

State of Rhode Island

County of Washington

In Hopkinton on the fourth day of May 2020 A.D. the said remote meeting was called to order by Town Council President Frank Landolfi at 6:00 P.M. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833.

PRESENT: Frank Landolfi, Scott Bill Hirst, Sylvia Thompson and Town Manager William McGarry were present in the Meeting Room; Barbara Capalbo, Sharon Davis; Town Solicitor Kevin McAllister; and, Town Clerk Elizabeth Cook-Martin attended remotely.

This meeting was held remotely. Instructions for participating remotely were included on the Town Council Agenda.

The Meeting was called to Order with a moment of silent meditation and a salute to the Flag at 6:00 p.m.

I. RESUMPTION OF THE APRIL 6, 2020 PRELIMINARY DISCUSSION BY THE TOWN COUNCIL SITTING IN A QUASI-JUDICIAL CAPACITY CONCERNING THE RECOMMENDATION BY THE TOWN SOLICITOR TO CONSIDER INITIATING FURTHER PROCEEDINGS TO DETERMINE WHETHER ALFRED W. DIORIO SHOULD BE REMOVED FROM THE HOPKINTON PLANNING BOARD FOR GOOD AND DUE CAUSE UNDER RIGL SEC. 45-22-3 AND CHAPTER 2, ARTICLE II DIVISION 5, SECTION 2-112 OF THE TOWN ORDINANCES

In compliance with RIGL sec. 42-46-5(a)(1), by e-mail dated April 29, 2020, Mr. DiOrio was given written notice of the intention of the Town Council to resume its preliminary discussion from the April 6, 2020 Council meeting, captioned as above, on May 4, 2020 at 6:00 p.m. Said April 29, 2020 written notice to Mr. DiOrio referenced his prior invocation of his right to require that this discussion be held at an open meeting and not in Executive Session and that resumption of this preliminary discussion will again be held in open session, and not in Executive Session. Mr.

DiOrio was again advised at the time that the public would not be allowed to participate in the resumed preliminary discussion, that he had the right to be represented by legal counsel during the discussion, and that that there would be no sworn testimony during this preliminary discussion.

1. Updated report of status concerning this matter from the Town Solicitor, including but not limited to the current status of Mr. DiOrio's Open Meeting Complaint, a recap of the April 9, 2020 conversation between Mr. DiOrio and the Town Solicitor and its outcome, the legal and practical impact of this matter upon the May 6, 2020 Planning Board meeting, etc. This report from the Town Solicitor will be followed by an opportunity for Mr. DiOrio to respond to, or comment upon, said report of status.
2. Presentation by the Town Solicitor of his recommendation to the Council concerning Mr. DiOrio and the reasons for said recommendation, including but not limited to introduction of the partial transcript of Mr. DiOrio's relevant comments from the March 4, 2020 Planning Board hearing and e-mails between Mr. DiOrio and the Town Solicitor dated March 5, 2020 initiated by Mr. DiOrio, and the legal and financial consequences to the Town should it fail to undertake further proceedings to determine whether Mr. DiOrio should be removed from the Planning Board for good and due cause based upon his March 4 and 5, 2020 referred to herein.
3. Response by Mr. DiOrio to recommendation by the Town Solicitor.
4. Council discussion and possible vote on the Town Solicitor's recommendation to the Town Council that it schedule a quasi-judicial evidentiary hearing at a later date to determine whether good and due cause exists to remove Alfred W. DiOrio from the Hopkinton Planning Board Pursuant to RIGL sec. 45-22-3 based upon his verbal remarks made on March 4, 2020 at the Planning Board and his written statement to the Solicitor on March 5, 2020 requested by Alfred DiOrio.
5. Discussion and possible vote on potential motions to set a date for the Town Council to conduct a quasi-judicial evidentiary hearing; the need for the potential appointment of

special legal counsel to advise the Council during said evidentiary hearing and deliberations following its conclusion; and to set conditions, if any, regarding Mr. DiOrio's continuation as Chair and Member of the Hopkinton Planning Board until the conclusion and decision by the Town Council on the issue of whether good and due cause exists to remove Mr. DiOrio from the Planning Board.

N.B. THERE WILL BE NO OPPORTUNITY FOR THE PUBLIC TO PARTICIPATE IN THIS PRELIMINARY DISCUSSION, THIS DISCUSSION CONCERNS A PERSONNEL MATTER DURING WHICH THE TOWN COUNCIL WILL BE SITTING IN A QUASI-JUDICIAL CAPACITY.

