TOWN OF HOPKINTON
PLANNING BOARD

Wednesday, October 7, 2020
7 p.m.
Hopkinton Town Hall
1 Town House Road, Hopkinton, RI 02833

CALL TO ORDER:

Chairman Alfred DiOrio called the October 7, 2020 Planning Board meeting to order at 7 p.m.

MEMBERS PRESENT:

The meeting was conducted remotely, so only Chairman DiOrio, Town Planner Jim Lamphere, and Senior Planning Clerk Talia Jalette were present in the Council chamber. Planning Board members Ronald Prellwitz, Emily Shumchenia, Keith Lindelow, and Carolyn Light, Town Council liaison Sharon Davis, Conservation Commission liaison Deb O'Leary, and Planning Board Attorney Sean Clough participated via Zoom.

APPROVAL OF THE MINUTES:

MR. PRELLWITZ MADE A MOTION TO APPROVE THE MINUTES. THIS WAS SECONDED BY MR. LINDELOW.

IN FAVOR: DIORIO, PRELLWITZ, LINDELOW, LIGHT, SHUMCHENIA
ABSTAIN: NONE
OPPOSED: NONE

5-0, MOTION PASSED.

OLD BUSINESS:

Development Plan Review – Photovoltaic Solar Energy System – Revity Energy, LLC. – AP 7 Lots 62, 62A & 63, 15 Frontier Road. Revity Energy, LLC., applicant.

Before the first agenda item was discussed, Mr. DiOrio wanted to remind all assembled that the Board had "a full agenda".

Mr. DiOrio: "So, before we get into the meat of the meeting, I just, uh, would like to remind folks, once again, that, uh, we have a full agenda. We certainly don't want to, uh, limit folks in their comments, but I would ask those that are commenting and offering thoughts to be as concise as possible. Uh, if someone has already made a point, uh, you might just wanna weigh in, and somehow second that idea, without repeating ourselves. Just makes the whole thing flow a little bit, uh, a little bit more smoothly."

Mr. DiOrio then asked Mr. Lamphere to provide a "brief introduction before we get started", and that he wanted to "ensure that the applicant and/or their representatives are on-board and live." Mr. Lamphere then began. He stated that he believed that Steve Cabral, of Crossman Engineering, was on the call, and that he had "approved the development plans for this project with respect to storm water." He continued.

Mr. Lamphere: "At the last meeting, as you recall, our Chairman read into the record a list of proposed conditions to approve this project. Uh, in your packet, I provided you with a, um, a 'red line' version – which is actually in blue – but, a blue line version, provided by the applicant, uh, of the, of their understanding of these conditions that were read, uh, last month, and I concur with their findings. Um, I, this – late this afternoon, I, um, added a few words to that proposed motion, and I sent it out to the Planning Board, um, around five o'clock this afternoon, and I asked, uh, for a volunteer from the Planning Board to, um, read this motion into the record, um, if they were inclined to do so, and, uh, basically, the changes that I made – I made substantive changes – was to number five. I just wanted to clarify the area of no cutting to be that of the one-hundred-foot setback area along Maxson Hill Road. So, I added a few words there. Um, I did speak with the developer about that this afternoon, and they were fine with it, they don't have any issues with defining this specifically. The, the other change that I made is up in, in the top of the motion, and, um, one of, one of the uh, one of the issues with this whole project is that the conditions that were laid forth are not consistent with the plan sets that you've been provided in your packet. For example, the landscape plan is August the 20th, and that includes a berm in the setback area, uh, a fence on top of it, and plantings. It, uh, in addition – the plan set for the project, uh, shows a access road, twenty feet wide, with reinforced turf underneath it, to get to the 'Infiltration B' on the project, so, that, that is also an inconsistency, because if the Planning Board wishes to enforce no cutting of existing vegetation in that one hundred foot setback area, the berm can't go there, the fence can't go there, the pathway can't go there. Um, the only what I see 'em doing it is to slide back the panels, and, uh, and operate outside of that. So, um, if you, if someone would be kind, would be kind enough to read this motion, you will see that, that I conditioned approval. I referenced the, the latest plan sets that you've been provided, and the, the site plan, the last revision that was made to the site plan was on page eight. That was inserted into the, uh, set of site plans. The revision date on that is September 30, 2020, and the landscape plan, again, was August 20, 2020, but I put a caveat in there, is that, um, that approval of those plans are conditional to those plans being amended by the applicant in order to comply with the conditions enumerated, uh, one through twenty-six here, with verification of compliance to be determined by the Town Planner. So, I would, I would check it, to make sure that the plan set that, that actually comes out of this, uh, proceeding tonight does comport with those conditions, uh, such that there's no cutting in the setback area, and, and other things as well, so, with that, I'll, I'll, uh, cease my comment here, and ask if, uh, a Planning Board member would consider reading this, uh, motion to approve into the record."

Mr. Lindelow said that he would read it, unless another Planning Board member was going to. Ms. Light wanted to know if she could ask a question before the motion was read. Mr. Lamphere replied that she could. Ms. Light said that Mr. Lamphere "noted in

the memo here that [he had] not seen a letter of approval of the PSES design from the Fire Marshal, so [she was] looking for some guidance on what that really means." Mr. Lamphere replied that "the Ordinance states that before construction begins, of the PSES, uh, of approval from the Fire Marshal must, must be obtained."

Mr. Lamphere: "So, um, any plan that comes out of this tonight would have to be given to the Fire Marshal for final approval. The Fire Marshal, I believe, has seen this plan in its early stages of development, but the Fire Marshal has declined to, uh, approve anything until the Planning Board approves a plan. Once, once the Planning Board approves a plan, they'll take a look at it, and tweak it if necessary. So, that, that's consistent with the Ordinance, um, that's fine."

Ms. Light asked if that meant that "no shovels will go in the ground until the Fire Marshal submits formal documentation of the approval", and Mr. Lamphere replied that "before the issuance of a building permit, um, the Fire Marshal would have to take a look at it, because, um, when they look at approving a building permit, they run it by the Fire Marshal, and they won't, they won't approve the building permit until the Fire Marshal approves it." Ms. Light thanked Mr. Lamphere for the clarification. Mr. Lamphere then added another point.

Mr. Lamphere: "If I could just mention one other thing, too, and I've talked to the applicant about this. In order to effectuate this plan, uh, the three lots that are a part of this are gonna have to be merged. Uh, if they're not merged, they could not, they could not go forth with this approved plan, because they'd have to meet setbacks for each one of the lots individually. We would – it would call for a redesign of the whole project, and, um, I believe the applicant is prepared to merge the three lots together upon approval of the plan set."

He then asked a Planning Board member to read the conditions, and mentioned that Mr. Lindelow had volunteered. Mr. Lindelow replied in the affirmative, and began to read the motion.

MOTION MADE BY MR. LINDELOW:

AFTER HAVING REVIEWED THE SITE PLANS FOR THE SOLAR ARRAY DEVELOPMENT PROPOSED BY REVITY ENERGY FOR PROPERTY ON FRONTIER ROAD, THE HOPKINTON PLANNING BOARD APPROVES THE SITE PLANS PREPARED BY DIPRETE ENGINEERING, AS LAST REVISED ON SEPTEMBER 30TH, 2020, INCLUSIVE OF A LANDSCAPE PLAN, PREPARED BY JOHN C. CARTER AND COMPANY, INC., AS LAST REVISED ON AUGUST 20TH, 2020, AND ALONG WITH THE ASSOCIATED OPERATIONS, MAINTENANCE, AND CONTROL PLANS AND MANAGEMENT REPORTS, CONDITIONAL TO THE AFOREMENTIONED PLANS BEING AMENDED BY THE APPLICANT TO COMPLY WITH THE CONDITIONS ENUMERATED HEREIN, WITH VERIFICATION OF COMPLIANCE TO BE DETERMINED BY THE TOWN PLANNER, FINDING THAT:

THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE TOWN OF HOPKINTON COMPREHENSIVE PLAN, AND/OR HAS SATISFACTORILY ADDRESSED THE ISSUES WHERE THERE MAY BE INCONSISTENCIES;

THE GRANTING OF APPROVAL WILL NOT RESULT IN CONDITIONS INIMICAL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE;

THE GRANTING OF SUCH APPROVAL WILL NOT SUBSTANTIALLY OR PERMANENTLY INJURE THE APPROPRIATE USES OF THE PROPERTY IN THE SURROUNDING AREA OR ZONING DISTRICT;

THERE WILL BE NO SIGNIFICANT ENVIRONMENTAL IMPACTS FROM THE PROPOSED DEVELOPMENT AS SHOWN ON THE FINAL PLAN, WITH ALL REQUIRED CONDITIONS OF APPROVAL; AND

THE PROPOSED DEVELOPMENT HAS ADEQUATE AND PERMANENT ACCESS TO A PUBLIC STREET.

ARTICLE NUMBER ONE: THE APPLICANT SHALL POST FINANCIAL SECURITY IN THE FORM OF AN INTEREST-BEARING ACCOUNT IN THE AMOUNT OF $343,254.85, AS DESCRIBED IN MORE DETAIL IN CROSSMAN'S DECOMMISSIONING ESTIMATE OF JUNE 12TH, WHICH REPRESENTS THE ESTIMATED COST OF REMOVAL IN THE EVENT THE TOWN OR ITS CONTRACTOR MUST REMOVE THE PSES.

NUMBER TWO: THE APPLICANT SHALL CONSTRUCT, OPERATE, AND MAINTAIN THE PSES IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REQUIREMENTS.

NUMBER THREE: REGARDING THE WELL LOCATED ON-SITE, AND SERVICING THE ABUTTING RESTAURANT PROPERTY – IF THE WELL REMAINS ACTIVE ON THE SITE, THE APPLICANT SHALL OBTAIN RHODE ISLAND DEPARTMENT OF HEALTH APPROVAL TO IMPLEMENT THE OVERALL SITE DEVELOPMENT PLAN, APPROVED BY THE HOPKINTON PLANNING BOARD, OR SHALL RELOCATE THE WELL TO ANOTHER LOCATION ACCEPTABLE TO THE DEPARTMENT OF HEALTH. AN AMENDMENT TO THE PLAN FOR PLACEMENT OF PANELS IN THE WELL SETBACK AREA, BASED ON DEPARTMENT OF HEALTH APPROVAL, OR WELL INACTIVITY OR RELOCATION OF THE WELL WILL BE TREATED AS A MINOR CHANGE.

NUMBER FOUR: THE APPLICANT WILL ADHERE TO ALL SETBACKS AS INDICATED ON THE APPROVED PLAN.

NUMBER FIVE: THE EXISTING VEGETATION WITHIN THE HUNDRED FEET SETBACK AREA ALONG MAXSON HILL ROAD WILL REMAIN IN PLACE AND BE SUPPLEMENTED WITH ADDITIONAL PLANTING OF EVERGREEN TREES OF A MINIMUM OF SIX FEET OF HEIGHT AT THE TIME OF PLANTING, AS SET FORTH IN THE APPROVED LANDSCAPING PLAN.

NUMBER SIX: THE APPLICANT SHALL COMPLY WITH ALL APPLICABLE RESPONSIBILITIES AND OBLIGATIONS OF THE HOPKINTON ZONING ORDINANCE, INCLUDING, BUT NOT LIMITED TO CHAPTER 246 ENTITLED "NONRESIDENTIAL PHOTOVOLTAIC SOLAR ENERGY SYSTEMS ORDINANCE", ADOPTED JANUARY 22ND, 2019.

NUMBER SEVEN: THE PROPOSED PSES SHALL BE DESIGNED AND CONSTRUCTED IN ACCORDANCE WILL ALL APPLICABLE FIRE CODES AS SUCH MAY BE INTERPRETED BY THE FIRE MARSHAL. THE CONSTRUCTION OF ANY PSES WILL NOT BE ALLOWED UNTIL THE DESIGN HAS BEEN APPROVED BY THE FIRE MARSHAL.

NUMBER EIGHT: THE ESTABLISHMENT OF THE PROPOSED PSES WILL NOT PREVENT THE NORMAL AND ORDERLY USE, DEVELOPMENT, OR IMPROVEMENT OF THE ADJACENT PROPERTY FOR USES PERMITTED IN THE DISTRICT.

NUMBER NINE: THE APPLICANT AND/OR CURRENT PROJECT OWNER SHALL AVOID ANY DISRUPTION, INTERFERENCE WITH, OR LOSS OF RADIO, TELEPHONE, TELEVISION OR SIMILAR SIGNALS AND SHALL MITIGATE ANY SUCH HARM CAUSED BY THE PSES.

NUMBER TEN: ALL REASONABLE PRECAUTIONS MUST BE TAKEN TO PROTECT NEIGHBORING PROPERTIES FROM EXPOSURE TO ANY RADIATION PRODUCED AS A RESULT OF THE PSES, INCLUDING, BUT NOT LIMITED TO, HIGH LEVELS OF RADIO FREQUENCY, ELECTROMAGNETIC RADIATION.

NUMBER ELEVEN: SOUND EMITTED BY THE PSES WILL NOT EXCEED FORTY DECIBELS, AS MEASURED AT THE PROPERTY LINE. THE APPLICANT HAS INDICATED THAT MITIGATION MEASURES MAY BE REQUIRED TO MEET THIS REQUIREMENT. WITHIN NINETY DAYS OF THE SOLAR FARM BECOMING OPERATIONAL, THE APPLICANT AND/OR CURRENT PROJECT OWNER WILL CONDUCT A POST-CONSTRUCTION ENVIRONMENTAL NOISE ASSESSMENT TO DETERMINE IF MITIGATION IS NECESSARY, AND TO VERIFY THAT SOUND EMITTED BY THE PSES SHALL NOT EXCEED FORTY DECIBELS AS MEASURED AT THE PROPERTY LINE. THE TOWN SHALL SELECT INDEPENDENT ENGINEERS TO REVIEW THE POST-CONSTRUCTION ENVIRONMENTAL NOISE ASSESSMENT FOR COMPLETENESS AND

ACCURACY AT THE APPLICANT'S, AND/OR CURRENT PROJECT OWNER'S, EXPENSE.

NUMBER TWELVE: NO BLASTING WILL BE CONDUCTED ON THE PARCEL IN CONJUNCTION WITH ANY ACITIVITY RELATED TO THE CONSTRUCTION OF A PSES, INCLUDING LAND PREPARATION.

NUMBER THIRTEEN: THE PSES AND EQUIPMENT SHALL NOT HAVE SIGNIFICANT ADVERSE IMPACT UPON THE SOILS, WATER RESOURCES, AIR QUALITY, OR OTHER NATURAL RESOURCES OF THE LAND OR SURROUNDING AREA.

