

State of Rhode Island

County of Washington

In Hopkinton on the fourteenth day of December 2020 A.D., a Town Council Remote Workshop was held beginning at 7:00 P.M. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833.

PRESENT: Stephen Moffitt, Jr., Scott Bill Hirst, Michael Geary were present in the Meeting Room; Sharon Davis, Robert Marvel and Town Clerk Elizabeth Cook-Martin participated remotely.

Also attending remotely: Attorney Peter Skwirz.

The workshop is to discuss proposed amendments to the Zoning District Use Table to amend permitted uses for solar energy systems throughout the Town of Hopkinton and to possibly change and/or amend the review and approval procedures for all solar energy systems within the Town of Hopkinton, as submitted by Peter Skwirz, Esq. on behalf of his clients Tom & Cynthia Sculco, including, but not limited to, discussions regarding potential impacts to the Photovoltaic Solar Energy Systems (PSES) Ordinance and the Farm-Based Photovoltaic Solar Energy Systems (PSES) Ordinance. For further details on the proposed amendments submitted by Attorney Skwirz, please visit the Town's Website at www.hopkintonri.org.

Council President Moffitt wished to thank everyone for attending the workshop and he noted that his goal was to get a better understanding of the proposed amendment.

Attorney Skwirz thanked the Council for holding this workshop and indicated that his clients, Tom and Cynthia Sculco, live in New York; however, own four abutting lots in town which total approximately 241 acres of land. Attorney Skwirz noted that his clients became concerned with the solar issue in town because they were abutters to several proposed large projects. He noted that they became involved with other concerned citizens and the Hopkinton Citizens Alliance. They felt that there was a need to update some of the areas of the

current solar ordinance to address their concerns. He noted that they were not looking to rush the Town Council into making a decision on this proposal.

Councilor Geary asking Attorney Skwirz if the Sculcos sat on any Boards or Commissions in the Town and was advised that they did not. Attorney Skwirz believed the most important part of the proposed ordinance was changing the designation of a principal use solar farm to manufacturing instead of commercial. He felt that commercial uses, although different from residential uses, could fit in with residential uses. He also noted that they have designed principal use solar farms as land development projects rather than going under a development plan review process. This is important because there was a lot of debate about what the appropriate role of the Planning Board was when rezoning land to accommodate a solar use and what the appropriate role was for the Council. By making this a land development project, it incorporates the precedence of an approval statute for a land development project which means that the first step is approval by the Planning Board; if the Planning Board did not approve the project than it went no further. They also added a special use permit process which requires these projects to be reviewed by the Zoning Board in addition to the Planning Board; they increased setbacks from residential properties; they added language about buffers, decommissioning reserve, allowing the Planning Board to protect scenic view sheds, and contaminated and compromised sites. They also added a provision for solar canopies and provisions to limit the clearing of vegetation and to protect prime farm land.

Councilor Geary asked Attorney Skwirz if he had ever written a proposal similar to this one for any other town and Attorney Skwirz indicated yes, this proposal was modeled from an ordinance that they drafted for West Warwick.

Councilor Hirst noticed on the proposed land use table it lists contaminated sites – solar energy systems – and it has “no” in every category of land use except in a manufacturing zone. He asked Attorney Skwirz what his suggestion would be when dealing with a contaminated site. Attorney Skwirz envisioned that they could ask for a zone change to a manufacturing site by first going before the Planning Board for approval and then going before the Council to ask for a rezone. Councilor Hirst asked how many cities and towns in Rhode Island

currently operate under the plan that is being proposed tonight. Attorney Skwirz noted that this would be unique to Hopkinton.

Eric Bibler wished to add that this proposed ordinance was the culmination of a conversation that has been going on for well over two years. This proposed ordinance improves the landscape buffers and provides that they have to be maintained in good condition over the life of the project; discusses a decommissioning reserve and noted that every panel will have to be recycled; utility connections to the grid shall be required to be underground except for where National Grid requires above ground connections; requires notice to abutters within 500 feet rather than the 200 feet; no building permit can be issued without written confirmation from the Town Planner that all conditions of approval have been met; and, there is an end of life date for the project, subject to extension by approval of the Planning Board.

Mrs. Sculco called in remotely and explained that their intent was to improve the town and maintain the beauty of the area.

