

**TOWN OF HOPKINTON
PLANNING BOARD**

REGULAR MEETING

Wednesday, December 2, 2020

7:00 p.m.

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

CALL TO ORDER:

Chairman Al DiOrio called the December 2, 2020 Regular Meeting of the Hopkinton Planning Board to order at 7:02 p.m.

MEMBERS PRESENT:

Town Planner Jim Lamphere and Senior Planning Clerk Talia Jalette were the only people present in Town Hall. The meeting was conducted remotely. Chairman Al DiOrio, Vice Chair Ron Prellwitz, Planning Board members Carolyn Light, Keith Lindelow, and Emily Shumchenia, Conservation Commission Liaison Deb O’Leary, Town Council Liaison Sharon Davis, and Planning Board Solicitor Sean Clough participated via Zoom.

APPROVAL OF THE MINUTES:

MR. PRELLWITZ MADE A MOTION TO APPROVE THE NOVEMBER 2, 2020 WORKSHOP MINUTES. THIS WAS SECONDED BY MS. LIGHT.

IN FAVOR: DIORIO, PRELLWITZ, LINDELOW, LIGHT, SHUMCHENIA

ABSTAIN: NONE

OPPOSED: NONE

5-0, THE MOTION PASSED.

MR. PRELLWITZ MADE A MOTION TO APPROVE THE NOVEMBER 2, 2020 REGULAR MEETING MINUTES. THIS WAS SECONDED BY MR. LINDELOW.

IN FAVOR: DIORIO, PRELLWITZ, LINDELOW, LIGHT, SHUMCHENIA

ABSTAIN: NONE

OPPOSED: NONE

5,0 THE MOTION PASSED.

OLD BUSINESS:

Master Plan – 4-Lot, 7-Unit Major Land Development Project – Fairview Estates – AP 18, Lot 7K, 66 Fairview Avenue. Shoreline Properties, Inc., applicant.

Mr. DiOrio asked if the applicant or one of their representatives were in attendance. Ms. Jalette replied that they were. She directed Patrick Freeman, of American Engineering, to unmute himself. Mr. Freeman began by explaining that he was calling in with Joe Catelli, the applicant. Jeffrey Caffrey, of Resnick & Caffrey, the attorney representing the applicant, interjected to state that he was also in attendance. Mr. DiOrio replied that the applicant and his representatives had the floor.

Mr. Caffrey explained that the applicant was before the Board “seeking to subdivide an existing lot into a four-lot, uh, cluster development.” He continued.

Mr. Caffrey: “The resulting properties would house three duplex units and a single-family property. The resulting lots would meet all of the dimensional requirements of a cluster development in an RFR[-80] zone, and would also provide substantially more open space than otherwise required by the ordinances. As a result of our Pre-Application meetings, uh, the applicant – myself and Mr. Freeman – have undertaken to address some of your concerns with the revised plans that are before you this evening. I know, in particular, the Board was concerned about the lack of [a] one-hundred-foot buffer zone, and that members were also concerned about preserving access to, uh, Witch Rock, located to the rear of the property. Uh, we have met with members of the Conservation Commission on-site, and, um, had discussions regarding the preservation of Witch Rock, and, included, in with your materials this evening, is what I believe is a favorable recommendation from the Conservation Commission. Uh, we’ve also worked pretty closely with, uh, representatives of Crossman Engineering, as part of their peer review, to attempt to address some of the other issues that were raised at the, uh, Pre-Application Meeting. Um, at this point in time, I’d like to call, uh, Patrick Freeman into the conversation, so Patrick [Freeman] can address whatever concerns the Board had, uh, regarding the one-hundred-foot buffer zone.”

Mr. Freeman explained that the applicant was “requesting to reduce [the one-hundred-foot buffer zone] to thirty feet in the area south of Lots 1, 2 and 3, in the area north of Lot 4, as well as the proposed private road.” He continued.

Mr. Freeman: “In addition, we provided a forty-foot no-cut buffer to the proposed lots, um, to pro-, and propose landscaping to restore the open space to the north of the proposed private road. This reduction, along with providing minimum lot sizing, allows us to avoid the wetlands and contiguous woodland area to the east of the development. Like Jeff [Caffrey] said, we, uh – to compensate for this, we provided 6.99 acres of open space, where 3.3 acres is required.”

Mr. DiOrio asked if there was “anything left to that presentation”, and Mr. Freeman replied that he had “some things, in addition, to mention, um, other than just that thirty-foot setback.” Mr. DiOrio laughed, and Mr. Freeman continued.

Mr. Freeman: “So, the, uh, the proposed road, in our discussions with Crossman [Engineering] in the Pre-App[lication] stage, we were requesting to reduce the two-and-a-half, uh, percent requirement within one-hundred-and-fifty-feet of the intersection. We did, uh, redesign that road to meet Town standards, um, which required us to cut, um, into that hill quite a bit more, but we were able to design it that way. Um, the drainage system - we also designed, we, we discussed with Crossman [Engineering], um, their comments have been attached to this proposal. Uh, the design has been, uh – we designed it to meet both the Town and DEM [Department of Environmental Management] standards, um, being the one-, two-, ten-, twenty-five, and a hundred-year storm, there’s no increase in peak run-off rate for those storms. Um, that should be all.”

He said that if any Board members had any questions, he would be happy to discuss with them. Mr. DiOrio thanked Mr. Freeman for his presentation, and said asked to hear from the Planning Board members, and then “from Jim [Lamphere] specifically with regards to a recap of the Crossman [Engineering] concerns.” He asked if any representatives from Crossman Engineering were present, and Ms. Jalette replied that there were. He said that he would “go directly to them at the appropriate time.” He then asked the Board if they had any questions for the applicant or their representatives.

Mr. Prellwitz replied that he did not have any questions. Mr. Lindelow said he did not have any questions either. Ms. Light said she would “hold off on any comments”. During this time, Mr. Caffrey and Mr. Freeman could be heard in the background, who were discussing that they needed to be unmuted. Ms. Shumchenia began to speak, but Ms. Jalette interjected that she had not muted Mr. Caffrey, and that he muted himself. He would have to press *6. Mr. DiOrio then said that Ms. Shumchenia was going to say something. She said that she was just going to “defer until [the Board] hear[d] from Crossman [Engineering]”. Mr. DiOrio said that he did “have a comment, or a question”, and he would “leave it up to the applicant and their representatives as to who is most appropriate to field the question”. He said he wanted to return to the “issue of the one-hundred-foot buffer.” He continued.