NUMBER FOURTEEN: ALL APPURTENANT STRUCTURES AND EQUIPMENT SHALL BE SCREENED FROM VIEW BY VEGETATION, AND JOINED OR CLUSTERED TO AVOID ADVERSE VISUAL IMPACTS TO ANY ADJACENT PROPERTY THAT IS RESIDENTIALLY ZONED, AND/OR USED FOR RESIDENTIAL PURPOSES. THE VISUAL SCREEN SHALL BE MAINTAINED IN A MANNER CONSISTENT WITH THE ORIGINAL APPROVAL AND APPROVED LANDSCAPE PLAN, THAT REASONABLY AND EFFECTIVELY SHIELDS THE PROJECT UNTIL THE PSES IS DECOMMISSIONED. THE OWNER OF THE PSES, AND ANY SUCCESSORS SHALL MAINTAIN THE SCREEN AND UNDERSTORY COVER. IN THE EVENT THAT THE SCREENING IS NOT CONSTRUCTED OR MAINTAINED CONSISTENT WITH THE APPROVED LANDSCAPING PLAN, THE TOWN MAY CONTRACT WITH A REGISTERED LANDSCAPE ARCHITECT, CURRENTLY LICENSED AND AUTHORIZED TO PRACTICE IN THE STATE OF RHODE ISLAND, AND AT THE APPLICANT'S, OR CURRENT PROJECT OWNER'S EXPENSE, TO REVIEW SAID SCREENING AND TO RECOMMEND SOLUTIONS TO RECTIFY THE INADEQUACY AND/OR FAILURE. UPON NOTIFICATION, THE APPLICANT AND/OR CURRENT PROJECT OWNER SHALL PROMPTLY WORK WITH THE REGISTERED LANDSCAPE ARCHITECT TO ENSURE SCREENING IS CONSISTENT WITH THE APPROVED LANDSCAPING PLAN.

NUMBER FIFTEEN: ANY EQUIPMENT THAT UTILIZES FLUID SHALL BE OUTFITTED WITH A CONTAINMENT MECHANISM SUFFICIENT TO CONTAIN AT LEAST ONE HUNDRED AND TWENTY-FIVE PERCENT OF SAID FLUID, AND WHICH PREVENTS SAID FLUID CONTACT WITH THE GROUND.

NUMBER SIXTEEN: THROUGHOUT THE LIFE OF THE PROJECT, THE OWNER OF THE PSES WILL PROVIDE COPIES OF ALL CORRESPONDENCE WITH FEDERAL AND STATE AGENCIES, PERTAINING TO PROJECT PERMITS AND REGULATORY REQUIREMENTS.

NUMBER SEVENTEEN: THE APPLICANT, AND/OR CURRENT PROJECT OWNER SHALL SUBMIT AN AS-BUILT PLAN, PREPARED, STAMPED, AND SIGNED BY A REGISTERED PROFESSIONAL LAND SURVEYOR, LICENSED

AND CURRENTLY AUTHORIZED TO PRACTICE IN THE STATE OF RHODE ISLAND, SHOWING THE ACTUAL LOCATION OF ANY INSTALLED SOLAR ENERGY EQUIPMENT. IF THE EQUIPMENT IS NOT INSTALLED AS PERMITTED, THE TOWN MAY ORDER ITS REMOVAL AND/OR ITS RELOCATION AS APPROPRIATE.

NUMBER EIGHTEEN: THE APPLICANT AND/OR CURRENT PROJECT OWNER SHALL MAINTAIN THE PSES IN A NEAT, CLEAN, OPERABLE CONDITION AT ALL TIMES, ENSURING THE STRUCTURAL AND TECHNICAL INTEGRITY OF THE FACILITY. ALL MAINTENANCE SHALL BE PERFORMED IN A TIMELY MANNER. MAINTENANCE SHALL INCLUDE, BUT NOT BE LIMITED TO, STRUCTURAL REPAIRS AND INTEGRITY OF SECURITY MEASURES, FENCING, AND VEGETATIVE BUFFERS.

NUMBER NINETEEN: SITE ACCESS SHALL BE MAINTAINED TO A LEVEL ACCEPTABLE TO THE FIRE CHIEF OR FIRE MARSHAL AND EMERGENCY MEDICAL SERVICES.

NUMBER TWENTY: THE APPLICANT AND/OR CURRENT PROJECT OWNER SHALL BE RESPONSIBLE FOR THE COST OF MAINTAINING THE PSES AND ANY ACCESS ROAD, UNLESS ADAPTED AS A PUBLIC WAY, AND SHALL BEAR THE COST OF REPAIRING ANY DAMAGE OCCURING AS A RESULT OF OPERATION AND CONSTRUCTION.

NUMBER TWENTY-ONE: THE TOWN'S ENGINEER OR DESIGNEE SHALL INSPECT THE PSES AT THE EXPENSE OF THE APPLICANT AND/OR CURRENT OWNER ON A WEEKLY BASIS DURING CONSTRUCTION, AND DURING THE MONTH OF APRIL EACH YEAR AFTER COMPLETION OF THE CONSTRUCTION. SAID INSPECTION WILL INCLUDE A REVIEW OF ANY AND ALL REPORTS AS REQUIRED BY THE STATE OF RHODE ISLAND AND THE TOWN OF HOPKINTON AND THE FEDERAL GOVERNMENT. THE APPLICANT AND/OR CURRENT PROJECT OWNER SHALL REIMBURSE THE TOWN FOR ANY COST INCURRED AS SPECIFIED IN THE STORM WATER FACILITY MAINTENANCE AGREEMENT.

NUMBER TWENTY-TWO: AT ANY TIME DURING THE PROJECT CONSTRUCTION, THE BUILDING/ZONING OFFICIAL AND TOWN ENGINEERING CONSULTANT MAY INSPECT THE PSES TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THE PSES ORDINANCE.

NUMBER TWENTY-THREE: THE FINAL DESIGN OF THE CONTAINMENT MECHANISM FOR ANY EQUIPMENT THAT UTILIZES FLUID, DESIGNED TO CONTAIN AT LEAST ONE HUNDRED AND TWENTY-FIVE (125) PERCENT OF SAID FLUID WILL BE INCLUDED IN THE APPLICATION FOR THE BUILDING PERMIT BY THE APPLICANT AND/OR CURRENT PROJECT OWNER. SUCH PLANS MUST BE PREPARED, STAMPED AND SIGNED BY A REGISTERED,

PROFESSIONAL ENGINEER, LICENSED AND CURRENTLY AUTHORIZED TO PRACTICE IN THE STATE OF RHODE ISLAND. THE APPLICANT AND/OR CURRENT PROJECT OWNER WERE FORMALLY AGREED TO IMPLEMENT THOSE CONTAINMENT MECHANISMS DURING PROJECT CONSTRUCTION.

NUMBER TWENTY-FOUR: EQUIPMENT PADS THAT HOUSE EQUIPMENT THAT UTILIZE FLUID ARE TO BE SEALED USING MATERIAL THAT IS CHEMICALLY COMPATIBLE WITH THE FLUID UTILIZED IN THE EQUIPMENT.

NUMBER TWENTY-FIVE: THE APPLICANT SHALL PROVIDE TO THE TOWN PLANNER SPECIFICATIONS AND INFORMATION RELATED TO THE MAINTENANCE SCHEDULE OF TRANSFORMERS USED ON SITE.

NUMBER TWENTY-SIX: ALL SITE WORK SHALL BE PERFORMED MONDAY THROUGH FRIDAY, BETWEEN THE HOURS OF EIGHT A.M. AND 5 P.M., EASTERN STANDARD TIME.

THE MOTION WAS SECONDED BY MR. PRELLWITZ.

Mr. DiOrio asked if there was any further discussion. Mr. Lindelow joked that Mr. Prellwitz would have to read the conditions again as a second. Ms. Jalette advised Mr. DiOrio that the applicant wanted to weigh in. Mr. DiOrio said that he would "entertain a brief comment, but [that the Board was] right in the middle of administrative efforts."

Attorney Kerin Browning, representing the applicant, spoke before the Board.

Ms. Browning: "For purposes of the record, uh, the applicant, uh, objects, uh, to any amendment to the plans. Uh, the evidence presented to date supports that the plans are consistent with the Town's requirements, and the Board does not have the authority to restrict cutting, uh, in this way. In addition, we renew our objection to conditions number five and twenty-six. As to condition twenty-six, regarding construction restrictions, uh, there was an e-mail exchange with your Solicitor's office, which we have requested be made part of the record, um, for purposes of the record. I will summarize that objection briefly. It is our opinion that there's no authority in the DPR [Development Plan Review] Ordinance or the Solar Ordinance to conditionally restrict site work for other construction activities, especially in light of the fact that there's been no evidence to support such limitations, and this is a manufacturing zoned parcel. This we believe is a substantial infringement on the applicant's rights, and their ability to conform with the one-year, two-year time constraint on construction activities, which is contained in your DPR Ordinance. According to the DPR Ordinance, the Council allowed two years to complete construction. This condition, by the Planning Board would reduce that timeframe by twenty-six percent, or 6.7 months. If the Council wanted to restrict weekends, they would have done that. Our opinion, that the Planning Board does not have the authority to further restrict construction or site work activities in this way. Respectfully, we ask if this condition is going to be approved, a six-month extension should be given on the two-year

deadline for construction in the DPR Ordinance. I also see that Ralph Palumbo would like to comment?"
Mr. DiOrio: "Okay, wait a minute, so, you've had an opportunity – this would have been a wonderful idea to raise prior to this activity. Uh, unfortunately, this is not the time or the place to be doing that kind of thing, so, you've had your opportunity. You've had your opportunity; you've had your-"
Mr. Browning: "Our hand was raised! Our hand was raised from the beginning of this, from the beginning of this matter, to make these comments on the record, in order to preserve the record, and we were not – we tried to unmute, and we were not allowed to do that."
Mr. DiOrio: "If you've had the opportunity to comment, your comments are duly noted, and I'm going to return to the administrative efforts. So, Planning Board members, there's been a motion, there's been a second. There was no further discussion with regards to the members, so I'm going to call for a vote on the motion. So, here we go."

IN FAVOR: DIORIO, PRELLWITZ, LIGHT
ABSTAIN: NONE
OPPOSED: LINDELOW, SHUMCHENIA

MOTION PASSED, 3-2.

Mr. DiOrio asked for a "recap of that" vote. Ms. Jalette explained that he was a yes, Ms. Light was a yes, and Mr. Prellwitz who was a yes, while Mr. Lindelow and Ms. Shumchenia voted no. Mr. DiOrio thanked "all for [their] efforts", and indicated that it was "time to move on."

Master Plan – Public Informational Meeting - Major Land Development Project – <u>Stone Ridge at</u> Hopkinton – AP 11, Lot 47A, Palmer Circle. RI-95, LLC., applicant.

Mr. DiOrio said that before the Board began to delve into this agenda item, he wanted to "be clear on the public informational meeting". He then read the tenets of the public informational meeting aloud "so that folks who are listening in and plan to participate can be clear on what we're hoping to, what our objective is this evening".

Mr. DiOrio: "So, an informational meeting – 'at the public informational meeting, the applicant shall present the proposed development project for the benefit of the Planning Board and the public. The Planning Board shall allow oral and written comments from the general public. All public comments shall be made part of the public record of the project application.' So, this is not a public hearing – it's a public informational meeting. I would also suggest that folks also have the alternative, should they not have the opportunity to be heard this evening, to e-mail their comments or concerns directly to the Town Planner, and he will pass them along to the applicant. Our objective is to get all concerns out onto the table this evening, so that the applicant has the benefit of hearing them. This is not an invitation to delve into the specifics and details of those concerns. There'll be another place in time for that opportunity, but, simply, the opportunity now to raise the concerns to the applicant, so that they're part of the record. So, hopefully, we're

clear on all that. I would ask Jim to just give us a brief overview of what we're looking at this evening, and then we'll go right to the applicant."
Mr. Lamphere said that he thought that Mr. DiOrio had "summed up a little bit of what [he] wanted to say", but he had spoken with the applicant, as well as "some people, um, in opposition to this application today". He had advised the former, who had three experts that they wanted to present, that "each of them sum up their remarks into five minute, five minutes each, so that we can get to public comments."

Mr. Lamphere: "Really, at this juncture here, before, um, any peer review, uh, might be conducted, if the Planning Board so orders that tonight, I would like to hear as much comment from the public on the particulars of these plans, so that the applicant knows what the concerns are of the various parties, and they can have much more time to address them. So, um, you know, with that said, I know the Conservation Commission has, uh, some comments, uh, that they'd like to, um, have the applicant address. I have an e-mail from, uh, the Chairman, Harvey Buford, which I will forward to, um, the Planning Board – excuse me – and also the applicant as well, so they can, uh, they can tend to these, uh, concerns. But, I'd like to hear from everyone, um, so that we can have an effective meeting. Again, there'll be – this application will be coming back to the Planning Board a number of times before the Master Plan is approved. There's a lot to look at, here, and the public will have additional, uh, opportunities to weigh in on this, but, for now, I'd like to hear exactly what concerns you have with the, with the features on the plan that's been developed. Thank you."

Mr. DiOrio said that he would like to go "right to the applicant", and asked "the first party to step up and give us their presentation." Ms. Jalette directed the representatives for the applicant to press *9 so they could be identified. The applicant's representatives had some difficulty with these directives. Sergio Cherenzia, the president and principal of Cherenzia & Associates, located at 99 Mechanic Street, Pawcatuck, CT, and an engineer for the project, stated that William "Bill" Landry had planned to speak before the Board, but he was having some difficultly accessing and participating in the meeting. Mr. Cherenzia said that, "in the interest of time", he would "be happy to, uh, to start", unless the Board wanted "to give it a few minutes." Ms. Jalette told Mr. Cherenzia that he could "just go ahead". Mr. DiOrio concurred. Mr. Cherenzia said that Mr. Landry could "fill in" where he left off, and began to present the project.

Mr. Cherenzia began by stating the location of his firm, as well as his certifications. He said that the "plans and the application was prepared under [his] direction and [his] responsible charge."