Town Solicitor McAllister recapped that on April 6, 2020 the Council first began discussing his recommendation under the statute to possibly remove Alfred DiOrio from his position on the Planning Board. Thereafter on April 9, 2020, he spoke with Mr. DiOrio with Town Planner Lamphere acting as mediator; however, they were unable to resolve the issues at hand. On April 10, 2020, he provided a legal opinion in writing to the Planning Board and a summary report to the Town Council with what had transpired during that April 9th conversation, with a copy to Mr. DiOrio and Mr. Lamphere. An Open Meetings Act complaint was filed by Mr. DiOrio to the Attorney General's office and he had filed a reply. The open meeting issue is still pending and they are awaiting a decision from the Attorney General. Over the course of the last two weeks, town administration starting working on the May 4, 2020 agenda and Solicitor McAllister had further communication with Mr. DiOrio concerning his potential role and status with regard to the upcoming Planning Board meeting of May 6, 2020. Mr. DiOrio retained Attorney Margaret Hogan to represent him, and the Town Council received an email with two attachments from her. Solicitor McAllister noted that he was pleased with some of its content and he spoke with Attorney Hogan advising her that based on the representations in her letter regarding her consultation with Mr. DiOrio, he wished to recommend to the Council that it was no longer necessary to hold a formal hearing to consider removing him from the Planning Board. Based on the legal matters that Attorney Hogan discussed with Mr. DiOrio and his acceptance of her interpretations of the legal issues, he

believed that the Town was adequately protected now and that Mr. DiOrio understood what he can and cannot do as a member of the Planning Board.

Attorney Hogan noted that in the future if Mr. DiOrio or another member of the Planning Board has a concern about whether one ordinance might conflict with the terms of another ordinance, they will consult with the Town Solicitor and accept the advice of the Town Solicitor in that regard. He recommended to the Town Council that it no longer needed to hold the formal evidentiary hearing and he believed this matter had been resolved. He felt the Council should make a motion to accept his recommendation that it will no longer pursue the issue of a removal hearing and that Mr. DiOrio can and should resume his duties on the Planning Board effective immediately.

Attorney Margaret Hogan noted Solicitor McAllister's recitation appeared to be accurate but wished to address a few things. She asked who had commenced tonight's meeting and who was in attendance. Council President Landolfi noted that he had commenced the meeting from the Town Hall chambers. Present with him was Vice President Scott Bill Hirst and Councilor Sylvia Thompson, as well as Town Manager William McGarry. Also in attendance via telephone were Councilors Sharon Davis and Barbara Capalbo, Solicitor Kevin McAllister and Clerk Elizabeth Cook-Martin. Attorney Hogan noted that what she felt was necessary as far as a motion, was one reversing the Council's decision last month to remove Mr. DiOrio from his position. Solicitor McAllister didn't believe Mr. DiOrio had been removed and noted that it was just a suspension and suggested that he had recommended that Mr. DiOrio resume his duties effective immediately. Attorney Hogan felt that Solicitor McAllister's emails had made it abundantly clear that Mr. DiOrio had no legal standing whatsoever either as a member or as the Chair of that Board and she would like to have that reversed to render the matter moot going forward. Solicitor McAllister felt that was a distinction without a difference. Attorney Hogan disagreed and wished to correct what had already taken place. Council President Landolfi asked if there was an issue with just reinstating Mr. DiOrio as a member and Chair of the Planning Board. Solicitor McAllister stated that there is no legal issue and the Town Council can word their motion however they wish. He just wished to note that the

Council did nothing wrong and there was nothing to correct. He strongly objected to Attorney Hogan’s use of the word ‘correct’; that the Council needs to correct that, for that implies that the Council made a mistake. Council President Landolfi asked if Attorney Hogan was acceptable to them reinstating Mr. DiOrio and not using the word “correction”. Attorney Hogan wished the Council consider a motion wherein the Council reverses its prior decision and also finds there is no need to go forward on further proceedings.