Mr. DiOrio: “So, I see that you’ve provided what you think is adequate, and I also appreciate your additional forty-foot no-cut buffer. Now, explain to me why we don’t have a seventy-foot buffer area, instead of breaking it into these two distinct elements?”

Mr. Freeman: “The reasoning behind that is, is the, the location of the proposed road. Um, it’s at the lowest, well, it’s, it’s – from a grading standpoint, um, the further towards that northerly property line you go, the less hill you’re gonna have to cut into to get the proposed road through there. If you were to move that road another forty feet south, you’d be looking at – and this is a guess – twelve-foot to fifteen-foot cuts, into that hill, to get through, um, that portion, so, our reasoning was to provide additional open space, as well as some additional plantings in the buffer area that was disturbed previously, um, to provide buffer for that area, without have to cut fifteen feet into the hill.”

Mr. DiOrio: “Yes, I remember that discussion. Perhaps I didn’t explain my question clearly enough.”

Mr. Freeman: “Sure.”

Mr. DiOrio: “So, specifically, if we look at, say, this – the southerly boundary.”

Mr. Freeman: "Okay."

Mr. DiOrio: "You show a thirty-foot buffer, shaded."

Mr. Freeman: "Okay."

Mr. DiOrio: "And then, on top of that, there's a hat – forty-foot, no-cut buffer."

Mr. Freeman: "Okay."

Mr. DiOrio: "My question is: Why don't we just have a seventy-foot buffer in that area?"

Mr. Freeman: "As opposed to have a thirty-foot open space, or, um? I think I understand your question. My, my reasoning there is we needed the area for the lots, to meet the minimum lot areas, without pushing those lots further into the rear of the lot, or the easterly portion, so we use that, that area of that forty-foot, no-cut buffer in the parcel area, um, as opposed to making a seventy-foot open space, which would essentially, um, flatten that area that we can use, and push the lots further to the east, um -"

Mr. DiOrio: "Okay, that's, that's good. Yep. That's the explanation I needed. So, now, with regards to the no-cut buffer area. Uh, forgive me if I didn't catch this in the documentation, but -"

Mr. Freeman: "Sure."

Mr. DiOrio: "Has there been a language that clarifies the conditions of the no-cut buffer?"

Mr. Freeman: "We have not provided anything other than the statement that nothing is to be cut there. Um, we can add it -"

Mr. DiOrio: "So -"

Mr. Freeman: "Yep."

Mr. DiOrio: "So, as a comment, you will flesh that out in greater detail? Obviously, we can't let the word 'forty-foot no-cut buffer' stand as all that we're going to say, though this would be, uh, this will, essentially, be a restriction on each of the lots, so, the lot owners will need to be very clear on what they're buying into. This would be a condition, this will be embedded in their deed, as well as on the plat – we're all clear on that?"

Mr. Freeman: "Absolutely."

Mr. Caffrey: "Absolutely."

Mr. DiOrio: "Okay. Yep. Very good."

Mr. DiOrio then said that the "only other concern [he] had was in reading through Crossman [Engineering]'s, uh, report, uh, concerning the drainage area", but he said that the thought they would "get to that when [a representative from] Crossman [Engineering] comes online." He said that beyond that, he was "good, uh, in terms of questions" for the applicant, and asked Mr. Lamphere to "step in and give [the Board] his perspective".

Mr. Lamphere said that he wanted to "mention that the applicant provided a conventional layout that provided for, um, six units." He continued.

Mr. Lamphere: "The applicant seems to prefer the Cluster, as well as the Town seems to prefer Cluster designs. So, we, we have a Cluster calculation that also confirmed that the parcel can handle six dwelling units. Now, given that this is a Major Subdivision, the Inclusionary Zoning Ordinance kicks into play, where twenty percent, um, you multiply six times twenty percent, you get 1.2, so we need to, we need to have, actually, seven units here. So, my question for the Planning Board is, uh, what your preference is for the

configuration of these seven units. Now, according to State Law, uh, the developer has the option of either providing, um, on-site affordable housing, that one unit on-site, or off-site, or a fee in lieu of providing them. So, I don't know, I don't know, really, what the preference is of the developer at this point, but, we have to consider the fact that, in our Subdivision Regulations, it says that no more than fifty percent of the, uh, development can be duplexes. So, what we have here on paper right now, in a Cluster, is we have three, we have four lots, three duplexes, and one single-family home. So, is this something that the Planning Board wants to entertain, or – because the Regulations state that a maximum of, um, says here, 'in regards to density and mix of types of units, the Planning Board will consider a maximum of fifty percent of a cluster for duplex or townhouse units. The balance would be for single-family homes.' So, I, I guess, my, my thinking here is, um, the applicant could probably go back and do a conventional, if the Planning Board, uh, authorized them to, um, but, again, the Cluster has some advantages – by preserving the access in the, um, on the eastern portion of the property, Witch Rock and etcetera, so, um, I just want to lay that out for the Planning Board's preference right now, because that's real, a, a good place to start here."

Mr. DiOrio thanked Mr. Lamphere for his comments, and said that that "that language seems to be pretty straightforward." He asked that "if the Planning Board embraces what's being presented this evening, what [was the Board's] mechanism for – I don't want to use the term 'skirting' that language, but, uh, dealing with the Regulations." Mr. Caffrey interjected to address Mr. DiOrio.

Mr. Caffrey: "As I read your Inclusionary Zoning Ordinance, in, in how you define the density bonus, I mean, I think the authority exists for the Planning Department to grant us additional units above that would, which would otherwise be permitted under the Ordinance. That's the exact language from your Inclusionary Zoning Ordinance, so I think you have the authority to do that, if we're providing you with an inclusionary unit."

Mr. Lamphere said that he would "agree with that", but continued.

Mr. Lamphere: "However, let's put the inclusionary unit aside for one second. We still have six units that you're, um, proposing to put here, and you, at least, have two duplexes, so, are, are we talking – again, first of all, I, I think, I think our Regulations could be written a little bit clearer – um, are, are we referring to lots, or, or a number of units? Uh, I would tend to, I would tend to weigh in on we're looking at the number of units here, is that no more than fifty percent of six, which would be three, which you're not going to put in two duplexes, anyway, uh, so, I don't know how that would, um, uh, how that would play out. I suppose you could put, I suppose you could put two duplexes on there, you know, three units and two duplexes, put the inclusionary in the, as the fourth unit in the two duplexes, but that gives you four units, and, I guess, you'd have two other lots for single family homes on them, so that, that only gets you to six, it doesn't get you back up to seven."