Mr. Cherenzia: "The reason we're here this evening, in front of you, as mentioned, was for a Master Plan submittal on behalf of the applicant, RI-95, LLC, Stone Ridge at Hopkinton. The site, uh, is located, um, as, at Tax Assessor's [Plat] 11, Lot 37A, off of Palmer Circle. The lot is approximately two-hundred-and-fifty-two acres. It was previously permitted under the Brae Bern Country Club in 1993 – part of an eighteen-hole golf course with a clubhouse, and, uh, currently, uh, we are seeking a permit for a, um, a solar facility. So, the, uh, the current site, under the existing conditions, is generally

an undeveloped, wooded lot, um, has some overgrown gravel areas, a small pond on the east side of the lot. The pond appears to be constructed of an irrigation reservoir, as part of the previously permitted project. Grades on the property generally slope in the westerly, northerly – northerly, and easterly directions, from high point near the center of the lot, and that slope on the lot range from between two and twenty percent. The property is abutted, uh, by undeveloped lots to the north, west, and south, residential lots to the east and southeast, and farmland to the northeast. Palmer Circle provides access to the site towards the east. Um, I'm not going to get into a lot of detail with respect to the types of soils. It varies widely across the site, um, and the lot is – a majority of it is located in a FEMA Zone X, which is an area that is not of a flood hazard, and a small portion of it in Zone AE, with a base flood elevation of seventy-five. Um, a small portion of the lot, in the proximity of the Canonchet Brook, um, is, is where that zone, uh, is, is located. Um, there's multiple wetland complexes on the site as, as indicated by our site map, and survey. Uh, the wetlands were flagged by Natural Resource Services, and Ed Avizinis is on the call this evening, if there are any questions regarding the wetlands. Um, with respect to, uh, storm water, there is the, uh, project will discharge to the Canonchet Brook and its tributaries, uh, to the east, and Tomaquag Brook and its tributaries to the west. Uh, the State of Rhode Island, uh, 2016 Impaired Waters, the report does identify Canonchet Brook as having impairments for cadmium, copper, lead, and naturococcus, and TMDL [Total Maximum Daily Load] for enterococcus, and the Tomaquag Brook having impairment for TMDL and for enterococcus. Um, historically, the, the site does have a cemetery, which has been identified on the survey, known as the Worden Lot – historical reference numbers it HP043. There are a series of stone walls and existing trails on the property. Um, it's not within a natural heritage area, a scenic road corridor, or a state-designated scenic area. Uh, there are no biking or bridle paths within or on the adjacent property, no play fields, playgrounds, or other recreational resources there. The Narragansett Trail is one of the trail features, as identified on the 2001 USGS [United States Geological Survey] Map. Uh, the proposed site condition, uh, is a proposed solar facility, consisting of approximately 102.6 acres – that is the area of the fenced, the fenced in area, uh, of the solar array, and, in addition to fifty-thousand square foot warehouse building. The building will have parking, utilities, well, on-site wastewater treatment system, and storm water management area, um, and the, the site will be developed with appropriate storm water management areas, as identified on the site development plan. We've approximated the sizes and locations of those areas, in order to meet the storm water requirements, uh, for the State of Rhode Island. Um, we will require an on-site waste water treatment system, as far as the State permitting goes, as well as Rhode Island Freshwater Wetlands permit, and a Rhode Island Pollution Discharge Elimination System, or RIPDES, permit, um, for the site, um, given we are over one acre of disturbance. Uh, we will have to address construction phasing, groundwater and soil investigations, and storm water and septic when we get to the Preliminary phase of permitting. Um, I will leave architectural – excuse me – landscape architecture to, uh, the other project team member, Ashley, uh, and, uh, just lastly, the uh, the traffic for, for a facility like this is very minimal, and does not, would not pose an adverse impact. Um, I don't know if I kept it to five minutes, but I think that's all I have for my presentation. I could defer over to Ashley unless Bill Landry is on."

Ashley Iannuccilli, a principal and owner of Traverse Landscape Architects, located in Providence, Rhode Island, spoke before the Board after Mr. Cherenzia. She stated that she had "prepared these site plans, along with members in [her] office." She explained that Traverse had been brought on-board to "look at the existing vegetated condition, as well as any sort of sight lines and revegetation required."

Ms. Iannuccilli: "We provided multiple site visits, in which we inventoried the different species on site, specifically the native species, like bayberry, high bush blueberry, grey birch, eastern oak species, and scotts pine and white pine. Um, using that information, we also started looking at view corridors and sight lines, which is evident in the plans that we've provided."

At this interval, Mr. Cherenzia interrupted Ms. Iannuccilli's testimony to ask for assistance on behalf of Mr. Landry, who was still trying to get into the meeting. Mr. Cherenzia said that he was having some "technical difficulties", and asked if there was a way that "we can help Bill into the meeting". Ms. Jalette responded that he was, in fact, in the meeting, he just had to "press *9, and then I can recognize him". Mr. DiOrio then interjected that he would like to have Ms. Iannuccilli "continue with the presentation, though", as the Board was "knee-deep in it". Ms. Iannuccilli resumed her presentation.

Ms. Iannuccilli: "So, the proposed condition is most evident if you refer to CL 0.1-"

At this time, the court reporter, Sally Brassard, interrupted Ms. Iannuccilli's testimony, as she contended that Ms. Iannuccilli was cutting in and out – likely due to the stormy conditions across the state. Ms. Brassard asked Ms. Iannuccilli to "just slow it down, please". Ms. Iannuccilli began again.

Ms. Iannuccilli: "So, the proposed condition is most evident on Sheet L, 0.1. Uh, there you will note that the location of the proposed solar arrays is fairly remote. It's bordered on the east, west, and most of the north side with wetlands and their associated buffers. Along the south portion of the site, the abutting condition is mostly vegetated forest, which we identified to be mostly birch trees, as well as pine, and the solar arrays have been, and associated fencing, have been located a minimum of about one hundred feet away from all property lines, and the design intent will be to maintain as much of the surrounding, one-hundred-foot buffer as possible, leaving enough space for the installation of a seven-foot perimeter fence around the solar arrays, additional vegetation where required, and access to maintenance. Um, some other notes: you will note on the proposed condition plan, we are showing locations to the closest abutters. The closest abutting structure is six hundred and forty feet away from the project area. This is represented as Section 7. If you refer to Sheet L, 11.1, the next closest is eight hundred and ninety feet, and then eleven hundred feet, respectively. All of those distances are measured from the structures to the project limit of disturbance. Um, so this was part of a study we were doing, to look at the sight lines from abutting properties into the site with the solar arrays there, so, we understand that those, these are the closest structures – this could currently change in the future, so part of our study, and our revegetation plan, was to incorporate the addition of evergreen plantings anywhere we felt like there could be

opportunities for open views in the wintertime. So, along the southern side of the site, beyond the substantial vegetated buffer, which is about one hundred feet that exists, the interior edge of the buffer will be reinforced with the addition of additional evergreen trees, which will provide additional coverage to us into the winter. This can be viewed on Sheets L, 10.3, and L, 10.4. These trees are comprised of native species, *Pinus strobus* [the scientific name for eastern white pine], *Abies concolor* [the scientific name for white fir], *Juniperus virginiana* [the scientific name for eastern red cedar], and *Thuja plicata* [the scientific name for western red cedar]. These trees will be installed in a row, or staggered, to create the greatest visual buffer possible, and all trees will be installed at a minimum height of seven to eight feet, um, and their mature height will range from twenty to sixty feet. So, along with any revegetation planting, which is evident in all the planting plans, we also looked at replanting the bio-retention areas, which would be proposed to be planting with native seed mixes, and then areas of greater disturbance, we will also be incorporating more pioneer species, like virgin junipers. Uh, that concludes the landscape presentation, and I will turn it over to Bill Landry."

Mr. Cherenzia then asked if Mr. Landry had entered the meeting yet. Ms. Jalette told Mr. Cherenzia that he was not, and directed him to communicate to Mr. Landry that he had to call in, press *9, and then, when he was given the directive to unmute, he would press *6. She said that she had tried to unmute Mr. Landry at least three times over the course of the previous presentations. Mr. Cherenzia said that Mr. Landry claimed that he tried to do the same. Ms. Jalette replied that if Mr. Landry wanted to speak, he would have to follow those directives again. Mr. Landry was finally able to join the call. He said that he heard that Ms. Iannuccilli was halfway through her presentation, and that he would have her complete it. Mr. DiOrio responded that Ms. Iannuccilli had, in fact, completed her presentation. Mr. Landry then began.

He apologized for how "disjointed" the presentation had been, but that the applicant and their representatives had been "trying to respect, uh, tonight, the, the Board's, uh, stated intention", which was to "leave ample time for the public to have input". He said that "for all of the solar projects that the Board has had, many of them controversial, and many of them with good cause controversial, this one really stands apart because we're dealing, not with a residential zone that's seeking to be rezoned to a commercial zone, but, but a zone that starts off as a commercial zone, in which solar is a permitted, uh, by-right use, and although there are some, uh, detractors that, that insist on, uh, raising that issue over and over again. The fact that we're dealing here, with a permitted use, has been resolved dispositively, not once, but four times, by the Zoning and Planning officials of the City, and, and, the, the, the Solicitors – once back in 2011, uh, when Mr. [Roy] Dubs was doing the very same thing, with a portion of this project, uh, relying on the 1990 zoning amendments, uh, that, that, uh, and it was determined that he could proceed as a matter of right, with a solar project, without further amendment than the amendments that had already been made. Again, 2011, the same determination in writing, unappealed by the Building Official, Mr. [Brad] Ward, uh, 2019, involving my client, in this project, determination by Sherri Desjardins, the Zoning Officer, and more recently, in 2020, the current, uh, Solicitor's, affirming the same, uh, result, that had been, uh, affirmed before – that a solar use, by itself, under the PSES Ordinance, or, in combination with another,

permitted use, under the regular Table of Uses, applicable to the commercial zone, uh, as amended by the 1990, uh, amendment, is a use permitted by-right. Now, that doesn't mean that the use evades, uh, Planning Board review, and that's why we're here, and because we're featuring not just a solar facility, but also a warehouse building, we're dealing with two different uses on a, on a two hundred and fifty-two-acre tract, and, therefore, are regarded as a Major Land Development project, and we're pursuing, tonight, the Master Plan, or conceptual stage of review, and I, I just want to let the members of the public know that the engineering issues have not been all fully resolved, because in a Major Land Development project, we begin with a concept stage, and then proceed to hard engineering, so, this project's going to be reviewed by Crossman at the Master Plan stage, and the concept, storm water management program, and other issues that Sergio, uh, made reference to will be, will be vetted, and then it'll come, come back for a public hearing at the Preliminary Plan state. That's not, and so, that – the engineering details are not fully resolved, not because we don't want to resolve them, and not because we can't resolve them, but because we're not at that stage of review, where all of those issues are definitively dealt with, and there's a reason why it's set up that way, and, and, that's the, the process that we're, uh, pursuing, so, that's all I had to add, from a legal perspective, to what Sergio has contributed from an engineering perspective, and what Ashley Iannuccilli has, uh, contributed from a planning and landscape concept, her focus, of course, being on, uh, buffering the, the very few existing residential exposure areas – the residents are very far away, and, also, potential future residential development, so, having said that, Mr. Chair, I will, as we've been requested to do, uh, yield, at this time, uh, with interest, in favor of, uh, the public having an opportunity to express their comments on our Master Plan."

Mr. DiOrio thanked Mr. Landry for this testimony, and suggested that Planning Board members "chime in first, again, appreciating that, uh, there's probably significant public interest here, so we want to allocate adequate time for them", while being cognizant of "want[ing] to get everybody's concerns out onto the table".

Mr. DiOrio: "So, Planning Board members, why don't you start off, uh, keep your comments as succinct as possible, and let's go."
Mr. Prellwitz: "Ron here. I think I'll hold my comments and ideas and concerns until after we hear what the public has to say."
Mr. DiOrio: "Okay. Very good."

Mr. DiOrio then asked if any other Planning Board members wanted to weigh in. Mr. Lindelow said that he agreed with Mr. Prellwitz, and that he was going to do the same – "defer to the public opinion and comments" before making his known. Ms. Light said that she was "not going to defer", and began asking questions.

Ms. Light: "My thoughts, or my questions, would be going forward, and I don't expect an answer here, is – we're gonna want to know, specifically, what type of warehousing is gonna be done in this fifty-thousand-square-foot building. Um, is this general warehousing, or is it chemical storage. Um, I'd like to get closer to that, because it's a big project to undertake without knowing why you're doing it. Um, another comment that I

would have going forward is that our landscape information, the next time we get together, include, uh, a general idea of how many acres of clear cutting is gonna be done. What's the quantity of trees per acre? And, the last comment that I would make would be regard to, regards to the Narragansett Trail going through there. Uh, conceptually, what we're looking at doesn't acknowledge any of that, um, and it draws me further into the original conditions set by the Council, that, uh, they were hoping to maintain forty percent of open space, and, um, I'd like to know how close we can get to that. That's all I have, and I don't expect any, any answers to anything, but, those are my thoughts. Thank you."

Mr. DiOrio thanked Ms. Light for her comments, and then asked Ms. Shumchenia if she had any comments. Ms. Shumchenia responded that Ms. Light had "raised most of the items [she] was interested in raising as well", and that she was "eager to get to the part when we hear from the public". Mr. DiOrio thanked Ms. Shumchenia for her comments, and said that his only comments "focus, uh, primarily on the trail system associated with the project."

Mr. DiOrio: "You know, I'm, I'm looking for, uh, you know, not only, uh, respect for the trail system itself, but for adequate buffering from that trail system, so that folks traversing that system can still continue to enjoy the, uh, the ambiance of the trail. So, again, I don't need to delve into it – that's my concern, and with that, I would be willing to go to the public right now."

Ms. Jalette told Mr. DiOrio that Deb O'Leary, the Conservation Commission liaison, was interested in weighing in. Ms. O'Leary said that she concurred with Mr. DiOrio, Ms. Light, and Ms. Shumchenia "about the trails, [and] the trail system". She said that it was "not even thought of on this, except for a little dotted line". She said that there were "some historical features on this, on this land as well", and that "most of them seem to be in the area of the cemetery". She said that "we'd like to preserve as much as a historical character as possible." Mr. DiOrio thanked Ms. O'Leary for her comments, and then asked the Board if they could "go to the public" for their comments. He reiterated that it was a "public informational meeting, not a public hearing."

The first member of the public to speak was Corey Mott, the secretary of the Narragansett Trail Restoration Project Committee, which is part of the Narragansett Chapter of the Appalachian Mountain Club (AMC). He said that although the headquarters for the AMC are in Boston, "we are local people in the community, and we're working to restore the trail." He explained that the group had "already restored it at Black Farm Management Area", and that they were working on the Canonchet Preserve property as well. He said that the trail in question "is represented on the map in the plans, as Narragansett Trail", and that he and his group were "requesting permission to walk and flag the trail so that the developers are aware of its location".

Mr. Mott: "We'd be happy to do that, to help them out. We really would like to preserve the trail where it is located on the property, uh, but if that's not an option, obviously, because it's a solar farm, then, that we come to some, uh, consideration of some

reasonable alternatives, so that the trail can still stay in that general area. Uh, that's – I just wanted to share that."

Mr. DiOrio thanked Mr. Mott for his comments. The next person to call in was Peter Skwirz, an attorney from the firm of Ursillo, Teitz, and Ritch, located in Providence, Rhode Island. He said that he was appearing on behalf of Dr. Thomas Sculco and his wife, Cynthia, who own Plat 11, Lot 44, which is a residentially zoned property that directly abuts the proposed project area. Joining Mr. Skwirz was Peter Friedrichs, a "professional planner" who was in attendance "to present expert testimony as a planner". Mr. Skwirz then asked if he could begin by presenting his argument to the Board, and then later introduce Mr. Friedrichs' testimony.