Councilor Capalbo felt the motion should state that there is no need to schedule an evidentiary hearing for Mr. DiOrio, as this matter has been resolved by Solicitor McAllister and Mr. DiOrio, and Mr. DiOrio may resume his duties as a member and Chair of the Planning Board. Councilor Thompson wished to incorporate Solicitor McAllister’s wishes and Attorney Hogan’s wishes into one motion as follows:

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR CAPALBO THAT THE APRIL 6, 2020 MOTION IN REFERENCE TO ALFRED DIORIO IS RESCINDED; THAT MR. DIORIO BE KEPT ON AS CHAIR AND MEMBER OF THE PLANNING BOARD; AND, THE COUNCIL WILL NOT PROCEED WITH A FURTHER SHOW CAUSE HEARING.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

CONSENT AGENDA

The April 20, 2020 Town Council Meeting Minutes were removed from the Consent Agenda for review and would not be voted on tonight.

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR THOMPSON TO APPROVE CONSENT AGENDA AS FOLLOWS: Approve Town Council Meeting Minutes of April 6, 2020; Ratify and Approve the Fifth Local Declaration of Emergency from May 8, 2020 to May 31, 2020.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

PUBLIC FORUM

Emily Shumchenia of Chase Hill Road wondered if the documents that were prepared by Mr. DiOrio’s attorney and the responses by the Town Solicitor would be made available to the Planning Board. Solicitor McAllister had no objection to having that information available to the Planning Board members and indicated that it would be provided if Attorney Hogan had no objection.

OLD BUSINESS

RESCHEDULE NEW FRONTIER LLC CLASS B-V LIQUOR LICENSE, VICTUALLING LICENSE AND HOLIDAY SALES LICENSE

Discuss and consider rescheduling the hearing date for an application for a Class B-V Liquor License, Victualling License, Holiday Sales License filed by New Frontier, LLC for property located at 15A Frontier Road.

Council President Landolfi asked the Town Clerk if this was just a matter of scheduling and she acknowledged that it was. It was noted that this matter needed to be a full hearing which is advertised and where the public can attend and voice any concerns or comments they may have. Solicitor McAllister felt that this matter needed to be re-advertised and written notice sent to abutters. Clerk Cook-Martin felt that the earliest they could do this would be for the June 1st meeting. Councilor Capalbo indicated that she would be more comfortable scheduling this matter a little later, such as June 15th or July 6th, for they still have the school and municipal budgets to be voted on and discussed should it not pass. Councilor Thompson suggested that the Council President work together with the Town Clerk and they keep an eye on the Governor’s orders and be given the authority to pick a hearing date. Councilor Capalbo felt that was wise. Councilor Davis felt July 20, 2020 would be reasonable. After more discussion, it was agreed that this hearing would be scheduled on July 20, 2020.

DISCUSSION RE: CHARIHO BUDGET VOTE IN JUNE

Discussion re: Chariho Budget vote in June – requested by Council V.P. Hirst.

Councilor Hirst noted that he was concerned that the town's fiscal year commences on July 1st and the Chariho Budget vote always precedes the Town budget vote. He felt the Chariho establishment and School Committee should have come up with a date for their referendum by now and the town needs to vote on its budget before the end of this fiscal year. Councilor Capalbo believed that Chariho did not have all of their numbers from the state because the Senate and the House haven't completed their budgets; and they are waiting for the transportation aid and housing aid numbers from the state. She felt that Councilor Hirst was correct and they need to encourage Chariho to get that done as quickly as possible because our vote comes after that and we have to base our budget on theirs since they are the majority of our municipal budget. Councilor Hirst wished to have this matter on the agenda routinely at every Council meeting until there is a date set. Chariho has the maintenance of effort cushion that the town does not have.

NEW BUSINESS

SET HEARING DATE RE: PROPOSED AMENDMENT TO MARCH 2, 2020 0 MAIN STREET DECISION AND CHAPTERS 272 AND 273

Discuss and consider referral to the Planning Board for advisory opinion and setting a hearing date and beginning the required statutory process under RIGL secs. 45-24-51 and 45-24-53 for consideration of proposed amendments to the March 2, 2020 0 Main Street Decision and to Chapters 272 and 273 of the Hopkinton Town Ordinances relative to the conditions setting the amount of the required cash decommissioning bond, thereby striking “~~of \$25,000 per Megawatt AC~~” and substitute “to be determined by the Planning Board” - introduced and sponsored by Councilor Thompson.