Mr. Caffrey: "That wouldn't then give us the, uh, the density bonus, because we would be entitled to a seventh unit, under the, under the Ordinance, as I interpret it anyway."

Mr. Lamphere: "That, that is correct."

Mr. Caffrey: “So that, would then, in turn, if we’re able to use the third duplex, that would give us the mechanism to get to the seventh unit.”

Mr. Lamphere: “Well, you’re proposing, right off, I mean, just forget the inclusionary for a second – you’re proposing two duplexes, which is four units, so, four is more than half of seven.”

Mr. Caffrey: “That’s correct.”

Mr. Lamphere: “So, I, I agree with you – the inclusionary, uh, gives the Planning Board the power to, uh, reduce lot sizes or configure it in whatever manner they have to, to get that extra unit on the property, but, I guess, before I even get there, I want to know how, how you propose to put your six on the property. Let’s say, let’s say we didn’t even bring up inclusionary. What you have on paper is three, three duplexes, and a single family home. How do you do that without the Planning Board granting a waiver, which, I, I believe they, they probably could do – I’ll leave it up to the Planning Board, and, and Sean [Clough] to say, but, I believe that the Planning Board has the power to waive their Regulations in the interest of good planning here, but, uh.”

Mr. DiOrio: “So, Jim, that was my thought exactly. So, if this – it provided that the Planning Board members feel that the Cluster arrangement, that’s being presented is superior, and has positive attributes, could the applicant weave a waiver into their applications for the Planning Board’s consideration.”

Mr. Lamphere: “I would say yes, Mr. Chairman. Um, it, it’s a Major Subdivision to begin with, so we don’t have to worry about bumping up a Minor to a Major for, to accommodate a waiver. We’re already at a Major, so, I would say, weave it in.”

Mr. DiOrio: “Okay, so that means though that the application now has to be, uh, let me use the term ‘amended’ to incorporate a waiver for the Planning Board’s consideration, if I’ve got that mechanism straight in my mind.”

Mr. Lamphere said that he “concur[red] with that.” Mr. DiOrio asked the applicant was “on board with this thinking. Mr. Caffery replied.

Mr. Caffrey: “Yes, it makes perfect sense.”

Mr. DiOrio: “Okay. I think it affords the vehicle to get folks where they need to be.

Again, the, the caveat here is that the Planning Board members, uh, feel that what’s being proposed has got enough positive attributes to it to make it fly.”

Mr. Caffrey: “Sure. Thank you.”

Mr. DiOrio asked Mr. Lamphere if he had anything else to add. Mr. Lamphere said that he did. He continued.

Mr. Lamphere: “I just wanted to revisit, I – did I hear, uh, Patrick Freeman say, uh, state that the road is designed to Town standards, and I just want to confirm that this is going to be a private road, as opposed to a public road.”

Mr. Caffrey asked if Mr. Freeman was there. Ms. Jalette replied that “he muted himself, [so] he will have to unmute himself by pressing *6.” She then told him that he was unmuted, and he responded.

Mr. Freeman: “Um, yes, so we did update the road. We made it two feet wider, and we also, uh, we, uh, we met the Town standard with that, that two-and-a-half percent slope, so, we, we updated it, per the recommendation of Crossman [Engineering].”

Mr. Freeman then said that it was “still going to be [a] private [road]”. Mr. Lamphere then asked if “all the, uh, maintenance of the drainage facilities will be done privately as well.” Mr. Freeman responded in the affirmative. Mr. Lamphere then said that he didn’t want to take away from the report written by Steve Cabral, of Crossman Engineering, but he said that Mr. Cabral “still has an issue with, uh, storm water flowing onto Fairview [Avenue]”. He continued.

Mr. Lamphere: “And I think he’s recommending to tie into the existing catch basins that are there, as opposed to using the, um, infiltration basin, so, I’ll let Steve [Cabral] address that, but, I think that’s all I have for now.”

Mr. DiOrio thanked Mr. Lamphere for his comments, and then asked Mr. Clough is there was anything from his “end that [the Board] need[ed] to hear about” before hearing from Mr. Cabral. He waited a few seconds, but did not get a response. He said that the Board would “get back to that.” He then asked if Mr. Cabral was in attendance. Ms. Jalette replied that he was, and she directed him to press *9, then *6. She then had him state his name for the record. Mr. DiOrio welcomed Mr. Cabral to the meeting, and said that the Board had “received [his] report”, and that they were “wondering if [he] could just give us a quick walk-through” of it. Mr. Cabral said yes, and thanked Mr. DiOrio, and then said that American Engineering “ha[d] been responsive over the past few months”, and that Crossman Engineering had “spent quite a bit of time going back and forth on drainage and the road design”. He said that “except for one, well, except for issues associated with the buffer that y’all have already addressed, [he] only had one remaining drainage comment.” Mr. Carbral then stated that he wanted “to touch on the roadway profile”. He said that Mr. Freeman “did originally submit a roadway profile that did minimize cutting into the hillside, but he wasn’t meeting the, the two-and-a-half percent in proximity of Fairview [Avenue].” He continued.

Mr. Cabral: “Now, there are cases where we would normally agree with that, to minimize cut, but our concern on this site is that we have about a three-hundred-foot to four-hundred-foot length of roadway that’s at eight percent, so we felt that it would be more of a safety benefit to have that landing for winter conditions, as opposed to minimizing the fill. So, that’s why we had recommended that, that they designed the road to meet Town standard, for solely for safety in the winter.”

Mr. Cabral said that the Board had already discussed the one-hundred-foot buffer, “but there was one other buffer [he] just wanted to touch on.” He continued.