Mr. Skwirz began by referring to the Pre-Application stage as the Preliminary Plan stage[1], before referencing the opinion provided by the Town's Solicitor, which he said that he "respectful[ly], uh, but vigorous[ly]" disagreed with. He said that did not believe that solar was a permitted use, by-right, on the parcel in question. He said that Mr. Landry "has cited that, uh, there's been previous, uh, zoning certificates in the past, uh, saying that any commercial use is allowed on this lot", but that he believed that "those, those zoning certificates were wrong". He said that, for the record, he had to voice his disagreement, but he thought that it "sets up the context and the background for why this project is not appropriate for this area". He said that when his argument was complete, he would "transition into Mr. Friedrich's testimony". He said that the Board had "to start off with" understanding that the parcel "is a commercially special, a commercial special zoned property" – not a commercially zoned property. He referenced the July 2nd, 1990 Town Council decision, which "rezoned this property to allow for one specific project" – Brae Bern. He said that when the Council rezoned the parcel in question, "they made ten findings of fact, uh, and all those findings of facts that were consistent with the Comp[rehensive] Plan were specific to that project". He then referenced the eleventh paragraph of the Town Council's 1990 decision, because he thought that "once you read the language, it's unavoidable." He said that "in the other paragraphs, it says 'This application is granted, subject to the following restrictions', and then set out a number of restrictions, and, in subparagraph C, it says, and I quote, 'The maximum number of structures, and the uses in this zone, permitted in connection with this project shall be as proposed', and it lists a number of uses – none of which are solar." Mr. Skwirz said that the "clear takeaway from this is – the unavoidable takeaway is – that this project was rezoned" for "one specific project", not "for any commercial project that might come down the pike." He said that "if you set out a list of permitted uses, you need to stick to the list". He said that "this would be no different than if [he] was given a list, a grocery list, by my wife, and she sent me to the store to buy milk, bread, and eggs, and I came back with a large, meat lover's, deep dish pizza, and I said, 'Well, you know what? It's food.' That, that doesn't – that defies common sense, because when you're given a list of permitted uses, or permitted anything, you need to stick to the list". He said that "the idea that you can put solar onto this project, uh, when there's a specific list of uses that are

[1] The Major Land Development process, per the Land Development and Subdivision Regulations within the Town of Hopkinton, RI: Pre-Application/Conceptual Review, Master Plan, Preliminary Plan, and Final Plan.

allowed, it just does not fly". He referred to the resulting effects as a "bait and switch", as the parcel was rezoned "with one use contemplated, and, instead, a developer is looking to developer with a completely different use". He said that the "interpretation to get to that completely defies one of the cardinal rules of zoning, which is restrictions applied to the land, so those restrictions, of that list, applies to the land. It doesn't apply to a developer, so these restrictions didn't just apply to the Brae Bern project – they apply to the land." He said that if it was "accepted that this commercially special zoned property can be used for any commercial use, I think that's a dangerous precedent to set, especially since a number of properties, in recent years, have been rezoned from residential to commercials, with the understanding that the only permitted use would be solar". He said that such a precedent could allow parcels that had been rezoned to accommodate solar arrays could then be used for "other types of uses" – meaning "any commercial use". He asked the Board to "be careful with, with that." He then said that he wanted to introduce Mr. Friedrichs, so he could provide testimony "uh, to, why, um, uh, this, uh, issue is not consistent with the Comprehensive Plan." He said that before that was to happen, he wanted to take the opportunity to "list off a number of issues why" the application appeared to be incomplete. He then began to read from sections of the Solar Ordinance. He said that a letter from the Fire Marshal was required, and, as he had not seen it online, he considered it to be a "missing item". He also said that a noise study, as well as an environmental impact statement, soil erosion, sediment control plans, and storm water management plans had to be completed as part of the application. He also stated that an operation and maintenance plan was required, as well as a decommissioning estimate. Mr. Skwirz concluded by stating that he thought that it was not "in order" for the Board to vote on the project in the first place. He said that the Board would have to elect to combine the Development Plan Review and the Major Land Development processes upon "reviewing the two applications and making an affirmative finding that the purpose of the Development Plan Review would be served by a combined review".

He began to introduce Mr. Friedrichs, but Mr. DiOrio interjected. He said that he was "delighted to hear from [Mr. Skwirz's] expert", but he wanted to ensure that Mr. Friedrichs would "keep things brief" as this was "not a public hearing". Therefore, the Board was "not taking testimony here", and he was sure that there were "member of the public that want to be heard as well". After a brief delay, Mr. Friedrichs appeared before the Board.

He began by stating that he believed that his resume had been sent to the Planner, but, as he was not sure if it had come to the Board, he gave a brief overview of his past work experience. He said that, since last year, he has been a member of the American Institute of Certified Planners, and that he was presently the City Planner in Newport, Rhode Island. He stated that he has been engaged in planning consulting for ten years, and had been involved in private practice between when he was employed by the City of Central Falls and when he began his employ in Newport. He said that he didn't know how the Board usually handled their public hearings when Mr. DiOrio interjected to correct him, as it was a public informational meeting, and not a public hearing. Mr. Friedrichs continued, and said he wanted to start by explaining to the public what was before the

Board, as he was sure that the Board and the applicant were aware of what was taking place. He said that this was a land development project, which is "a tool in, uh, State zoning law, um, it's, it's really planned development, whereby the permitting authority is able to enter, uh, establish controls over development, and limit that development." He continued, stating that "there's, of course, conditions by which they need to do that", though "this petition that's in front of the Board is the perfect example of where, uh, planned development is a good tool". He said that, as the project was going through the land development process, "it gives the Planning Board a lot of discretion in how it reviews that project appropriately." He then said that he was going to quickly go into the findings that the Board would have to make "before they can, uh, vote on this petition at the Master Plan stage". He then delineated the findings. The first finding Mr. Friedrichs said that the Board had to make was that the project would be consistent with the Comprehensive Plan, which he thought was "going to be the hardest, uh, finding for the Board to find affirmatively." He said that the Comprehensive Plan was adopted in 2016, and it was still in effect. While he believed that there were Board members, Town staff, and members of the public who are "more familiar with it" than he is, he was looking at the document "holistically". The Comprehensive Plan highlighted recreation, conservation, and open space goals, which Mr. Friedrichs said "conveys the importance that the community assigns" to those values. He said that the Plan delineated goals, policies, and actions, and that he had "heard Board members reference some of these goals with other, similar petitions" before them. He read the first recreation goal, which is to increase and improve recreational programs, facilities, and access for all of Hopkinton's residents, as well as Goal NR-1, which he read as being "preserve, conserve, and protect the significant natural resources of Hopkinton as an endowment of the, for the future of the Town". He also read Goal HCR-1, which is to "preserve, protect, and maintain the Town's historic, cultural, and archaeological resources so as not to lost the past character of Hopkinton". He said that PSES "are not a focus of the [Comprehensive] Plan", which are "tucked into the public services and facilities chapter". He said that, "having only just recently looked at the Hopkinton Comprehensive Plan, it's not clear to [him] why it was tucked into that chapter", but that that section "focuses on the public consumption by Hopkinton's municipal services of electricity. He referenced policy PSF-17, which encourages "renewable energy projects in the private sector", though he said that "it's not clear what the applicability of that is". He referred to Goal PSF-5 as being "nested", and that "this project that's proposed is, is huge, and, uh, really, a utility scale project". He said that "it seems like what Hopkinton is looking for is more its municipal energy needs, and energy independence rather than service, serving as a regional energy producer for areas with high energy demand, i.e., regional cities". He also referenced policy NR-5, which "talks about energy" in "promot[ing] energy self-sufficiency using renewable energy and energy conservation". He then identified Recommendation 17, under the public services and facilities chapter, which "calls for [the] adopt[ion of] regulations that encourage small-scale renewable energy installations", which he says "is not a thirty-megawatt system".

He then said that he wanted to mention the "context for what's causing solar development" in Hopkinton, though he was sure that the Board was "very familiar" with the "onslaught of solar farm proposals" throughout the region. He attributed this

development to the fact that "land prices are cheap there", and due to what he referred to as a "perverted incentive, put in place by the State of Rhode Island". He said that it has "resulted in the clear cutting of undeveloped land, and in this case, contrary to Hopkinton's Comprehensive Plan". He said that proposals like this are "pure pursuits of profit, where minimal site investment is made, and monotonous fields of solar panels are walled off from the surrounding area". He said that the proposal was on a site "that has unique characteristics that make it extra problematic, namely its ownership history and the Narragansett Trail". He again referenced the "problem" with "the solar incentive", referencing an Office of Energy Resources report, published on August 18th, 2020, which stated that Rhode Island's energy needs could be addressed "through land that has already been developed", and that "there's no need for additional cutting and clearing of land for solar production". He said that he could "share that report with the Board". He posited that "we can assume that the State will be correcting" the incentives moving forward. He said that "hopefully, there won't be proposals like this, and, um, the Board, frankly, won't have to waste its time reviewing proposals that are inconsistent with its Comprehensive Plan."

Mr. Friedrichs then said that he wanted to touch on the other findings that the Board would have to make. He mentioned that Mr. Skwirz had discussed his opinions about the proposal's inconsistencies, particularly in regards to zoning, but that it was the "Board's finding alone to make", though the Board can rely on "all sorts of experts, including its own Solicitor or Zoning officials, but it's the Board that's going to make the determination of whether or not this project is consistent with the Zoning Ordinance". He said he wanted to "call out" that within the PSES Ordinance, "it talks about setbacks from residential zones, and it allows the Planning Board to extend setbacks adjacent to residential zones". He argued that a "one-hundred-foot buffer is insufficient, and that the Planning Board should mandate a larger buffer". He said that a larger buffer would better protect the neighbors, particularly the ones to the south of the property. He mentioned the third finding, which "talks about environmental impacts". He said that the Fire Marshal "should be involved". He also noted that "the intended use of the building is battery storage". He said that "the amount of batteries necessary to provide energy storage for a facility of this size are immense, and they could be perceived as an, to be an area fire hazard". He said that, at minimum, the Board should hear from a fire official in regards to "whether this use can be safely accommodated at this location". He said that finding four had to do with subdivisions, so it was not applicable. Finding five was, according to Mr. Friedrichs, "the only finding that the petition meets", as it "does appear to have sufficient access to a street".

Mr. Friedrichs: "Unfortunately, for the petitioner, they're required, uh, to positively meet all five findings, so the project cannot be approved as requested."

Mr. DiOrio thanked Mr. Friedrichs for his testimony, and then asked if there were members of the public who were wishing to be heard in regards to the proposal. Ms. Jalette indicated that there were. The next person to speak before the Board was Carol Desrosiers. She said that she "just wanted to mention a little bit of how [she] perceive[s] some of the history of this, um, beyond the original Brae Bern proposal." She said that

when the Stone Ridge proposal first appeared before the Board, she had spoken with the Town Planner about what it entailed. The Pre-Application proposal included "a bunch of buildings, you know, potentially an assisted living facility, medical buildings, etcetera, and a small amount of solar". She said that by February 2020, what was presented was "a two hundred and fifteen-acre solar facility, five thirty-thousand gross floor area buildings, and, it was stated in that meeting that solar actually was the primary, and the buildings were secondary."

Ms. Desrosiers: "Now, here we are, with 102.6 acre solar, one fifty-thousand square foot building, and I feel there is actually no assurance that this fifty-thousand square foot building would ever come to fruition, and provide any sort of jobs or other benefits to the Town. Um, I think this really is all about solar as a primary development, which only benefits the landowner and the solar development. Um, so, when we talk about, you know, I think Attorney Landry said it's not just solar, but also this warehouse facility, why can't the warehouse facility be first. Um, additionally, I wanted to mention that something was said about the Tomaquag and Canonchet Brooks would be the discharge area, and I think it needs to be taken into consideration that that is part of the Wood-Pawcatuck Watershed Area, which is a designated, uh, watershed area – national designated watershed area. My final concern is that, here we are, in Hopkinton, with all of our commercial property being threatened to move towards solar, and here we, with a, a piece of property that is designated commercial special that clearly had a specific use in mind, um, that we should not be allowing solar, uh, you know, we're just not gonna have any property left for a true commercial development, outside of solar. Thank you."

Mr. DiOrio thanked Ms. Desrosiers for her comments. The next person who called in was Elaine Calderone, the Hopkinton Representative to the Wood-Pawcatuck Wild and Scenic Rivers Stewardship Council. She said that she "would like to speak for the Canonchet Brook and Tomaquag Brook".

Ms. Calderone: "Hopkinton contains four tributaries that qualified for Wild and Scenic protection, and the Tomaquag Brook and the Canonchet Brook are two of those tributaries. As outlined in Chapter Six of the Wood-Pawcatuck Wild and Scenic Rivers Stewardship Plan, new, alternative energy systems should be carefully sited to minimize any disturbance within the recommended one quarter mile area along these nationally designated water bodies, and storm water plans should assure all residues or sediments are captured, and do not reach the water bodies untreated. The array under discussion appears to be within this buffer area of the Canonchet Brook, and if I understood one of the first speakers, storm water will be discharged to both of these Brooks. Now, the Brooks may look modest, from uh, from the sides of the river, but the wetland area, and those Brooks, are very important. They were important enough to be designated as part of our National Wild and Scenic River System. Canonchet Brook, in particular, has been identified as containing a population of wild brook trout, and that is very rare around here. So, given this unique status, of these two Brooks, if this proposal goes forward, I would like to request the Planning Board and the applicant to take their status under consideration when setting buffers around the Brook's edge, beyond the normal DEM buffer requirements, and to find some way to use two Wild and Scenic Designated

Brooks as not discharge areas, and to address any and all other issues that may negatively impact the Brooks. Thank you for your consideration."

Mr. DiOrio thanked Ms. Calderone for her comments, and asked if there were any additional comments from the public in regards to this proposal. Finding that there were not, at that time, any additional comments, Mr. DiOrio asked Planning Board members "who deferred" what their comments were. Ms. Jalette interjected that a member of the public had raised their hand as Mr. DiOrio made his request, and Mr. DiOrio accommodated their request. The member of the public in question was Harvey Buford, with the Hopkinton Conservation Commission. Mr. Buford requested "that there be a, uh, site visit". Mr. DiOrio thanked Mr. Buford, and said that his request was noted. He then asked to return to Planning Board member input. Mr. Prellwitz was the first Planning Board member to weigh in.

He said that "the question" of the fifty thousand square foot warehousing building was "if it's going to be used for just the batteries for the, for the solar field", or if it would be for "spare parts, or if it's going to be commercially let out". He said that that was something that needed to be addressed, though, in his mind, "the biggest issue right now is the legality of it."

Mr. Prellwitz: "We've heard from some attorneys, that they believe it's not a legal move to put anything there. The actual status of the zoning of that property, in my mind, is in question. I'd like to have more information on that, something definitive, not just someone's opinion, but something that could actually stand up in a court of law, saying 'It's zoned for this', or 'It's zoned for that', or 'It's not zoned for anything', and you have to leave it alone.' That doesn't seem to be really clear. We have two opposing opinions that need clarification. That's it. Thank you."

Mr. DiOrio thanked Mr. Prellwitz for his comments. Ms. Jalette then alerted Mr. DiOrio to the fact that there was another member of the public who was interested in weighing in. Mr. DiOrio replied that he was "in the Planning Board mode right now", and asked that "whoever's out there from the public, please hang fire", as he would get to them after hearing the rest of the comments from the Planning Board. He then asked if any Planning Board members had any comments. When there were not any responses, Mr. DiOrio moved back to public comment. Eric Bibler was the next person to call in to comment in regards to the Stone Ridge at Hopkinton proposal.