Councilor Geary stated that he was concerned because the proposed ordinance cuts out the farm viability ordinance. Attorney Skwirz noted that there was a feeling that placement of solar on farms was introducing a manufacturing use into a non-manufacturing zone. Councilor Geary noted that in his reading of this proposed ordinance he believed that there could never be any more ground mounted solar in the town and he asked Attorney Skwirz if he was correct in that assumption. Attorney Skwirz indicated that there could be ground mounted solar as a principal use in a manufacturing zone and accessory ground mounted solar in nonresidential zones.

Councilor Davis wished to talk about accessory solar and explained there is a pole that is vertical in the ground with solar panels on it which looks like a Christmas tree and people have it standing in their yards. She asked if this sort of thing would still be allowed. Attorney Skwirz felt this could be discussed and ultimately allowed; however, his proposal limited how much electricity a residence could generate. Councilor Davis also asked about Section 5.3.2(B)(1), Permitted Uses – Review of major and minor solar energy systems shall be conducted in accordance with the following procedures which are summarized in

the table below... The last sentence in No. 1 stated, “When minor land development project review for a minor solar energy system requires further relief from the Zoning Board or Town Council request for such relief shall follow the precedence of approval procedures set forth in 45-23-61 of the Rhode Island General Laws with the applicant first obtaining an advisory recommendation from the Planning Board as well as conditional Planning Board approval for the first approval stage for the proposed project...” then obtaining further relief from the Zoning Board or Council. She questioned where the applicant would go if they needed further relief, to the Zoning Board or to the Council? Attorney Skwirz was unsure and noted that the law was confusing. Councilor Davis felt that this seemed to move the Council out of the whole process. Attorney Skwirz suggested that if the applicant needed a zone change and the matter had been approved by the Planning Board then it would go before the Town Council. Councilor Davis wished to keep the farm viability ordinance in place to assist farmers. Councilor Marvel questioned the definition of an accessory solar energy system which they defined as one that generates no more energy than 100% of the energy that is necessary to support principal uses of the parcel. He believed that all residential roof-mounted solar has the energy generated from those panels fed to the grid and thereafter the homeowner would receive a flat reduced rate; that in theory would be more than 100% and he wondered what process a homeowner would have to follow. Attorney Skwirz believed that if the system was over 100% than it would require development plan review or a special use permit but they could change that. Councilor Hirst was concerned because large landowners were looking for ways to get tax relief and he suggested that there should be some input from the fire departments before this ordinance was adopted. He also noted that trees were an expensive proposition and there should be some type of payment to the tree warden by the property owner. He also noted that the coverage had been reduced to 2% from the original 3%. Attorney Skwirz noted that the largest concern by the group that discussed this draft was the rezoning of residential properties to accommodate solar use because it did not fit the character of the town. Councilor Hirst asked about the setting of a date for decommissioning and if that decommissioning bond would be enough to assure it gets done or if the cost

should become a lien on the property. Attorney Skwirz felt this was a good idea and something that was missed in this proposal.

Clifford Heil of Chase Hill Road felt that nothing had to be put on a contaminated area, especially if that area was in a residential zone. He noted that this proposal should be looked at like a negotiation and it should not matter who proposed it. He also spoke of the farm viability ordinance and felt things should be tightened up and suggested there be some type of Planning Board approval before it got to the Town Council level. Also, the maximum lot coverage now proposed is 30% in a nonresidential area which is a significant decrease in the current 75%. He felt that if the property was already clear than they could have the 75%, but if they needed to clear the property, the coverage should be limited.

Carolyn Light of Forest Glen Drive asked Attorney Skwirz for transparency reasons, the names of the coalition of friends who worked on the proposed ordinance with him. Attorney Skwirz indicated that he represented the Sculcos. Ms. Light noted that the Sculcos were also abutters to the Stonington Ridge project and the Planning Board had not heard from them for several years. Attorney Skwirz noted that there were two proposed solar projects that the Sculcos abutted, which was what started their interest in proposing this ordinance. He also acknowledged that he has been discussing this proposal with the Hopkinton Citizens Alliance which Eric Bibler heads. Ms. Light felt that it was not appropriate for them to tell homeowners what they can and cannot put on their property and the farm viability ordinance should be left alone; they should hold the landowners accountable for the projects put on their land; construction of these projects in New England should not be limited to six months; and, any and all applications should be vetted from start to finish.