Mr. Cabral: “The Ordinance also recommends a fifty-foot buffer to, uh, between a home and a public street, and, along Fairview Avenue, in that fifty-foot buffer, there’s going to be the proposed water quality pond sand filter, which is essentially a detention pond, and then there’s a limited landscape buffer, which appears to be only about ten feet. So, I

understand why the buffer has been minimized, and that reason is, along Fairview Avenue, that's the lowest point, so you need to have the detention facility at the lowest point to capture as much of the run-off as possible, but, from the beginning of the discussions, even though American [Engineering] has been very responsive, and I respect everything they've done, if, at all possible, we would recommend more than that single row of vegetation along Fair, Fairview [Avenue], and see if the Town could gain a little bit more of a buffer along Fairview [Avenue]. In regards to the drainage design itself, American [Engineering] did design the drainage system to meet the Town and State standards, but our concern is that, even though they're meeting standards by not increasing the discharge, the concern we have is the location of the discharge. The way the system is designed is, the run-off from the roadway is gonna be collected in catch basins. The catch basins will be piped to a sediment forebay, which will overflow into a water quality pond, and, during the severe storm events, the water quality pond will overflow into a level spreader, which will then flow directly onto Fairview Avenue. Now, the biggest concern we have is that, the way the State Regulations are is – they really don't address winter conditions, or rain storms that occur during the early spring, when the ground is still frozen, and, what we see in those events are that there's very little infiltration, because the ground's still frozen, and you tend to get more overflow. So, we recommended, from the beginning, that if there's any potential of actually piping the effluent of the water quality pond directly into a nearby catch basin, or a nearby culvert, that will avoid any long-term safety conditions with Fairview Avenue. We really would hate to see this built, and then, two or three years from now, end up creating a drainage problem or icing problem in Fairview Avenue, so, we feel now is the time to certainly look at all the alternatives for the discharge point. And that, that's really the remaining drainage or design comment, because, as I said, American [Engineering] has been very responsive over the past couple of - a few – months, and they've made quite a few amendments to address our concerns.”

Mr. DiOrio thanked Mr. Cabral for his testimony, and said that he had a “couple of questions to follow up on [his] concerns.”

Mr. DiOrio: “So, let's, let's go with the profile concern first. So, if I understand your concern correctly, there's an eight percent decreasing slope before we get to a two-and-a-half percent decreasing slope onto Fairview Avenue, yes?”

Mr. Cabral: “Yes.”

Mr. DiOrio: “Is that satisfactory, or are you looking for an amendment?”

Mr. Cabral: “No, I feel – the way it's designed currently meets Town standards, in the sense that they provide a two-and-a-half percent slope that's one-hundred-and-fifty feet long, so they do meet the Town standards, and I do feel that's reasonable.”

Mr. DiOrio: “So, let me rephrase that question. Are we gonna have people skating out onto Fairview Avenue?”

Mr. Cabral: “Hmm. Well, even if the entire roadway was two-and-a-half percent, if it's iced over, people will slide, but this does meet typical standards, so, what, as long as the roadway is out and maintained, that one-hundred-fifty feet is considered sufficient.”

Mr. DiOrio: “Okay. Alright. So, we won't go beyond that.”

Mr. Cabral: “Yeah, I mean -”

Mr. DiOrio: "I'm sorry. Go ahead."

Mr. Cabral: "Oh, I was going to say – I've been on a standstill on a roadway that's been iced over, and just, the crown of the road, I've slid, but, but the design that's presented is a safe design."

Mr. DiOrio: "Okay. That's what we need to hear."

Mr. DiOrio then went to the "buffering idea at that drainage area."

Mr. DiOrio: "So, I hear your concern. A single row of whatever they've got there is probably never going to be adequate. Uh, I'd love to just suggest that they double it and offset it, but, as I look at the grading, would they have room to do that, because it appears that the doubling and off-stat would then be in the grading of the water quality pond. What do you think?"

Mr. Cabral: "Yes. What would have to occur is the single-family home and the septic and everything would have to shift eastward, you know, to gain that extra space. So, basically, the water quality pond would shift east to accommodate the additional plantings."

Mr. DiOrio: "Um, okay, so, uh guide me a little bit here. Before I make that kind of suggestion, I mean, are we talking anything more than grabbing onto a bunch of poly lines and doing a move of ten feet? Is it more complicated than that?"

Mr. Cabral: "Well, for the designer, it would involve regrading a Lot, on Parcel 1. So, yes, there is more to it, you know, there is a little more to it, but certainly it – I agree with you, that in the long run, it would be best to maximize that buffer along Fairview."

Mr. DiOrio: "Is there, is that request, like, insurmountable, or am I being reasonable in making the request?"

Mr. Cabral: "I, well, as the Town's consultant, I feel it is very reasonable, especially seeing they're seeking a waiver to the fifty-foot buffer."

Mr. DiOrio: "Okay. That's all I need. Alright, and then, your last item, the, the whole idea of connecting to the catch basin. So, uh, forgive me, I'm a little bit out of my league here. So, I see an exit point to the water quality pond, kind of at its southwesterly corner. Do I interpret that correctly?"

Mr. Cabral: "Yes, well, actually, and Patrick [Freeman] you could confirm – I don't have the plan in front of me. I believe there is an overflow at the, yes, at the northwesterly corner, and that overflow flows into a level spreader that allows the effluent to spread out, so that when it does flow into Fairview [Avenue], it flows in a sheet flow manner, so the width of the flow may be one hundred feet wide or so."

Mr. Freeman: "Can I weigh in on that, just to clarify?"

Mr. DiOrio: "Yes, please."

Mr. Freeman: "So, that's actually, that's an emergency overflow, set six inches above the, uh, one-hundred-year ponding elevation of that pond, um, just the direct flow, in case of, you know, beyond a hundred-year storm, if that pond ever fills up that high, um -"

Mr. DiOrio: "Okay."

Mr. Freeman: "And to provide a little additional clarity, those catch basins, when we did our field inspection, they appear to be cisterns. There's two pipes coming out of each of them, in line with Fairview Avenue, um, that don't appear to go anywhere, so, without actually lifting the lids, which were very heavy, um, we believe they're, um, an actual

infiltration system, as opposed to routed to another catch basin, where they, um, go elsewhere. So, that's, that's the dilemma we're running into there, and why we didn't exercise -"

Mr. DiOrio: "I understand."

Mr. Freeman: "And, yeah, then we, yes, and we've been, also been quiet as to whether or not there was any culverts beneath Fairview Avenue nearby that could be tied into. In, in, and, again, as I mentioned, American [Engineering] designed this in full conformance to the DEM [Department of Environmental Management] standards for sizing the pond, but, but we always have to recognize that that's based on the assumption that they're maintained, one hundred percent perfectly. So, I am concerned that, even though on paper, the overflow will be minimal in all likelihood and practicality, the overflow will be more frequent than the design, just because of the delays and maintenance. So, again, if at all possible, we'd like to avoid an overflow into Fairview [Avenue]."