He said that he had "a procedural question" as well as a comment. His procedural question, when he posed "through the chair or to the chair", related to the comment made by Mr. Prellwitz. He said that maybe it was really a question for the Solicitor instead, but he wanted to know if the Planning Board was "obligated to agree with the ruling of the Solicitor, or can the Planning Board, uh, exercise its own judgment, and, uh, decide that it concurs with, um, a legal opinion of an objector or some other party". Mr. DiOrio asked to "stop there", replied that "that is, of course, the question of the evening". He asked if Mr. Clough was available for comment. Ms. Jalette stated that he was, and Mr. Clough

indicated that he was in attendance. Mr. DiOrio asked Mr. Clough is he "care[d] to opine on, on the response to that question, please." Mr. Clough responded.

Mr. Clough: "Certainly. So, the – just to give a bit of background, in your packet, it's my understanding, uh, you have correspondence from the Solicitor's office as it relates to the particular legal issue, uh, that you all are grappling with this evening. That correspondence was provided after both, uh, after the previous meeting, where this issue was brought up, back in February, where both, uh, the objecting party, as well as the applicant, uh, were asked and they both did provide, um, their own legal opinions, and then this office, the Solicitor's office, drafted its own legal opinion, and forwarded that to the Planning Board, um, and, so, you have that there, so to answer Ron's question, um, the Solicitor's legal opinion has been provided to you in writing, and I believe that's been made public as virtue of being placed in the packets tonight for the Planning Board, as well as I believe they were handed to both the objector and, uh, the applicant when they were produced back in March. To answer the question that had been posed by the public, the Planning Board is in its right to make its own, uh, determination, so, in theory, you, uh, you could accept that the legal opinion of someone other than the Town Solicitor. Obviously, we would, this office would caution the Planning Board when, when doing so, if it does decide to do so, and, having reviewed, uh, some of the law as it relates to this particular issue, it is, it, it's safe to say that you are entering into, uh, uncharted territories as it relates to, um, being put, uh, on notice of a legal opinion from your Town Solicitor, and then going contrary to that, that decision. So, I would just caution, and the Planning Board to act, uh, as carefully as possible, when making the decision, but the short and concise answer, after all that, is that after weighing the arguments before you, you are entitled, as a body, to, uh, go in which direction you believe is best, in accordance with, uh, the law and arguments regarding the legal analysis that's put before you."

Mr. DiOrio thanked Mr. Clough for his comments, and asked Mr. Bibler if that response had answered his question. Mr. Bibler replied that it had, but that he'd "just like to observe that, you know, we have only to read the newspaper to know that the Supreme Court of the United States reaches decisions, all the time, on a basis of a five to four vote, that, uh, very experienced jurists can disagree, and disagree vehemently." He said that he was "sure whichever side the Planning Board comes down on in this opinion, um, it's very likely to be contested either way", but that he was "very happy to know that, um, that the Planning Board does have the authority to use [their] own best, best judgment on this." He also said that he wanted to highlight a couple of things, and cautioned that he is "not an attorney, but [he has] listened to these hearings", and he didn't "want these things to get lost." He said that the "plain wording of the Ordinance", which he said Mr. Skwirz had referenced, "is that the permitted use", "under the commercial special approval was mixed-use planned development, combining any of the permitted uses listed in items one through fifteen above, and hotels, motels, conference centers, golf courses, etcetera." He said that he had read the Solicitor's memo, and he said that he thought it was "instructive to look at parts of that as well". He said that the Solicitor "cites some boilerplate language as a sort of preamble to his, uh, ruling, or his interpretation." He said that one would "see this all the time in court cases", and began reading from the Solicitor's memo. He said that it read that "when analyzing the meaning or intent of an Ordinance, the court

will look to the language of the Ordinance, and when such language, quote 'is clear and unambiguous, the court must interpret the Ordinance literally, and must give the words of the Ordinance their plain and ordinary meaning.'" He said that that quote was from a "precedent ruling that is cited in court all the time", and then proceeded to interpret the meaning of this language to be that "whenever possible, you have to look to the plain language of the Ordinance, and you have to read it literally and give the words, quote, 'their plain and ordinary meaning'." He said that in the same memo, two paragraphs later, the Solicitor stated that "'incorporation into the Ordinance of the entirety of the commercial use table indicates an intent to allow any commercial use on the property, as defined by the commercial use table.'" He said that the Council could have "used some obvious language, such as any commercial use as defined, but, nevertheless, it does not follow, but absent that particular language, the Council intended to restrict commercial use to the, basically, list of uses." He then quoted the Solicitor's memo again, and said that the Solicitor said that "'as a matter of interpretation, it is assumed that the Council, at the time, as do all Councils, understood the use tables and dimensional regulations are periodically amended, therefore, the Planning Board can't infer from the lack of express language, cementing in place the 1990 Zoning Code within the zoning amendment, that there was no intent to do so'".

Mr. Bibler then said that it appeared to him that "suddenly, we go from plain language to a whole lot of speculation about what the Town Council intended at the time, and what we can infer". He said that the Solicitor's memo was in "complete opposition" to the opponent's opinion, but that the "real point" was that a meeting took place in February, where Peter Conopask, a former Hopkinton Planning Board member, spoke before the Board, and said that "there certainly was no intent on the part of the Town Council or the Planning Board at that time to allow any commercial use under the code, uh, under the Zoning District Use Table." He said that he believed that Mr. DiOrio "made some comments to the same effect" at that meeting. Though he did not want to quote Mr. DiOrio back to Mr. DiOrio, Mr. Bibler paraphrased Mr. DiOrio's statement, which was that he was "one of the few people in the room that was actually here when all of this occurred". Mr. Bibler said that he "lived in Hopkinton at that time, or, you know, I certainly owned property here, and spent a great deal of time in Hopkinton", and he remembered "that there was a great deal of concern about the size of this tract of land, and how it might be developed", which he said was "one of the reasons why the, um, uh, restriction was put in place, that, um, forty percent of the development, after excluding wetlands, had to be devoted to open space, and then, this list of uses, that was permitted under this commercial special designation, were all seen to be relatively inoffensive, and possibly supporting the mixed-use development as a golf course with a restaurant and a gift shop and parking and, you know, all those sort of amenities". He said that he did not "know why our Town Solicitor feels that he can speak authoritatively to the intent of the Council in 1989 or '90, when he was nowhere to be seen in Hopkinton at that time, and when others have already come forth and testified that it is their clear recollection that the, uh, that the Town Council of that time, uh, intended exactly the opposite." He said that he hoped that the Board would "keep that in mind". He also wanted to caution the Board against "embracing this idea that commercial special can mean commercial special today, and whatever the Ordinance says, but if the project fails, and somehow, uh, the

whole ‘special’ part of the designation just falls away, and it’s just commercial property, um, with whatever use, you know, may be permitted in the commercial zone at that time, because I believe that we have many hundreds of acres right now that are commercial special, solar only.” He said that “any one of those could be subject to failure”.

He continued, stating that he agreed with Mr. Skwirz “that the, uh, that the prior rulings were simply wrong”. He referenced another project on Palmer Circle, which “failed to observe the required hundred foot to the residential zone”, and was part of the original Brae Bern project. He said that he wanted to “submit that if this parcel was approved, to - with a specific, specific set of uses, a mixed-use, uh, development, and if that development failed, and if a new buyer bought it, in that condition, with those restrictions, then it certainly has the potential for the new owner to go back to the Town Council and say, ‘I’m not going to build a golf course, I don’t want to build a golf course, but I’d like to talk to you about how we could change the zoning, so that we could do something that is consistent with your Comprehensive Plan, acceptable to the Planning Board, and acceptable to the Town Council, and acceptable to the residents of Hopkinton. Let’s have that discussion.’ That’s perfectly fine – we don’t want the property to be worthless, but this idea that, um, the Town Council of 1990 had a crystal ball, uh, and foresaw the possibility of a 102.6-acre solar farm is just ludicrous, in my opinion”. He said he hoped that the Board would “side with the opinion of the objectors.”

Mr. DiOrio thanked Mr. Bibler for his comments. Ms. Jalette said that there was another member of the public wishing to be heard. Ms. Jalette gave the respondent the opportunity to speak before the Board, but that person never spoke up, so their “hand” was lowered. Mr. DiOrio said that, as the Board had heard from the applicant, the public, Planning Board members, “those representing abutting property owners”, he’s “like to think that we’ve provided, uh, concerns for the applicant to consider”. He said that there was a recommendation from the Planner, which he read aloud.

Mr. DiOrio: “’I recommend that the Planning Board direct the applicant to bring the Master Plan back to the Board for further review, subsequent to it being peer reviewed by Crossman Engineering.’”

He said that “that should probably be a motion” by the Board, if they were “so inclined.” Mr. Prellwitz said that he “would like to make that motion.”

MR. PRELLWITZ MADE A MOTION TO DIRECT THE APPLICANT TO BRING THE MASTER PLAN BACK TO THE PLANNING BOARD FOR FURTHER REVIEW, SUBSEQUENT TO IT BEING PEER REVIEWED BY CROSSMAN ENGINEERING.

THE MOTION WAS SECONDED BY MR. LINDELOW. THERE WAS NOT ANY FURHTER DISCUSSION.

IN FAVOR: DIORIO, PRELLWITZ, LINDELOW, LIGHT, SHUMCHENIA
ABSTAIN: NONE

OPPOSED: NONE

5-0, MOTION PASSED.

Amendment to an Approved Plan – Development Plan Review – Photovoltaic Solar Energy System – Navisun, LLC (successor in interest to Oak Square Development, LLC.) - AP 11, Lot 47, 41 Palmer Circle. Navisun, LLC., applicant.

Mr. DiOrio asked Mr. Lamphere to give a "brief overview" of the agenda item before the Board prior to the applicant weighing in. Mr. Lamphere explained that the original applicant for the project was Oak Square Development, LLC., "and they, uh, sold their interest in the project to a company called Navisun, LLC." He said that the company was "in the process of clearing the land and preparing it for solar panels, and in the process of doing so, they asked the Planning Department to go out there and take a site visit, because they felt that, rather than abide by the approved plan, which called for clearing, uh, existing vegetation along Palmer Circle, and along the southern portion of the property abutting a residence, it was, it was so thick, uh, and adequate to screen, it would do a better job of screening than if they were to follow the approved plan, cut everything down, and then replant according to the landscape plan." Mr. Lamphere explained that he and Ms. Jalette visited the site, and "kind of concurred with their, with their findings", as "the vegetation to the property to the south was very, very dense". He said that thought that the applicant's request was "a valid one to make", as well as a "thoughtful one to make on their part". He said he thought that the applicant's "approach would do a much better job of screening this project from both Palmer Circle and the condos across the street, as well as the property to the south".

Mr. Lamphere then said that he hoped that the Board had "taken a look at the plans", as well as the applicant's "written request to, to amend the plan". He said that "the other small item in this" was the applicant's request to remove the proposed privacy slats on the fence. Mr. Lamphere said that if the Board was to look at where the fence was going to be, "if the vegetation is clearly adequate to screen this thing, [he didn't] really see what privacy slats are going to offer". He, again, reiterated that he hoped that the Board had looked at the plans in their packets, and then said that he "would recommend to the Board that they approve the request submitted by the applicant here."

Mr. DiOrio thanked Mr. Lamphere for his primer on the proposal, and said that if the applicant was present, he would entertain a brief presentation from them as well. Stephen Campbell, managing director at Navisun, called in. He thanked the Board for hearing their request, and explained that his company had purchased the project from Oak Square "at the end of last year, and started construction, um, at the, towards the, the end of spring". He explained that they had "gotten to a point now, where we have the site cleared to where we think it is adequate to accommodate the solar panels that will start being installed, relatively shortly here, um, and our site contractor had called out the fact that the landscaping plan, as currently proposed, we were, we were supposed to, um, clear cut, basically, basic-, right up to the property line, along Palmer Circle and adjacent property owner, and then replant a vegetative screen back in there." Mr. Campbell

continued, stating that they had "basically looked at it, and have come to the realization that we don't need to clear that, and that the existing vegetation is adequate, um, more than adequate, we believe." He said that there was "a very dense understory, and there are some larger trees that will remain, um, to provide what we think is, is adequate buffering to the adjoining properties." He said that he wanted to note that "there are a couple of, um, of small areas along the driveway, um, right at the end of the T, and along the northern edge of the, of the driveway that we would plant so that, even as people are driving down Palmer Circle, if they were to look in here, there would be some, um, some trees planted along the corner, and at the edge of the driveway to kind of close in that, that, um, that driveway, so no one would be able to see clearly in, so, we're not looking for a complete, um, removal of all the, the vegetation that was proposed in the landscaping plan, but we are looking for a bulk of it to be removed, leave the existing vegetation in place, and then plant a couple of, um, trees along that driveway, to give just a little bit reinforcement, so that we can block off the equipment path".

Mr. Campbell also said that "because of the understory and what we would be leaving, um, we feel it's, um, that we have the adequate, um, buffering that we're asking to remove the, the black slats along that, um, that side of the fence as well." Mr. DiOrio thanked Mr. Campbell for his comments, and asked if he had anything else to add to his presentation. Mr. Campbell replied that he did not, so Mr. DiOrio started by asking if any Planning Board members had any comments. Ms. Light was the first Planning Board member to respond.

She said that she agreed that the "vegetation that's in place, on Palmer Circle, uh, is thick enough", therefore, she "would not want to see it removed." She said that she "applaud[ed]" the applicant's comments "regarding the exposure of the driveway to Palmer Circle'. Ms. Light said that that was something she was going to bring up. She referenced some of the pictures included in the Planning Packet, and said that one could "clearly see, uh, condo windows in there".

Ms. Light: "As you're aware, another solar project, right around the corner from where you guys are putting this one in, and some promises were made over there. Um, you can see that the vegetation that is remaining on the road, uh, isn't, um, hiding anything. What you do see is that the black privacy slats do hide. It would be my suggestion, that because today the trees are standing, tomorrow the trees could fall – we know how that works down here in Hopkinton – I suggest that the privacy slats remain. There's no assurance that that vegetation is going to be stable enough to withstand storm damage that we've been experiencing down here the last four or five years. So, I, I'm a no on giving up on the privacy slats. I think they need to be tended to. I'd like you to take a look at the site from the condo owner's window view, um, and think about what they're being exposed to. I, I don't see any easy solution to hiding what they're looking at there right now, but it's disturbing to me, and that, that's about all I got."

Mr. DiOrio thanked Ms. Light for her comments, and asked if there were any other Planning Board members who would like to comment on the project. Mr. Prellwitz was the next member to speak. He said that he "agree[d] with using the existing vegetation as

much as possible", but that he wanted to add "that before the closure of the, the project, and it goes online, that our Planner, and one of their people walks the property or tours the property, and decides if more vegetation is required – kind of a medium ground, so to speak." Mr. DiOrio thanked Mr. Prellwitz for his comments, and took "the opportunity to endorse that" idea. He suggested that the Board make it a condition of approval if there was agreement amongst the members.