Carol Desrosiers of Pleasant View Drive wished to comment that all councilors when running for office suggested that they did not support rezoning residential properties for solar use and she believed they needed to put protections in place so this did not happen in the future, even when there may be a different Town Council in place. She felt that there needed to be more work on accessory units on homes as well as the farm viability ordinance for they were not tight enough, and noted that recently there was an application that actually fell under forestry,

but was going through the approval process under farm viability or had already been approved by the Planning Board. If forestry is considered a farm than there were potentially 93 properties in town that could have solar, which is a lot of scattered solar around town.

Sherri Aharonian of Dye Hill Road advised that there were four basic solar proposals that could come to town: (1) rezones; (2) “by-right”; (3) roof-mounted; and (4) farms. She felt that each of these four proposals should be discussed separately. She questioned if all rezones should be classified as major land development projects from the minute it walks through the door. She noted that in her reading of the state definition of development plan review, it is supposed to be for by-right projects. Attorney Skwirz agreed on this point and noted that a project was bumped up to a major land development if it required a waiver or an ordinance amendment because it was not a by-right project and he noted this was included in the proposal.

Emily Shumchenia of Chase Hill Road wished to remind people that the Planning Board did discuss this draft ordinance in their recent November meeting and she had made a motion to support the further exploration of it. The Planning Board felt that this proposed ordinance addressed many of the issues that they have struggled with and applies lessons learned. She felt that there should be a requirement for a completeness determination before the application ever got to the Planning Board.

James Lamphere, the Town Planner, explained that this proposed ordinance was to repeal and replace the existing ordinance. He felt that it was very important for the Town Council to clearly understand and review what was being presented and the tweaking that might be necessary going forward. As a technician he wished to make sure that the Town Council was clear on what was being presented to them and he wished to be clear on how to apply this in real time. He noted that he was basically a servant of the Town of Hopkinton and he wished to make sure the Planning Board was happy and the Town Council received what it expects to receive. He noted that he would expect this ordinance to be consistent with state law and with that in mind; state law defines a minor land development plan as a development plan for a residential project as defined in the local regulation,

provided that the development does not require waivers or modifications. All nonresidential land development projects are considered major land development plans. He did not see how there could be a minor solar energy system, which is less than 40,000 square feet, how the Planning Board could review that as a minor land development project. Also, he mentioned that there was nothing to prevent anyone from requesting a zone change of the Town Council, whether it is a text change or a map change. He questioned if there was any law that would prevent someone from going to the Town Council and requesting a zone change or map change, just as Attorney Skwirz had done here, without having to go to the Planning Board for anything. Attorney Skwirz cited R.I.G.L. 45-23-61 which is the precedence of approval statute; and noted that subsection (b) provides that where an applicant requires both Planning Board approval and Council approval for a zoning ordinance or a zoning map change, the applicant shall first obtain an advisory recommendation of the zone change from the Planning Board as well as conditional Planning Board approval for the first approval stage of the proposed project.

Councilor Davis had thought that this new proposed ordinance would not allow anyone in a residential property to even ask for a rezone anymore. She did wish an exception be put in there for the Stubtown Road landfill because that is currently zoned residential. Councilor Geary believed that when a farm used an acre or two for solar that area would be changed from RFR80 to Manufacturing; however, Jim Lamphere indicated that the zoning district did not change for a farm.

Eric Bibler of Woodville Road asked what happens to a farm property that has a solar installation when it no longer qualifies as a farm. He also felt that having a lien on a property that probably had a mortgage on it would not help the town in any way. He noted that the Supreme Court as well as Johnston Superior Court had issued rulings that effectively found that wind and solar power generation are manufacturing processes.

Council President Moffitt noted that he would like to continue this conversation to the next scheduled workshop which was scheduled for December 28, 2020.

Councilor Hirst asked the Town Clerk to send a copy of this proposed ordinance

to the Ashaway and Hope Valley/Wyoming Fire Departments to obtain their comments.

Clifford Heil asked what the Council required from the residents and should they go through the proposed ordinance and make comments on the document?

Council President Moffitt asked Attorney Skwirz if he would take written questions from residents which he indicated he would and it was noted that these comments should be sent to the Town Clerk who will thereafter forward them to Attorney Skwirz. Councilor Davis also wished to have Attorney Skwirz' comparison of the proposed ordinance and the existing ordinances before the December 28th meeting.

A MOTION WAS MADE BY COUNCILOR HIRST AND SECONDED BY COUNCILOR DAVIS TO ADJOURN THE WORKSHOP MEETING.

SO VOTED

The Workshop was closed at 9:45 PM.

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Murray

Deputy Town Clerk