Mr. DiOrio: "Yeah, I understand, but Steve, candidly, if the representation is accurate, that those catch basins that are located northwesterly of this facility are just holes in the ground, what's the benefit of asking the applicant to connect to those? What are we getting out of this?"

Mr. Cabral: "Yeah, the other question was if the applicant's engineer inspected the area to see if there are any other culverts nearby, that could be connected into. Our question was: were there any catch basins or cross culverts that could be utilized?"

Mr. Freeman: "During the performance of the field work, we didn't find any culverts that crossed Fairview [Avenue], in proximity to, um, that area, um, and we didn't find anything, obviously, that - but pipes in any direction could tie into."

Mr. DiOrio: "Okay, so, that option is not there, Steve [Cabral]. What else do you have for me?"

Mr. Cabral: "Okay, well, say the worst case - that there were no options, it - there would still be a benefit of connecting to the cisterns, because if that theoretical overflow occurs, and it is a low flow, having the cisterns capture as much as they can handle would still be beneficial, especially in, say, a winter condition, you know, when the storms may not be severe, yet the bottom of the ponds are, are frozen. They would, they would, as a minimum, be a trickle of overflow, and I would believe that those cisterns could handle that trickle, which could prevent an icing issue. So, the more we keep off the road -"

Mr. Freeman: "One thing -"

Mr. DiOrio: "I understand. Go ahead."

Mr. Freeman: "Oh, alright. Um, as an alternative, Steve [Cabral], we did propose a[n] infiltration practice, uh, on our Lot, at the uh, as you can see, Catch Basin 6 and 7, um, as an alternative. Would it be reasonable to - see, I don't know how you'd be able to maintain the flow pattern of catch basins delivering to a forebay, which overflows to a water quality pond, and then, somehow, it redirects storm water instead of to the level spreader, to an underground infill penetration practice with a backup of a level spreader. I don't, I don't know how you'd actually get that to work."

Mr. Cabral: "Oh, oh, Patrick [Freeman] that would be, oh, if I may, Patrick [Freeman], that would be having a conduit from, running from the level spreader -"

Mr. Freeman: "Oh, I see."

Mr. Cabral: "To the infiltration system."

Mr. Freeman: "Okay. That, that's more -"

Mr. Cabral: “That’s what I meant.”

Mr. Freeman: “I -”

Mr. Cabral: “Yeah.”

Mr. Freeman: “I got ahead of myself there.”

Mr. Cabral: “And I do – yep – and I do agree that if the existing structures in Fairview [Avenue] are dry wells, as long as your new dry wells were appropriately sized, that would be a very good alternative.”

Mr. Freeman: “Okay.”

Mr. DiOrio then said that if her understood Mr. Freeman and Mr. Cabral’s discussion, Mr. Freeman was “going to do some kind of diversion into Catch Basins 6 and 7, out of the water quality pond.” Mr. Freeman replied that it would “be, uh, out of the level spreader, um, to Catch Basin 7.” He said that they could “route that” by “add[ing] a stand pipe to that, below the level of, or, or some sort of grate, um, below the level of the, uh, level spreader”. He said that they could “pipe that to Catch Basin 7, to provide some additional treatment.”

Mr. DiOrio then said that the Board had heard from the individual Board members and Mr. Lamphere. He asked if Mr. Clough was still available. Mr. Clough replied that he was. Mr. DiOrio asked if there was anything the Board needed to know “from the legal perspective.” Mr. Clough said that there was not anything at that time. Mr. DiOrio thanked Mr. Clough. He said that the Board had also heard from Mr. Cabral, and that he was now “prepared to go to public comment”. Ms. Jalette directed any member of the public who wanted to comment to press *9. Ms. Jalette said that there was not anyone wishing to be heard from the public. Ms. Light took that opportunity to comment again.

Ms. Light said that what was “weighing on [her] mind [was] that these three duplexes are going to be rental property, with one of these units being for low-, moderate-, moderate-income” residents. She then asked the applicant for confirmation. Mr. Caffrey replied.

Mr. Caffrey: “I’m not, I’m not sure that those are intended as rental properties. I mean, it’s maybe owner-occupied at one half, and rental on the other side. I think that’s not, not yet determined.”

Ms. Light replied that her concerns rested on the fact that this was going to be a private road, and that “there are, uh, septic systems – there’s just a lot of maintenance money.” She continued.

Ms. Light: “When I look at this, and, I’m, I’m concerned that – if it’s not rental prop-, if it is rental property, who’s going to bear the cost of maintaining things like the septic and the roadway, and if they’re not going to be rental property, then, the, uh, developer is, is prepared to go to Rhode Island Housing, and get the proper approval for a low-income unit, to be sold? Is that gonna, is that what we’re talking about?”

Mr. Caffrey: “Well, I, I think you’re raising two, two separate issues there. Relative to the cost of maintaining, um, the area, I mean, it’s, it’s recommended, and I’m sure we’re

gonna be required to do an HOA [Homeowners' Association], which would have a budget built-in.”

At this point, there was some background noise. Ms. Jalette asked Mr. Caffrey to continue. He did.

Mr. Caffrey: “So, at some point in time, we would have to present some HOA [Homeowners' Association] documents that would, um, basically require that everybody contribute towards the cost of maintaining the road, and the septic systems are going to be all self-contained, so, it wouldn't be any different than any other homeowner requirement – mainly, that they maintain their septic system.”

Ms. Light replied that she was “on board with that”. She then said that one of the units would be low- and moderate-income housing, while the others would be market rate, “and it would be home ownership responsibility to contribute to the HOA [Homeowners' Association].” She said that “that clarifies everything for [her].”

Ms. Jalette then told Mr. DiOrio that there were two members of the public who wanted to comment on the proposed project. He said that the Board would “hear from the public”, but that he would “want to go back to the Planning Board members who deferred their comments.” Ms. Jalette read the last four digits of the caller's phone number, instructed them to state their name for the record, and asked them to press *6 to unmute themselves.

Cynthia Johnson, of Hope Valley, was the first member of the public to call in.