Ms. Light then had a question for the Board about the other solar project on Palmer Circle. She said that she recalled stating that a containment system "that would support one hundred and twenty-five percent of, uh, any fluids that could potentially leak from the equipment" was necessary. She said that she was "asking now because it wasn't done there", though she recollected that that applicant had promised it would be done. She also said that the applicant for that project had insisted that it would not be visible from Interstate 95. She asked if the containment system was a condition of approval for the project presently before the Board. Mr. DiOrio replied that he was not sure, and said he was unsure if the Board could put their "fingers on the answer to that right now". Ms. Light said that she thought it had "just become a standard here, in the community", and that she wanted to know that the applicant "can support that". She also wanted to know what power the Board would have if the applicant did not follow their directives. Mr. DiOrio thanked Ms. Light for her comments, and asked if there were any other Board members who wanted to comment on the project. Ms. Shumchenia said that she concurred on "adding a condition for one last site walk and assessment once the construction is complete, to determine if additional vegetation is needed." She said that she also agreed with Ms. Light in regard to keeping the privacy slats in the fence.

Mr. DiOrio thanked Ms. Shumchenia for her comments. He then said that, while this was not a public informational meeting or a public hearing, but an amendment to an approved plan, he would entertain brief statements from the public if there were any. As there were not any members of the public wishing to be heard on this issue, Mr. DiOrio asked the Board to make a motion.

MR. PRELLWITZ MADE A MOTION TO ACCEPT THE APPLICANT'S PROPOSAL TO USE THE EXISTING VEGETATION AS MUCH AS POSSIBLE, WITH THE OPTION OF SUPPLEMENTING IT WITH NEW VEGETATION WHERE REQUIRED.

Ms. Light asked if the motion should include a reference to the privacy slats. Mr. DiOrio replied that that was a good question, and that he was going to "interpret the motion to mean that, by omitting any reference to the slats that the decision was no", but that he would return to Mr. Prellwitz and ask if he would like to amend his motion to "explicitly take a position on the slats that probably would be preferable." Mr. Prellwitz was amenable. He added the following:

THE SLATS TO REMAIN IN PLACE WHERE REQUIRED. IT WAS SECONDED BY MS. LIGHT.

IN FAVOR: DIORIO, PRELLWITZ, LIGHT, LINDELOW, SHUMCHENIA
ABSTAIN: NONE
OPPOSED: NONE

5-0, MOTION PASSED.

Request for Extension - 3-Lot Minor Subdivision – Sarah Land – Plat 25, Lot 54, Maple Court. Dan Liese & Marguerite A. Liese (successors in interest to Sarah Land Company, LLC.), applicants.

Mr. DiOrio announced that he recusing himself from the proceedings, as he was involved with the project. Ms. Jalette accepted his recusal form. Mr. Prellwitz filled in as Chair.

He began by asking if there were any Planning Board members who had any questions in regards to the request. Ms. Light said that she wanted to hear from the applicant, to see "if they ha[d] any comments that they'd like to provide beforehand." Unfortunately, the applicant was not in attendance. Ms. Light said that she did not have a "problem with the motion", nor did she have any comments. At this interval, Ms. Jalette asked Mr. Lamphere if he had any information to provide to the Board. He said that, "in the absence of the applicant here", he would provide some background. He said that the applicant was "asking to extend the validity of the approval for an additional ninety days beyond the expiration date of November the third."

Mr. Lamphere: "So, the purpose of this extension: uh, the project, as you know, uh, was approved on August the fifth, and in your packet, I put a eleven-by-seventeen, um, diagram, of the subdivision, just to refresh your memory as to what got approved. The original applicant sold this, uh, property to Mr. Dan Liese, and Dan Liese is asking for this extension so that he can have an opportunity to amend this approved plan. Now, the amendment is going to consist of, uh, converting this three-lot, cluster subdivision into a two-lot, conventional subdivision. So, it won't be a cluster anymore, it won't be three lots, it'll be two houses instead of three, so, you have to look at this as, as, a you know, an improvement, uh, from the Town's perspective on this. There'll be less traffic on the road, less wear and tear, um, and it's what the applicant, you know, wants themselves. So, I think, I think, in order to give the applicant opportunity to bring the plans back to you, and they may come back to you in November, uh, for approval, um, I think an extension is, is, uh, warranted, on the part of the Board."

After hearing Mr. Lamphere's explanation, Mr. Prellwitz asked the Board if they had a motion.

MS. LIGHT MADE A MOTION THAT THE BOARD APPROVE THE REQUEST FOR THE EXTENSION OF THIS SUBDIVISION FOR NINETY DAYS. IT WAS SECONDED BY MR. LINDELOW.

IN FAVOR: PRELLWITZ, LIGHT, LINDELOW, SHUMCHENIA
ABSTAIN: NONE

OPPOSED: NONE

4-0, MOTION PASSED.

NEW BUSINESS:

Pre-Application – Development Plan Review – Photovoltaic Solar Energy System – Kenyon Lane Solar, LLC. – AP 7, Lot 48, 34 Kenyon Lane. Kenyon Lane Solar, LLC., applicant.

Mr. Prellwitz asked Mr. DiOrio to resume his position as Chair, which he did. Mr. DiOrio wanted to remind all assembled that, "before we get started, the next two applications are Pre-Applications – that's their format." He said that he wanted to "be clear, again, for those in the audience" on what the objectives of a Pre-Application are. He said that, as the tenets of the Pre-Application stage are so similar across the various land development processes, that he was going to be "abbreviating here". He said that, "essentially, the Pre-Application meeting, uh, aims to encourage information sharing and discussion of project concepts among the participants."

Mr. DiOrio: "It's important to realize that Pre-Application is intended for guidance of the applicants, shall not be considered approval of a project or any of its elements. Of course, no formal action need be taken by the Planning Board at a Pre-Application meeting. So, with that backdrop, if you will, uh, I'm going to ask Jim to just briefly introduce the application, and then we'll hear from the applicant."

Mr. Lamphere explained that this application was for a "two hundred and fifty kilowatt ground-mounted solar project on a farm, so this is a farm project". He said that it was actually an "extension of a two hundred and fifty kilowatt project that was approved back in 2017 for the same property." He explained that the applicant for that project had returned, which they had the right to do, and was asking for another "one acre, um, plot of solar". Mr. Lamphere described the property in question as "a very large farm", and that the applicant "could go as much as three acres of solar, uh, ultimately", but that, for the time being, the they were "just expanding to a total of two acres". He said that, in his view, "it's really a simple project", and that he could not "see any point in bringing this back again to the Planning Board", as it was "going to be, pretty much, a duplication of what's there right now". Mr. Lamphere also asked the Board to set a decommissioning fee, "in the amount of $9,227.28, or something rounded off close to that". He said that this amount "was taken by using the, uh, dollar amount that was set for Frontier Road, on a per acre basis, um, for the project." He said that the decommissioning amount for the Frontier Road project was "thirty-seven acres, and they posted $343,000". He said that, "given, given the one acre, um, size of this addition here, that works out to, you know, nine thousand, little over nine thousand dollars per acre". He also said that the Board should also "make a finding that the impacts of this proposed use are too minimal to warrant further review by the Board". He said he was going to let the applicant "make a brief presentation", before reminding the Board that it was getting close to nine o'clock. He said that he "really would rather reserve most of our remaining time to look at the Skunk Hill project", which was the following agenda item.

The applicant had some difficulty accessing the meeting, but were ultimately able to enter and present. Andrew "Drew" Vardakis, a registered professional engineer in the State of Rhode Island, and a senior engineer with Wood Environment and Infrastructure Solutions, was present on behalf of the applicant, Kenyon Lane Solar, LLC.

Mr. Vardakis explained that there was a "lengthy narrative" about the project in the Board's packets, with a "description, and all sorts of items in the Ordinance", but he wanted to "skip to the drawings" in the interest of time. He said that there was an aerial image, "where you can see that previous project is constructed on Kenyon Lane", which was "permitted and approved in 2017." He said that they were "proposing to, to construct a .9-acre project, identical to that first project". He said that the project would be next to the existing array. He said that there would be "a .9-acre chain link fence surrounding the project", and that they have "access on [an] access road, coming off of Kenyon Lane". Mr. Vardakis continued, stating that there were "transformers in the modules, same as the previous system", and that the applicant "ha[d] consulted with the Fire Marshal regarding the project". He said that the Fire Marshal made "a couple recommendations, same as the first project", such as wanting the applicant "to have a twenty-foot wide access road, and a seven-foot high chain link fence, with some, some smaller mesh, mesh fencing", which would provide "climb resistancy". He said that those modifications would be found in their Final plan set, "for our building permit application".

Mr. Vardakis said that, "in regards to storm water", the site is "a very flat, open field", which has grass, and "about a three percent slope". He said that they have not had any storm water issues with the original project, and did not "anticipate any here". He said that the project abuts Interstate 95, and that they were "only proposing some minor tree trimming for shading, off to the south of the project". He also said that the applicant was "amenable" to the decommissioning amount "that was presented here tonight, as opposed to what was presented in, in the package". At this point, Mr. Vardakis said that he would "open it up for questions", and that while there was an exhaustive narrative, he would be happy to answer any specific questions or respond to specific issues. He also named the other two team members, Steve Kerr and Scott Milnes, who were on the call who could also answer questions if necessary.

Mr. DiOrio started by asking the Planning Board members for their "questions, comments, concerns". Ms. Light was the first Board member to weigh in. She said that she thought that "the condition of the road over there is horrible".

Ms. Light: "If you've driven down there to take a look, it's, it's, uh, it's tough if you're in a four-wheeler, you know. It's even worse if you're in a vehicle, but that has nothing to do with what we're here to talk about."

She said that a condition for a containment system had to be included, and that it be coated and sealed. She said that she did not "see any issues", but that she "would like to talk to the Planning Board and to Jim about using the, uh, Revity project as the blueprint

for setting the decommissioning". She said that she didn't "believe that any of the Board members were comfortable with what we did there."
Ms. Light: "I'm not saying that this project would cost a heck of a lot of money, but, using that as a template for this project, and projects going forward is not where I think I want to go."

Mr. DiOrio thanked Ms. Light for her comments, then asked if there were any other Board members who wanted to comment on the project. Mr. Prellwitz said that Ms. Light "covered everything quite nicely", and that he would "agree with her". Mr. Lindelow said that he agreed with Ms. Light in regard to the decommissioning.

Mr. Lindelow: "It's just such an unknown. I don't know where we go with that."

Ms. Shumchenia said that she "one hundred percent agree[d] about the decommissioning", but that she had "no other comments". Mr. DiOrio then made his remarks. He said that he was going to "jump on the decommissioning thing first."

Mr. DiOrio: "So, I'm in complete agreement that, while we were hoping that the Revity project, uh, in terms of its – the, the decommissioning element, would serve as a template going forward. I think I share my colleague's, uh, concern, that that didn't really pan out the way we had hoped. That said, uh, without, without suggesting that we, we're setting a precedent here, for a project, uh, of this magnitude – that being a very small project – uh, it might be acceptable to adopt the suggested figure. I'll let you think about that while I offer a comment, uh, unrelated."

Mr. DiOrio said that he thought that this project would be one that the "Planning Board will decide, uh, that we do not need to see thing again", due to the project's simplicity, but he "would just suggest that, uh, whoever decides to make a motion on this would incorporate something along the following."

Mr. DiOrio: "If we look at Sheet C101, note number two, it – that note to me suggests that this plan was prepared by information completely sculpted from existing sources of data. This is really not the way we do business in Town. This is not really how we should be setting precedence for any type of development, land development project, and I would only ask that, uh, the Final plan set delete note number two, and instead, there be a, uh, clear, uh, indication that data represented is the result of information captured by on the ground observation, otherwise, how would the Planning Board possibly know that what they're reviewing and approving is actually reality, and not fabricated from some existing source of information that may or may not be correct. That would be my only comment, otherwise, I have nothing else to add on this particular project."

After these comments, Mr. DiOrio opened the discussion up to the public. Eric Bibler spoke before the Board. He said that "decommissioning is a subject that's, uh, pretty important to me", and that he "agree[d] with the rest of the Planning Board, that we don't want to get hung up on a one acre, two hundred and fifty kilowatt project". He said that he had tried to comment during the Revity proceedings when it came to

decommissioning, but that he wasn't able to do so remotely, but that he just wanted "to make one comment on that".
Mr. Bibler: "I feel that we missed the boat on the analysis on the decommissioning, um, with our Town engineer's input, and I, I do not believe that the Revity conclusion should be a precedent of any kind, and the question that was missed was that there was an arbitrary assumption about how many, what percentage of the solar panels, thirty years from now, could be repurposed, could be resold."

Mr. Bibler said that "the metric that matters is based on the developer's own expert testimony from We Recycle Solar." He said that it would cost $44.12 "per panel to recycle a panel", and that they had "calculated salvage value of eleven dollars for every panel that they were able to repurpose". He said that the "flaw" was that "there is no basis whatsoever" to determine that "panels would be, uh, you know, usable or have any value thirty years from now." He said that the amount of panels that could be repurposed at the end of the project's lifecycle was "totally unknowable". He said that he believed "very strongly" that when the Town engineers examine the next decommissioning estimate, "the question that has to be asked" is if they can provide "any reason to believe that [the Town engineer's] arbitrary assumption of fifty percent repurposing is any more or less probable than zero percent reuse". He said that he believes that "the Town, just on a pure risk analysis kind of, uh, basis, needs to assume the worst". He also said that the Town should "require that developers reserve against one hundred percent recycling", as "all the money belongs to the developer". He said that the Town did not want to "come up on the short end of that". He said that there was not a "dynamic best case, worst case, most probable case kind of analysis", and that neither the Town's engineer, Mr. Cabral, nor the developer "provided any basis in reality for believing that they could know what the landscape will be like thirty years from now". He said that the hoped that the analysis of the Frontier Road decommissioning estimate is not accepted as a baseline for other projects in the future. He asked the Board to "zero in on that question", because if the Board cannot "have any confidence that any number of these can be repurposed, or be guaranteed of that, then we have to assume that they're all going to need to be recycled at a pretty hefty expense, and we don't want that".

Mr. DiOrio thanked Mr. Bibler for his comments. Mr. Prellwitz then spoke. He said that he agreed with Mr. Lamphere, as the project was "something that's going to be added on to an existing project", and that the decommissioning amount seemed "like a fair amount." Mr. DiOrio said that there was no motion for a Pre-Application, but that he would "like to think that [the Board had] given the, uh, the applicant some guidance" at the meeting. He said that if the applicant or Board had further questions, they could ask them now, or direct them to the Planner at a later time. As there were not any further questions, Mr. DiOrio began to address the next agenda item.

Pre-Application – Major Land Development – Photovoltaic Solar Energy System – Skunk Hill Road Solar, LLC. – AP 18, Lots 8, 13, and 14, 0 Arcadia Road, 0 Lisa Lane, and 145 Skunk Hill Road. Skunk Hill Road Solar, LLC., applicant.

Mr. DiOrio began by again cautioning all assembled that this was a Pre-Application. He said that he was sure that there were many people who wanted to weigh in on the project, and that the Board would try to get to all parties, but directed members of the public to "exercise the option of sending [their] concerns, comments, whatever they happen to be, directly to the Planner". Mr. DiOrio said that the Planner would "ensure that those comments reach the applicant, so that those concerns can be incorporated into the project moving forward." He then asked Mr. Lamphere to provide a brief explanation as to the what was before the Board.

