and, why did they have to cut all of the vegetation down, only to put it back up at the end. Attorney Donnelly stated that there was an ordinance for decommissioning which was not in effect yet; and, Chapter 246, enacted in 2016, is applicable for anything built after this time and it states that the Planning Board is the entity that determines the amount of decommissioning, etc. in a form and in an amount the Planning Board determines. He asked if this is still an open question. Attorney Mancini stated that this was incorrect and a mischaracterization. Mr. DiOrio stated that upon advice of counsel the Board would not respond. Attorney Donnelly stated that his question was, as a Board, do they intend in the future to look at decommissioning according to the PSES ordinance or is this something they are not going to address and just leave it with the original ordinance, Chapter 260. Attorney Mancini objected as this was speculation. Mr. DiOrio advised that the Board had Attorney Donnelly's question and they would get him an answer. Steve Dolce of 114 Maxson Hill Road indicated that he lived directly across the street from the project and he is at the project every single day and it concerns him greatly. He asked for a copy of all of the conditions which was given to him by Mr. Bibler. Emily Shumchenia asked why there was no itemized decommissioning list as in the Alton-Bradford project. Mr. DiOrio stated that the decommissioning aspect was not before the Planning Board. Mr. Lamphere reiterated that the applicant had posted the performance bond and also a decommissioning check of \$264,500, and was ready to give

a fee for reforestation. Those were the big items that they would like to see put in place. Ms. Shumchenia stated if the Town Council had decided the decommissioning bond for this project, what prevents the Town Council in the future from taking any element of a project that is normally in the purview of the Planning Board and specifying it as a condition in an ordinance and essentially erasing the Planning Board's input from that issue. Mr. DiOrio indicated that he had respectfully asked the Town Council to not do that in the future. Attorney Donnelly handed out a copy of the statute that he had referenced.

**SOLICITOR'S REPORT:**

None

**PLANNER'S REPORT:**

None

**CORRESPONDENCE AND UPDATES**

None

**PUBLIC COMMENT**

There was no public comment at this time.

**DATE OF NEXT REGULAR MEETING:** January 8, 2020

It was decided that the workshop of December 11, 2019 would be postponed.

**ADJOURNMENT:**

A MOTION WAS MADE BY RON PRELLWITZ AND SECONDED BY KEITH LINDELOW TO ADJOURN.

SO VOTED

Marita D. Murray  
Deputy Town Clerk