Ms. Johnson: “The Hopkinton Land Trust, of which I'm a member, walked out on this property with Mr. Catelli back in March, and had some pretty interesting conversations with him, and - about the protection of the Witch Rocks, which are coming back on what will be the open space in the rear of the property, and it is, um, the desire of the Land Trust to preserve that land – culturally, historically important property, and very dear to a lot of people, a lot of people here in Hope Valley. So, I think, um, because the open space is the area just around, around the Witch Rocks that we're interested in - and we have had this conversation with Mr. Catelli – we would like to support that. Um, we are further interested, interested in working with Mr. Catelli in the future to try to plan for controlled public access via the cul-de-sac, cul-de-sac, not a general public access, but something that we can discuss in some kind of controlled way. That's it. Thank you very much for your consideration.”

Mr. DiOrio thanked Ms. Johnson for her comments, and asked if there was still another person who wanted to speak before the Board in regard to the proposal. She said that there were not, as “there was another person, but they put their hand down”. He then “return[ed] to Planning Board” comments, as some members had “deferred [their] comments”. He said that he wanted to see if they had “anything else [they'd] like to add to the mix.” Mr. Prellwitz weighed in first.

Mr. Prellwitz: “As I’m understanding this, the general consensus is, if we offer a waiver or some sort of, uh, wave of the magic pen, they can accept what we’re seeing on Sheet 5, and from there on, with the existing duplex, two new duplexes, and a new single-family home. Is that correct?”

Mr. DiOrio: “That’s correct, Ron.”

Mr. Prellwitz: “Okay, uh, I’m good with the design. I mean, Mr. Cabral answered all the questions that I would think would pop up. Uh, I think it’s a nice-looking design, and if everybody’s good with it, I’m good with it.”

Mr. DiOrio thanked Mr. Prellwitz for his comments. Mr. Lamphere asked Mr. DiOrio if he could “just get clarification from the developer” on “which of those units [was] going to be the affordable unit at this point in time.” Mr. Freeman responded that they had not “determined that yet”, but that it was “most likely going to be on one of the units, uh, of the duplex for Parcel 4, which is the northeast parcel.” Mr. Lamphere responded.

Mr. Lamphere: “Okay. So, if that’s the case, it, it, will, will it be a condo, or will it be a, uh, rental unit, or, um?”

Mr. Caffrey: “Probably a rental, because if someone buys that, that if someone buys that duplex, you know, they’ll have that restriction – we’ll have to rent to, you know, a qualified affordable -”

Mr. Lamphere: “Okay.”

Mr. Caffrey: “Applicant.”

Mr. Lamphere thanked Mr. Caffrey for his response. Mr. DiOrio then asked if any other Planning Board members wanted to comment. Ms. Shumchenia chimed in to say that she was “supportive of the design”. She continued.

Ms. Shumchenia: “I was interested to know if, um, abutters had thoughts about it, however, um, with respect to, you know, whether they are okay with density, are supportive of, um, this level of density in their neighborhoods. It’s a neighborhood I’m not super familiar with, although I took a drive up here, um, so I was curious about public comment, but, um, from a conceptual perspective, I appreciate the, you know, preservation of open space on the east side of the lot, and I think that the density makes sense. Um, I, it just was raised by Jim [Lamphere], um, the location, particular location of the affordable unit. Some more clarity about that would be appreciated. I don’t, I don’t fully understand how you can, like, demand that someone rent an affordable unit, um, and how you have only one side of a duplex be affordable, um, I just, I guess I don’t understand completely how that Affordable Act works in that instance, so it’s more clarity, and a clear plan for that would be appreciated, in the next version.”

Ms. Light said that she could communicate “the research that [she had] done” to Ms. Shumchenia. She continued.

Ms. Light: “If there’s an intention to build an affordable house, there has to be approval from HUD [the Department of Housing and Urban Development], and there would be a commitment letter. As far as renting is concerned, uh, what owner buys the property – if

they decide that they're going to offer a rental unit up for affordable housing, they have to meet State guidelines, etcetera. But, there is no guarantee that an owner, buying a property, is going to use it for low-income or moderate-[income] housing. There's no way to guarantee that. That was my, my reference – that they be prepared in order to go and rent the unit, uh, commit, by the State resources.”

Mr. Caffrey replied that he was “not so sure [he] agree[d] with that”, as there is “a monitoring agency that oversees the affordability unit, and they have requirements as far as anybody to purchase and to rent that property.” Ms. Light said that that was “right”, and that the developer could “offer the unit for rent, but the unit has to meet the guidelines for a low-income or moderate-income rental.” She continued.

Ms. Light: “That part you have to agree with.”

Mr. Caffrey: “They have guidelines as far as compatibility with the other units, if that's what you're referring to.”

Ms. Light: “Compatibility with other units – you're talking about, as far as lowest – some rental terms might involve, like, vouchers, rental assistance.”

Mr. Caffrey: “It's whatever the monitoring agency requires.”

Ms. Light: “Well, I, I suggest you take a look at what the monitoring agency would require, and get familiar with it. I can tell you that we had a failed low-income housing development called ‘Rockville’. It was, uh, perpetuated by the, uh, known conditions that existed around the development. What ended up happening, when that proposed structure failed for the tenants, with that, the housing monitoring agency gave all the tenants rental vouchers to rent wherever they wanted, which means they left Hopkinton. There's a lot to be considered, when you're talking about low-income, and rental, uh, unit, when you're talking about market rate versus a low-income rate, you know, uh -”

Mr. Caffrey: “There's gonna be – it's going to be a ninety-nine year restriction put on this property, so, it's a matter of public record.”

At this point, Joe Catelli asked to interject “one thing”. Mr. Caffrey gave him the floor. He spoke.

Mr. Catelli: “I can say one thing. It's not ‘low-income.’ It's affordable housing. It's a big difference. You know, this is meant for people – you get a certificate, like she said, but it's affordable housing. It's not ‘low-income.’ I don't like when people use that term, because, it's, it's meant for people that fit in – whatever the guideline they're going to give us for the income, and we'll get that from the Housing Authority. Um, I'm pretty familiar with them. I've done quite a few of them now with my developments, where we either rent or sell, um, so they would have to get a certificate, and they'd have to qualify. They have to bring – if I'm the owner, or whoever the owner of the building [is], they would have to present that certificate to qualify.”