Mr. Lamphere explained that the project was "the recipient of a zone change and a Comprehensive Plan change by the Town Council." He said that it initially "came to the Town as two separate projects, but, uh, it was requested to review it as one", as the parcels "are interconnected". He explained that the connection lines went "from the extreme, uh, one extreme property", then "through the other properties out to Arcadia Road". He said that it was reviewed "as one project by the Town Council" for this reason. He said that "because it was done as a zone change, um, [the applicant had] to come in as a Major Land Development project with this". He explained that State law required a pre-application for a Major Land Development, which was what the Board was "having tonight". He returned to Mr. DiOrio's earlier comments, and reinforced that a "Pre-Application meeting is a conversation between the applicant and the Planning board". He said that "if the applicant can get some guidance", then they would be equipped to "bring us a Master Plan at some point in time" in the future. Mr. Lamphere then said that it was "time to turn the meeting over to the applicants", and recommended that they have a "relatively brief overview of the project". While it was not a "public informational meeting or a public hearing", he thought that, "because of the interest that this, uh, project has generated in the community", "once the applicant gets appropriate feedback from the Board, everything that the Board has to say, [he thought] it might be appropriate to hear from the public so they can also weigh in on it at this time."

Before the applicant began their presentation, Ms. Light had a question. She asked Mr. Clough to comment on something "before we go over to the applicant". She explained.

Ms. Light: "Um, I'm, I'm totally stuck on, uh, the legalities of what company we might be talking to here. Um, first, I would like to say that, as far as the Skunk Hill Road Solar, LLC., Skunk Hill Road Solar joins the company of thirty other LLCs, combined between Mr. [Frank] Epps and Mr. [Maarten] Reidel - um, that's enough to hand out for Halloween treats. But, the, uh, what, what brings my concern to Sean [Clough] is that we have what is supposed to be a corrected record in front of us. My first comment on this corrected record is that the name of the company that is on the corrected record is not a registered company in the State of Rhode Island. The registered company is, in fact, as it's proposed in the narrative, Skunk Hill Road Solar, LLC. That's, uh, my first problem with moving forward. My second problem is this, in my mind, it's a supposed correction, because A), our Planner didn't provide us with a corrected Ordinance, and B) the one that we're looking at is not signed by Frank Landolfi, or attested to by Elizabeth Cook-Martin. So, uh, with those two things out of the way, I also want to bring our attention back to the Zoning Certificate, and the applicant's name here is Hopkinton Land I, LLC.

Again, it's part of that group of thirty LLCs that these two gentlemen have registered at the address in Providence. Uh, shouldn't the Zoning Certificate reflect Skunk Hill Solar, Skunk Hill Road Solar, LLC? Um, those are all legal business questions, and, because these types of issues tend to get picked apart by par-, participants, and people are raising their concerns, I'd, I'd like us to tend to it at the front end, and I don't want to go through an hour and a half, or three days-worth of presentations, uh, if none of this business entity stuff is legitimate."

Mr. DiOrio asked Ms. Light "what, specifically, what is the question" being posed to Mr. Clough. Ms. Light elaborated, and Mr. Clough responded

Ms. Light: "The question is: Sean, with all these inconsistencies in who is applying, uh, even I, and I went back to the beginning of the Atlantic Solar presentation for this project, with all of these inconsistencies, should we consider this a legitimate Pre-Application hearing?"
Mr. Clough: "Carolyn and Mr. Chairman, you can certainly, uh, continue forward as a, uh, at this hearing, or at this time for the Pre-Application meeting. Uh, I certainly, Carolyn, will look further into these particular issues. I'm not prepared to, uh, speak authoritatively on, uh, each issue that you, you raise as it relates to, um, the different LLCs that may or may not be listed on different aspects of the application. Uh, however, I will review that, and this office will, will get back to the Planning Board to give a more conclusive answer. But, as it relates to, uh, the agenda item this evening, you're more than eligible to proceed at this time."

Ms. Light said that she would "send a list of the pointed questions" to the Planner and Mr. DiOrio, so her questions could be sent to Mr. Clough. She thanked those in attendance for her opportunity to speak on the topic. Mr. DiOrio then moved to the applicant. Robert Craven, who practices law at 7405 Post Road in North Kingstown, appeared before the Board on behalf of the applicant. He said that the "corporations" Ms. Light had referred to "are, in fact, active, and are recorded with the Secretary of State". He explained that the project which "has been anecdotally known as the Skunk Hill project" is composed of the Tefft property and the Gordon property. He said that it was "obviously a Pre-App for a Major Land Development for a solar facility, selling the product to the grid."

He explained that his testimony would be accompanied by the testimony of two witnesses, Alan Benevides, an engineer with Woodard & Curran who had "presented on this project before the Town Council", as well as Frank Epps, a principal in Energy Development Partners, "which is the parent company of, I'll assume, those thirty corporations that the last witness just referred to." He said that Mr. Benevides would provide "an engineer's overview", while Mr. Epps would offer a "more, uh, business-oriented overview, and answer any questions."

Mr. DiOrio interjected that he would again caution that, as the application was at the Pre-Application stage, the speakers should aim for a "broad overview, please", as the Board was "looking to give [the applicant] feedback before you leave this evening." He posited

that “most of that feedback is going to come from the public”, so he wanted to “try and allocated adequate time for that element.” Mr. Benevides then began his portion of the presentation.

Mr. Benevides explained that in his capacity as an engineer with Woodard & Curran, he had “testified throughout the State of Rhode Island on a number of solar arrays similar to” the proposal before the Board. He stated that there are three parcels, with a total of one hundred and sixty-eight acres “between all the three parcels combined”. He said that the “project involves a twenty megawatt AC solar array”, and then explained that he wanted to “touch briefly on the sort of the evolution that the plans have taken, to the point where they’ve gotten to the, uh, to the Planning Board”.

Mr. Benevides: “The first set of drawings, the concept layout, was developed back in October of 2018, actually reviewed by the Planning Board back in November of 2018. Those are the plans that went with that Comp, uh, change, and zone change, and that was the original version of the drawings. As the project went through the zoning change process, there were a number of public meetings, substantial comments from the public, as well as the Town Council, and the plans were modified as that process went along, and so, there were very substantive changes that occurred, since that original version that went to the Planning Board, so the size of the system was reduced. The remaining wooded areas were increased. Panels were removed from certain areas that were near residential areas. Residential setbacks were increased. Visual berms were added to the project, so, as the project evolved, through that zoning process, there were changes that occurred to reflect the comments that came up. Lastly, as part of the issuance of the zone change, there are about twenty conditions that related to the design of the project. So, the drawings that were submitted are part of this Pre-Application, Major Land Development reflects those twenty conditions that were part of the zoning process. There’s a table that’s in the application that goes through each of the conditions that were part of the zoning, zone change process, and how this drawing set reflects that. I’m obviously not going to go through this tonight, but just, to, to reiterate that there’s been substantial changes, and that reflect the, uh, the public, as well as the Town Council to get to the version that we’ve got tonight. Um, tonight, I’d like to touch on, quickly, three of the drawings, probably spend most of the time on proposed conditions. Those of you who have access to the drawings, Figure 1 shows the existing conditions plan. There were also, it was a separate set of drawings, was a very detailed existing conditions plan, but the one that’s provided as part of the application, Figure 1, is a look at the entire project. It shows the partial boundaries in red, it shows the wetlands, and it shows the wetland offsets and both the riverfront, as well as the, uh, as well as the, the buffer zones. Uh, since this, uh, went through the Town Council process, there’s been a new topographic survey, there’s a new property boundaries – or there is a property boundary survey that didn’t exist previously, and the wetlands were, delineations were updated since that process, so this is very up-to-date information that’s shown on the existing conditions plan. The second drawing that I’d like to touch on quickly is the, the proposed conditions plan, and that is Drawing 5. It’s, essentially, a same view of the project that you can see on the existing conditions plan, and there’s really two sort of general array areas. Uh, there’s an array area to the north. It’s generally located on the Tefft property, so that’s

Plat 18, Lot 14. Um, that's one general area of the array, and then the southern area is located on the Gordon parcels, and, um, what I'll do is just touch on those very briefly. That northern one, on the Tefft parcel, you can see that access comes off of Skunk Hill Road, um, and the access road is shown in dark gray. You can see it, uh, leading southerly, through the arrays, and located into the array that's kind of the center potion of the site. So, that's the access onto the site. The blue is opposite the panel, so, where the current panels are located, as I said earlier, there were panels that were beyond the location of where these are currently, that were modified and cut back as part of that zoning process. The other thing to know on the existing conditions plan, also a comment to respond to Town Council rezoning, is the area shown in purple are twelve-foot, um, landscape berms, and those were incorporated to provide screening to abutting properties. There was a very detailed process that led to the location of these specific berms. It's also to screen the project from Skunk Hill Road, so, purple shows the berms, blue the panels, and the brownish color are the wetland areas. So, that's, that northerly area, that is approximately ninety-eight acres. Um, the fenced portion of the site – so if you take just these two northerly arrays of the Tefft property, that's approximately thirty-eight acres. And that's one thing I do want to comment on, because it was a significant part of the review process as it went to rezoning, is the existing, wooded area in that portion of the site is sixty-seven acres. The proposed cleared area is twenty-five acres, and the remaining wooded area is 42.5 acres, and, the point I'd like to make there, is that that 42.5 acre was mandated as part of the rezoning process, so, it established the amount of trees that need to remain, and that will be a consistent requirement as we move the process through the land development process. Um, as I said, there's twelve-foot berms that are located in the north, and of the eastern boundary. The southern array – a smaller array – is approximately fifteen acres, and, uh, the entire site there is seventy-one acres, so, uh, to touch again on the wooded area, there's existing, sixty-two acres, there's sixteen, approximately 16.8 acres of that will be cleared, and the remaining wooded area is 46.1 acres, and, again, that was a requirement established as part of the rezoning process. So, to summarize, it's a twenty megawatt AC solar array in its entirety. There's one hundred and sixty-eight acres total, and the array will occupy approximately fifty-three acres. So, obviously, we're in the Pre-Application process. We welcome any comments from either the Board or from the public, and, as you know, this is going to make its way through the Major Land Development process, a very detailed process, that will certainly get opportunities to modify the design, and certainly will go in parallel through the RI DEM process, Rhode Island Department of Environmental Management, where it will be, uh, we'll certainly be submitting, uh, preliminary determination regarding wetlands, as well as a RIPDES, Rhode Island Pollution Discharge Elimination System, uh, land clearing permit as well. So, with that, I'll end my portion of the presentation."

Mr. DiOrio thanked Mr. Benevides for his presentation, and asked for the applicant's next witness. Frank Epps was the next witness to speak before the Board in relation to this project.

Mr. Epps introduced himself as the principal of Energy Development Partners, as well as a principal and manager of Skunk Hill Solar, LLC. and Hopkinton Land Trust I, LLC. He

explained that the latter LLC is the owner of the "property formerly known as the Tefft property". He said that Mr. Benevides had presented the zone change process, and said that he wanted to "point out that the berm situation is something that is unique to many projects" in Hopkinton. He said that they had "done this, uh, at considerable expense to ensure that screening, uh, and adequate screening is applied, uh, to the area sensitive to, uh, to the residential areas." Mr. Epps continued.

Mr. Epps: "Additionally, uh, we have decided not to - if you can see on the property itself, on the Gordon property – we've decided not to develop the areas north of the, of the southern, the most southern array, uh, towards, the, uh, Lisa Lane area, and we've done that on, on purpose, to ensure that that area will, will not be touched for development whatsoever. The interconnection itself, uh, instead of going through the Skunk – up and down the Skunk Hill Road area, the interconnection is a single interconnection coming off of the southern array, and we moved the interconnection, interconnection section of the array, of the array, back into the array itself, to minimize any type of issues concerning noise or visual impact to the, to abutters. And so, therefore, we are going underground, uh, through a, an additional lot that is a very thin lot, going out to Arcadia Road, and making our interconnection that way, so, there's no poles on this, uh, area, uh, it is all underground, uh, uh, and then going up to, uh, connecting to the, the, uh, the existing poles up on Arcadia Road. So, so, other than that, uh, I think Mr. Benevides did a phenomenal job of, uh, describing the, uh, the system, and I would, uh, uh, like to yield, uh, Mr. Chairman, uh, in so that the public can make comment. Thank you."

Mr. DiOrio thanked Mr. Epps for his comments. Mr. Craven then said that those were all of the witnesses he "intend[ed] to, uh, present at this stage of the application process", and that he, or the witnesses, would be happy to "entertain any questions from the public or the Board members." Mr. Lamphere had a few questions for the applicant.

Mr. Lamphere: "Yes, uh, Jim Lamphere, Town Planner. A couple of questions I have: um, I'm looking at Lot number 8, and I'm looking at Lot number 13, and I see that the southern array there goes, um, across the property line, so, um, I, I'd like to know what your intentions are in terms of merging these three lots, if, if any. That's the first question, and the second question is: we have been consistent in determining that access roads are a part of the PSES, and that they shall not be in the setback areas, and I noticed that the access road, coming from Arcadia Road, goes through a very, very narrow bottleneck at a certain point in time, and it doesn't appear, to me, as though it's respecting the, um, setback areas for that particular lot, so, I'd like to know how you plan to deal with that."

Mr. Craven responded that he assumed that Mr. Lamphere was asking him. He replied that "as far as, uh, the lots are concerned, I think it would be appropriate, under the circumstances, since it's a single use, to merge the lots."

Mr. Craven: "I will go through the legal process to doing that, and, uh, as far as a road qualifying to observe the setbacks, I'm not sure, I'm not quite sure that that's required.

Uh, I will defer to your question, and give you a legal answer when we come back from the next stage – or discuss it with you in your office at some point in time."

Mr. DiOrio said that he would "certainly suggest the latter." He continued.

Mr. DiOrio: "We, we don't want you engaging in, uh, design work that's gonna be adversely interpreted by the Planning Board. So, consult with Jim. Square that away."
Mr. Craven: "Yep."

Mr. DiOrio replied that the was good, and then said he wanted to start with input from the Planning Board. Mr. Prellwitz spoke first.

Mr. Prellwitz: "It was brought to my attention – I don't know if this would be directed towards, uh, Attorney Craven, or to Mr. Epps, or to the other gentleman, but it has been brought to my attention that the property in the southern portion, between the panels and Lisa Lane, is on the table for being donated to the Land Trust.
Mr. Craven: "That's true."
Mr. Prellwitz: "Am I correct in that?"
Mr. Craven: "That is true, sir."

Mr. Prellwitz thanked Mr. Craven for his response, and stated that that was all he had. Ms. Shumchenia weighed in next. She said that she did not have any questions, but that she did have a few comments.