Councilor Thompson noted that she had spoken with two of the principles for the developer and neither had a problem with this amendment. She was recommending this change to provide consistency between their last approved project on Skunk Hill Road. Councilor Hirst asked Solicitor McAllister for his comments regarding this amendment. Solicitor McAllister stated that he really didn't have any comments; his only concern was that this qualifies as an

amendment to the ordinance that was passed. He wished to assure that they follow the correct procedural process as mandated by Rhode Island General Laws secs. 45-24-51 and 45-24-53. Councilor Davis was in favor of this amendment. Councilor Hirst asked if this referral was for the Planning Board to make a decision or just to provide a recommendation to the Council. Solicitor McAllister answered that they were to make a recommendation to the Council.

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR DAVIS TO REFER THE SUBSTITIVE AMENDMENT TO THE PLANNING BOARD FOR CONSIDERATION AND TO SET A PUBLIC HEARING.

IN FAVOR: Hirst, Davis, Thompson

OPPOSED: Landolfi, Capalbo

SO VOTED

MODERATOR PRO-TEM

Discuss, consider and possibly vote to appoint Joseph Moreau as Moderator Pro-tem for the May 5, 2020 Financial Town Assembly (FTA).

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR HIRST TO APPOINT JOSEPH MOREAU AS MODERATOR PRO-TEM FOR THE MAY 5, 2020 FINANCIAL TOWN ASSEMBLY (FTA).

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

\$295,861 RIDEM GRANT AWARD FOR CRANDALL FIELD PLAYGROUND IMPROVEMENTS ANNOUNCEMENT

Town Manager William McGarry advised that the Governor and the RI Department of Environmental Management announced that the Town of Hopkinton was listed as the recipient of the \$295,861 grant for a new playground at Crandall Field. They will be replacing the existing playground, install a drainage system, wood fiber surface, walkway to the playground and seeding and loam. He thanked Recreation Director Mary Sawyer and Planner James

Lamphere for their hard work. Mr. Lamphere was present and noted that he was happy to participate in this endeavor and he noted that Mary Sawyer did a very good job in preparing the grant. Councilor Capalbo wished to thank Mr. Lamphere and Ms. Sawyer for their hard work and for putting in some features and equipment for individuals and children with special needs which will also work with the elderly. Councilor Hirst noted that he had previously emailed Ms. Sawyer congratulating her on receiving the grant. Councilor Davis felt that Ms. Sawyer and Mr. Lamphere had done a fantastic job. Councilor Thompson was thrilled over the receipt of the grant and the prospect of a new playground. She wished to thank Mr. McGarry, as well as everyone else, who participated. Council President Landolfi asked Mr. McGarry if the money they had set aside in the proposed budget would take care of any additional costs the Town may have in this regard. Mr. McGarry noted there was \$50,000 in the capital improvement plan for the new playground if needed. There is an 80/20 split where the Town is responsible for 20% but he was hoping that it would be significantly reduced by in kind services with DPW doing a large amount of the work. Council President Landolfi noted that between Langworthy Field and Crandall Field the Town has received close to \$1.2 Million in grants for recreation areas. He suggested that Mr. McGarry write a letter to Janet Coit or anyone else at DEM to thank them for their grant money for those two projects, which was unanimously agreed to by the Council.

BOARDS & COMMISSIONS

Planning Board

Discuss, consider and possibly vote to appoint Emily Shumchenia from alternate to full term member to September 2020 to fill the unexpired term of the full-term vacancy position on the Planning Board.

Councilor Hirst wished to note that the Town needed volunteers, specifically two alternates for the Planning Board and a vacancy on the Zoning Board. People have to step up for these boards so the government of the Town is at full strength. Councilor Davis felt that Ms. Shumchenia will do a great job.

A MOTION WAS MADE BY COUNCILOR HIRST AND SECONDED BY COUNCILOR DAVIS TO APPOINT EMILY SHUMCHENIA FROM ALTERNATE TO FULL TERM MEMBER TO SEPTEMBER 2020 TO FILL THE UNEXPIRED TERM OF THE FULL-TERM VACANCY POSITION ON THE PLANNING BOARD.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

ADJOURNMENT

A MOTION WAS MADE BY COUNCILOR HIRST AND SECONDED BY COUNCILOR THOMPSON TO ADJOURN IN MEMORY OF THOSE PEOPLE WHO HAVE DIED AS A RESULT OF THE COVID-19 CRISIS.

SO VOTED

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Murray

Deputy Town Clerk