Ms. Light replied that that was a “true story”, and that if the developer was “selling that affordable unit, then [they would] have a thirty, thirty-year deed restriction, as a mortgage holder”, but that they didn't “need to get into the semantics of that”. She was just saying

“there are requirements, and, uh, you know, this – it’s nice to see all of this stuff, but it’s better to execute it.” She continued.

Ms. Light: “So, I would only hope that we would have the promise of the developer that that low-income unit that we’re talking about is, in fact, going to be targeted for low-income – and I would prefer to see it sold, rather than rented, because you have a complicated situation with these being duplexes, and, and, you know, that’s, that’s an interesting story that somebody else can figure out.”

Mr. Caffrey: “Okay. Thank you.”

Mr. DiOrio asked if there was anyone else who wanted to be heard. Ms. Jalette said that there was a member of the public who wanted to comment. He replied that the Board would “take that one, and that’ll be the end.” The caller was Sherri Aharonian.

Ms. Aharonian said that Ms. Light “had asked a question that prompt[ed] a question in [her] mind.” She asked what the “approximate affordable housing market rate for 2020.” She said that she knew “it varies from year to year”, and that in “some years, it’s been two-hundred-and-forty thousand, two-hundred-and-fifty thousand.” She said that she did not “know what it is” in 2020, and she “was just curious as to what the affordable housing market rate average is.” Ms. Light interjected that those rates would be specific to Hopkinton, not Rhode Island. Mr. Catelli concurred. Ms. Aharonian asked if “anybody” knew “what the average price point is for an affordable housing, um, purchase.” Mr. Catelli said that he did not know. She said that she was “just curious”, as she did not “know what the approximate dollar amount for the house would be.” Mr. Catelli replied that he had just completed eight units in Exeter, and, while he did not know if it would be “the same”, that it had “been based on 120% [of] average medium income, and [he] had to do four at 120%, and four at eighty percent, so it gave a good variety”. He said that the cost was \$200,000 for eighty percent, and that it was \$323,000 for 120%, and that if one took “the average of those two, that would be the one hundred percent, so it would be right in the middle, probably around two-forty [\$240,000], two-fifty [\$250,000], like you were saying.” Ms. Aharonian thanked Mr. Catelli for his answer.

Ms. Jalette told Mr. DiOrio that there was another member of the public who wanted to comment. He said that they could. The next caller was Barbara Capalbo, of Ashaway. She said she had a question that she thought would be for Mr. Lamphere. She asked if the single-family home “had, um, a mother-in-law apartment or an affordable, um, are they considered affordable apartments that can be rented, so that, instead of having, um, you know, a condo side, whether the house had an affordable apartment, that could be considered affordable housing?” She wanted to know if that was “a possibility, or is that, is that not” allowed. Mr. Lamphere began to respond, but Ms. Light interjected, and said that she could answer that. He told her to “go ahead.” Ms. Light said that the answer was no. Ms. Capalbo replied that said she “wanted to finish hearing from [Mr. Lamphere] if [she] could.” Ms. Light replied that there were some “State laws [she] could point [Ms. Capalbo] to”, and that she could e-mail them to her, but that, “in short, the answer is no.” Mr. DiOrio interjected to ask if Ms. Capalbo “want[ed] to hear [Mr. Lamphere’s]

response”, and she said that she “just wanted to hear [Mr. Lamphere’s] response” to her question, “because [she knew] it [had] been considered in other areas, and that, indeed, when they have a mother-in-law apartment, it often is allowed to be, at least for families, considered, uh, affordable housing.” Ms. Capalbo said that she was “sure [Ms. Light was] right in certain instances, but there may be others where a family rents to its cousin or its, you know, nephew, or a family member, but it’s considered affordable housing, especially if it’s [housing for] disabled [people], if someone’s disabled, and needs the, uh, additional space, and has to have, like, Section 8 housing, so [she] wondered if [Mr. Lamphere] would just answer that, because [she thought] there are times that is allowed or it could be allowed.” Ms. Light responded again, and said that what Ms. Capalbo was referring to was “called an accessory unit, an accessory dwelling unit, [Ms. Capalbo], and that’s, uh, you know, [Mr. Lamphere] can speak to that, but that’s what [she was] referring to.” Mr. Lamphere then interjected. He said that they were called accessory family dwelling units, “and, basically, they’re for a family member”, but that Ms. Capalbo raised an “interesting question” that the Board would have to look into closely. He said that “at the very least, it probably, it probably circumvents the intent of [the purpose].” He continued.

Mr. Lamphere: “I mean, you know, I mean – we’re trying to get, we’re trying to get, trying to get affordable housing to the general public, who needs it – not that, not that family members don’t need it as well, but, um, very good question. Very good question.” Ms. Capalbo: “And, sometimes, family members really do need it because they can’t live on their own, um, but it is a way to put affordable housing, but within a sold, owned, mortgaged, single-family dwelling. Thank you, Jim.”

Ms. Light then interjected again.

Ms. Light: “Hey, uh, for the crowd out there, uh, Hopkinton does have an Ordinance that specifically speaks to accessory dwelling units, and it specifically says accessory dwelling units are only for blood members of a family, um, so when you talk about putting a unit on a bonus room, on top of a garage, our own Ordinance prohibits it from being considered for low-income housing.”

Mr. DiOrio thanked Ms. Light for her comments. He then asked if there was “anything else on this one.” Ms. Jalette replied that there was not. Mr. DiOrio replied that he “presume[d] [the Board was] getting close to contemplating a motion”, though he had “a couple of summary thoughts, that, should the Planning Board decide to move forward, uh, [he] would suggest these conditions.” He continued.

Mr. DiOrio: “That the subsequent application needs to include a waiver with regards to the duplex. That I think the buffer near the proposed drainage area at Fairview [Avenue] needs to be expanded upon – specifically, doubled and off set, and that there’s, that there’s going to be a drainage connection from that facility to Catch Basin 7, and that the next iteration of this needs to include detailed language for the no-cut – what are we calling it? – no-cut buffer zone. So, those are my thoughts. I’d be prepared to entertain a motion.”