Ms. Shumchenia: "I know, I'm sure folks are going to bring this up, but I feel like I need to weigh in on it as well. Um, the Planning Board voted unanimously to send a negative Advisory Opinion to the Town Council for rezoning this parcel or set of parcels from residential to commercial in November 2018, and the changes to the plan since that initial Planning Board review that the applicants are describing as 'the zoning process' don't make it magically consistent with the Comprehensive Plan, um, especially specific portions of the Comprehensive Plan that were cited by the Planning Board back then as reasons for inconsistency, such as preserving, protecting the significant natural resources of the Town as an endowment for the future, et cetera, et cetera. And the three Town Council members that voted to approve this zone change aren't even running for reelection next month, so, in my mind, they created this mess and then walked away and handed it to the Planning Board to deal with. So, I'm finding it very difficult to view this project in a positive light, as shown on these diagrams. Um, the fragmentation and disconnection of the wetlands within these properties from the forest, it's just really upsetting, actually, to see vast solar fields, uh, dotted, throughout this landscape. So, um, those are my thoughts, uh, I, I have nothing else to add. Thanks."

Mr. DiOrio thanked Ms. Shumchenia for her comments, and asked if there were any other comments from the Planning Board. Mr. Lindelow weighed in next.

He said that he hadn't made up his mind about the project yet, but said that he was "unsupportive of this project at this moment, and especially, you know, with everything else."

Mr. Lindelow: "We mentioned it before – I'm concerned about the, not only the beginning of these projects, but what the end life for them, and, and how much unknown there is, and, again, we don't want to have precedents set by the last project that we just approved. Um, so it just would temper the expectations, that going forward, we'll have some long and serious discussions about the end life of this project."

Mr. DiOrio asked if there were any other members of the Planning Board who wanted to comment. Ms. Jalette responded that a member of the public wanted to speak. Mr. DiOrio said that he was going to "defer any of [his] comments", as he really wanted "to get to the public, uh, with the time that we have remaining." He said that unless the Board had any other questions, comments, or concerns, that he would be "ready to go to the public." Ms. Jalette reminded Mr. DiOrio that it was 9:41 p.m., as the clock on the wall in the Town Council Chamber was slow, and therefore, incorrect. He responded that that was "duly noted", and opened the discussion to the public.

The first member to comment was Eric Bibler. He started by saying that the Board had "revisited this issue of decommissioning", and that he "just want[ed] to recall" that, in regard to the project on Frontier Road, "the Planning Board members made a number of cryptic references to guidance that they had received from the Town Solicitor." He said that there wasn't "any document like that that was ever made available to the public", but each Board member had referenced it. He wanted to request that "this whole topic of what the Planning Board is obligated to do, uh, in the face of this expert testimony, and you know, so forth and so on" be brought to light. He asked that "this guidance that the Planning Board was provided with, concerning the rules of the road be, um, provided, um, on the Town's website, so that all of us can have access to it so we can understand what the heck's going on here with that." Mr. DiOrio responded that that was "duly noted", and that the Board was "planning on taking care of that, uh, that misstep as we move forward."

Mr. Bibler continued. He referenced the Crandall Road Town Council Hearings, and said that he was not sure if any members of the Board had participated in those proceedings as citizens. He also referenced the Planning Board's "unanimous, um, adverse opinion, advisory opinion on that project". He said that at the September 21st, 2020 Town Council meeting, which he "did not attend", "two of the, um, Town Council members and the Town Solicitor, uh, took a detour, uh, during the explanation of their reasons for their decision, and, um, indulged in an extraordinary public flogging of [him], personally". He said he was "accused of, uh, essentially lying", as well as "making a number of false statements." He said that at a different hearing, he had mentioned "two legal, um, challenges to the Town, to the Town of Hopkinton and the, and it's, the Town Council's process for approving these projects" that were "outstanding". He said that Town Council member Sylvia Thompson, as well as Council President Frank Landolfi "insisted that that was just flat out untrue", and, upon asking the Town Solicitor for confirmation, "he

agreed". He said he wanted to "correct the record", as this particular project is the subject of an appeal, which was "filed on a timely basis, on August 16th of 2019". He said that on "February 17, 2020, uh, the Superior Court dismissed the complaint without prejudice for having been too long and too detailed and including too many exhibits", and he said that "there's been a great deal of mockery about the, the length of pages". He said that most of the exhibits were "things like copies of the Comprehensive Plan". He said that it was dismissed by the Judge for being "overly long", but what Mr. McAllister "failed to mentioned was that it was dismissed without prejudice". Mr. Bibler said that "that ruling was appealed to the Supreme Court", which he said Mr. McAllister did mention. Mr. Bibler then gave a lay person's explanation of what a case being dismissed without prejudice means – namely, that the plaintiffs have the ability to refile. He said that the complaint made in regard to this proposal was refiled on June 2, 2020, and that it's "only twenty-seven pages now, down from" more than one hundred and fifty pages, with a "single exhibit". He said that the "single exhibit is the Planning Board, the Planning Board's adverse advisory opinion of November 2018". He said that the complaint was amended as the attorney, Jim Donnelly, is retiring, and that the "amended complaint was, um, filed on September 17th of 2020". He also brought up the appeal filed against the Atlantic Solar project, which was filed on May 11, 2020, and slightly amended on September 3, 2020. He said that he wanted the Planning Board to know about this legal challenge, which aligned with the Board's previous negative findings. He asked if Mr. Clough wanted to "weigh in and offer an apology on, uh, on behalf of our Town Solicitor". He also stated that he was the "lead plaintiff on both" of the appeals.

Mr. DiOrio thanked Mr. Bibler for his comments, and asked if there were any other members of the public who wanted to comment. Ms. Jalette replied that there were. Harvey Buford was the next member of the public to comment. He asked that a site walk be conducted. He said that they are a "necessity on something of this scale, to uh, to understand the impact, on the neighbors, on the environment". Mr. DiOrio thanked Mr. Buford for his comments, and said that they were duly noted, but that, "having conducted, uh, numerous site walks both, uh, you know, as a Planning Board member, and as a person in private practice, uh, site walks are most productive at a particular point in the project, uh, so just wandering through the woods is usually not very productive." He said that they should "wait until we're at a juncture where there are things in the field that we can, uh, we can see, we can kind of get the project context", and that he would "very much support" Mr. Buford's idea. Mr. Buford also made reference to where the project is proposed to be in relation to where the wetlands are. He said that he thought that he could "make some judgments, uh, at, at this stage" and that "sooner is the way to do it". Mr. DiOrio said that he understood and that his comments were "duly noted".

The next member of the public to call in was LouAnne McCormick, of 9 Lisa Lane. She said that she knew that the Planning Board had "issued a unanimous negative opinion on this proposal". She said that she wanted to acknowledge and thank the Board "on behalf of all of the Skunk Hill abutters and neighbors". She said that the project had been "very hotly contested from day one". She mentioned the "sixty-three direct residential abutters and the hundreds of homes in close proximity."

Ms. McCormick: “It’s hard to imagine a worse location choice, really.”

She continued, stating that “the Town Council had issued the zone change anyway”, and that the decision was now “the subject of a pending lawsuit.” She said that she thought that the “public is at a disadvantage right now” due to the COVID-19 pandemic and the resulting remote meetings. She said that it was difficult when meetings were in person, but that having meetings online “makes it harder to participate”. She also said that she wanted to “assure” the members of the Planning Board that “all of us over here at Skunk Hill are very keenly interested in every aspect, and are following this very, very closely”, as it is “something that is very close to our neighborhood”. She said that residents “feel strongly that it is being put in the wrong place”, and that they are “counting on” the Board to “have [their] backs”. Ms. McCormick also said that they were “grateful” for the Board’s negative opinion.

Mr. DiOrio thanked Ms. McCormick for her comments, and said referenced that it was nearly 10 p.m. He asked Ms. Jalette how many other members of the public wanted to weigh in on the project at hand. She replied that there was one person remaining. Mr. DiOrio said that he wanted to stress that “unless the Planning Board members tell [him] that they’re prepared to, you know, work into the night, uh, [the Board was] gonna be wrapping this up shortly.” He said he wanted to stress to those in attendance that they could also provide their comments or concerns directly to the Mr. Lamphere, and he would “disseminate those to the applicant”.

The next person to call in was Joe Moreau of Old Depot Road. He commented that at the beginning of the meeting, the “Chair was very clear” that, “with the amount of projects that are on the schedule” that comments should be “concise” – which he said he agreed with “one hundred percent”. He said that there was “one particular resident that came on for about ten minutes”, and that that resident had discussed “decommissioning fees and twelve dollar panels and forty-four dollar panels”. Mr. Moreau said that the Board was “past the Revity project” when the “resident [came] back again to talk about, uh, issues with the Revity project”. Mr. Moreau said that what the resident “did not tell [the Board] was that he tried to be on the agenda for the Town Council meeting, uh, to talk about his, quote, ‘flogging’, and that was denied.” He said that he did not “know why we’re talking about the Crandall [Lane] project, uh, to spend another six minutes on that, and listen, again, about the court case.” Mr. Moreau said that he “like[s] to follow the rules”, and that there was “one comment that [he] wanted to make during Public Forum”, but it did not “look like [he was] going to get to that”. He said that he agreed with the “strict schedule” imposed by the Board on the Frontier Road project. He said that he had followed the Maxson Hill Road project closely, “which had the same restricted schedule”, which he thought was “more than fair”, though he alleged that work was “continually” done “when they please” on that site. He said that he was “very concerned” about the Frontier Road project, as Mr. Palumbo had stated that his crew would “need to work [on] Saturdays[s]”. Mr. Moreau said that he would “like to know” that exceptions were not being made, and that “the rule is the rule”. He said that any party to break that rule should be fined.

Mr. Moreau: "If they want to work on a Saturday, there should be some financial, um, consequences for them not following the rules. We are the residents of Hopkinton. They come here to earn big dollars, and they need to follow the rules."

Finding that there were not additional members of the public who wanted to weigh in on the proposal, Mr. DiOrio asked the Board how they wanted to proceed. He asked if the Board was "comfortable in sending the applicant away to continue their efforts", or if they "want[ed] to continue this discussion". As he did not hear anything from the Board, he said that the Board and the public had provided the applicant with information to move forward, and that there was not a motion required. He said that the applicant was "directed to work with the Planner to move his project forward." Mr. Craven thanked the Board and the public for their time and input.

Discuss possible scheduling of an agenda item at either a future Special Planning Board meeting, or a future Regular Planning Board meeting, regarding discussion of reforestation issues, as requested by Planning Board member Carolyn Light.

Mr. DiOrio asked the Board if they wanted to discuss Ms. Light's request. Ms. Light said that she wanted to see the Board "take some action on this", and that she wanted to hear from other Board members in regard to "where they would like to go with" her proposal. Mr. DiOrio asked if Ms. Light wanted to discuss it that night, and she asked if it needed to be a Special Meeting topic or if it could just be added to an agenda. Mr. DiOrio said that his recollection was that the item "was going to remain on the agenda, uh, and we can either make a decision this evening, or we can continue to let it roll". He asked Ms. Light to tell the Board what she wanted to do, and they would "make it happen."

Mr. Prellwitz threw his "two cents worth in". He said that after reading the draft, and discussing it with the Planner about the future agendas, he thought that the Board "would need a Special Meeting." He asked how the Board would go about doing that, as it was "going to be very difficult to get together and discuss this, but it seems like there's quite a bit to discuss". He said it was a "good draft" and a "good proposal", but that it was "going to take time". Mr. DiOrio asked if Planning Board members would be "available to start an hour early" as an "opportunity to tackle this issue". Ms. Light agreed, as did Mr. Prellwitz. Mr. Lindelow said that that would be a "hard time" for him, but that he would do his best to attend once the Board had the date scheduled. Mr. DiOrio replied that it would most likely be the date of the next regular meeting. Mr. Lindelow reiterated that he would do his best. Ms. Shumchenia said that she thought meeting a little earlier was a great idea, and that she really like the idea that participants would read Ms. Light's draft, write down those ideas, and send them to Mr. Lamphere and Ms. Jalette for collation into a "cheat sheet of what everybody has been thinking, or some of the main ideas that might rise out of this". She said that she had wanted to get to getting her own thoughts down this month, but her work schedule had prevented her from doing so. She thought that the most productive use of the Board's time would be for all members to engage in that kind of thoughtful exploration of the topic prior to the next meeting. Mr. DiOrio suggested that the Board endeavor to do that, and set the Board's start time at the November 4th meeting for six p.m. "with the intention of devoting the first hour of the

meeting to [Ms. Light's] proposal." The Board members agreed, and Mr. DiOrio said that that would be the way that the Board would handle it.

PLANNER'S REPORT:

Administrative Subdivision – AP 2, Lots 8 and 13, Jacobson Trail. Victor and Laura Sottile, Douglas Buckley and Sherry Lee Green, applicants.

Mr. Lamphere explained that in the Board's packets, there was an Administrative Subdivision that he had approved, which was located off of Jacobson Trail. He said that it had already been recorded.

Final – Minor Subdivision – AP 20, Lot 4, 32 Kenney Hill Road. John J.B. Silvia, Jr., PhD, applicant.

Mr. Lamphere stated that he had included a copy of the Final Plan for a Minor Subdivision off of Kenney Hill Road, which had come before the Board a few months before. While the Board had not "explicitly state[d]" that the Final Plan approval was delegated to the Administrative Officer – the Planner, he said that, in reviewing the minutes, the discussion suggested to him "that the Board didn't need to see it back again". He also included in the Board's packet "evidence that they're complied with the conditions of approval", which had been set by the Board.

Mr. DiOrio then asked if the "Solicitor's Report" section had been omitted purposefully. Ms. Jalette indicated that it had been, as Mr. McAllister had communicated to her that it was not necessary to place the item on the agenda if the Solicitor's Office did not have anything to report.

CORRESPONDENCE AND UPDATES:

Letter from Wood-Pawcatuck Wild and Scenic Rivers Stewardship Council regarding alternative energy installations.

Mr. Lamphere explained that the Planning Department had received a letter from the Stewardship Council, penned by Elaine Caldarone in regard to "alternative energy installations". Mr. DiOrio said that the Board "appreciate[d], uh, getting that."

PUBLIC FORUM:

Ms. Shumchenia said that she wanted to add something about the letter that the Board had received from the Stewardship Council. She said that Ms. Caldarone's letter referenced a "quarter-mile buffer around the rivers and their tributaries", and she said that it was her "understanding that that Council is working on some more discrete guidance about what types of, what types of activities or best practices could be applied in that quarter-mile buffer, in terms of a planning perspective". She said that if anyone was interested in "seeing a map of what that looks like", she would "be happy to share" the

one she had made. Ms. Light said that that sounded interesting, and Mr. DiOrio replied that he would "very much like to see that kind of mapping." There were not any other comments made during the public forum.

DATE OF NEXT REGULAR MEETING: November 4, 2020

ADJOURNMENT:

MR. PRELLWITZ MADE A MOTION TO ADJOURN THE MEETING AT 10:08 P.M. IT WAS SECONDED BY MR. LINDELOW.

IN FAVOR: DIORIO, PRELLWITZ, LIGHT, LINDELOW, SHUMCHENIA
ABSTAIN: NONE
OPPOSED: NONE

5-0, MOTION PASSED.

By: Talia Jalette, Senior Planning Clerk, 10/22/20