Mr. Lamphere asked Mr. DiOrio if he was “contemplating a motion to approve the Master Plan with those conditions”. Mr. DiOrio replied that he was asking the Board “what they would like to do, but those would be the things that [he] would be looking for in the next iteration, whether it’s revised Master Plan, or” not. Mr. DiOrio then asked Mr. Lamphere if the Board was “on the right track”, and if they were “good” to make such a rendering. Mr. Lamphere replied that it was up to the Planning Board. Ms. Light could be heard in the background briefly, saying that she did not have one of the documents. Ms. Light interjected to reference Mr. Lamphere’s memo, which indicated that the Board had “to make a decision on the Master Plan by January 24th, 2021”, so she thought that the Board had “a little bit of wiggle room to request, um, some revisions to this draft Master Plan, including all the things [Mr. DiOrio] just mentioned, and that would be [her] preference.” He asked if Ms. Shumchenia would “care to put that in a motion.” She did.

MS. SHUMCHENIA MADE A MOTION THAT THE BOARD REQUEST THE FAIRVIEW ESTATES, SEVEN-UNIT, MAJOR SUBDIVISION AT 66 FAIRVIEW AVENUE REVISE THE MASTER PLAN BEFORE THEM TODAY TO INCLUDE:

A WAIVER WITH REGARD TO THE RATIO OF DUPLEXES IN THE PLAN,

THAT THE FAIRVIEW AVENUE DRAINAGE BUFFER BE DOUBLED AND OFFSET WITH A CONNECTION TO CATCH BASIN 7 ON FAIRVIEW AVENUE, AND,

TO INCLUDE DETAILED LANGUAGE DESCRIBING THE NO-CUT BUFFER ZONES IN THE PLAN.

Mr. DiOrio said that he had a motion. Mr. Freeman had a question about “the off-setting of the pond and the buffer, before [the Board] moved[d] forward.” Mr. DiOrio said that he could. Mr. Freeman asked if he could “offer an alternative, um option.” He continued.

Mr. Freeman: “Um, we’d be happy to provide additional buffering, but can I recommend that it be, um, to the east of the ponds, um, in between Parcels 1 and that open space area? The reasoning there would be, um, those ponds are flat, relatively. There’s a lot of contours, but, from the streets perspective, there’s not, um, a lot of elevation in that fifty feet to see, so if you put that planting along Fairview Avenue, and then put a line of plantings, uh, on the westerly side of Parcel 1, you wouldn’t need to move the pond, and you’re increase the buffer in that area. Um, does that sound reasonable, or?”

Mr. DiOrio responded. He wanted to make sure that he understood Mr. Freeman’s line of thinking, and apologized to Ms. Shumchenia “for jumping in in the middle of the motion here.” He continued.

Mr. DiOrio: “Uh, we’re looking to screen the water quality pond.”

Mr. Freeman: “Okay, so, you’re not, you’re not trying to screen the, uh, the single-family home?”

Mr. DiOrio: “Well, um, I’m looking at the contours here. I don’t, I can’t quite make out the con-, the proposed contours on, uh, Parcel 1. Uh, can you tell me what the elevation

difference is between the top, the top of the pond on the west side - looks like one-thirty?"

Mr. Freeman: "One-thirty-six. Yep."

Mr. DiOrio: "What's the, what's the elevation, uh, of the Eljin in-drains at Parcel 1? One-forty?"

Mr. Freeman: "There's a one-forty-one contour that goes over those Eljins."

Mr. DiOrio: "So, your proposal would say, 'I want to do plantings', what, around the toe of that slope, around the Eljins?"

Mr. Freeman: "Correct. Correct. I think that that, that would provide, um, buffering that would actually - I think it would help more. It would step the buffering process, um."

Mr. DiOrio: "I understand."

Mr. Freeman: "Yeah, okay, just, to be clear."

Mr. DiOrio: "I think - I'd be prepared to accept additional buffering at the top of that slope."

Mr. Freeman: "Um, adjacent to the septic system?"

Mr. DiOrio: "Yes."

Mr. Freeman: "So there is a, there is a ten-foot setback, um, from that septic system, but it, it would - you could, potentially, do that, right. The only thing I'd - from a landowner's perspective, those - that tree line, um, would cut off probably twenty feet up there, of their lot, visually. Um, that would just be the one thing I would be concerned with, but we could definitely - we can do it -"

Mr. DiOrio: "Now, listen, if we're going to try and buffer the project, it doesn't make any sense to put vegetation at the toe of the slope."

Mr. Freeman: "I agree. Okay."

Mr. DiOrio: "Okay, so, you have your choice - I would summarize this - I would summarize it this way: you can either put additional buffering at their water quality pond _"

Mr. Freeman: "Mhmm."

Mr. DiOrio: "And shift everything to the east, or you could do buffering at the top of the slope of Parcel 1, near the septic system."

Mr. Freeman: "Okay."

Mr. DiOrio: "I - all I'm looking to do is soften the impact from Fairview Avenue."

Mr. Freeman: "Absolutely."

Mr. DiOrio: "Emily [Shumchenia], are you on board with that?"

Ms. Shumchenia: "Yeah, that sounds good."

At this point, Mr. DiOrio and Ms. Shumchenia began speaking at the same time about the motion that she had already made. Mr. DiOrio said that the "motion could simply include, uh, a request to improve the buffering from Fairview Avenue, and let the applicant decide how they'd best like to handle it."

Ms. Shumchenia said that she was going to restate the motion "just for the sake of getting everybody on the same page again."

MS. SHUMCHENIA MADE A MOTION THAT THE DRAFT MASTER PLAN FOR FAIRVIEW ESTATES, THE SEVEN-UNIT, MAJOR SUBDIVISION AT 66 FAIRVIEW AVENUE BE REVISED TO INCLUDE:

A WAIVER WITH REGARD TO THE RATIO OF DUPLEXES IN THE PLAN,

THAT THE VIEW FROM FAIRVIEW AVENUE NEEDS TO HAVE ADEQUATE AND ADDITIONAL BUFFERING THAN WHAT'S PROPOSED CURRENTLY IN THE DRAFT MASTER PLAN, EITHER BY SHIFTING THE WATER QUALITY POND EAST, AND INCREASING BUFFERING AT THE STREET LEVEL, OR ADDING TREE AND VEGETATION MATERIAL AT THE TOP OF THE SLOPE AND PARCEL 1, AT THE DISCRETION OF THE APPLICANT,

AND, FINALLY, THAT THE MASTER PLAN INCLUDE DETAILED LANGUAGE FOR THE NO-CUT BUFFER ZONES THROUGHOUT THE PROJECT PLAN.

Mr. DiOrio said that he had a motion. Ms. Jalette interjected to ask Ms. Shumchenia if she had included the language about the catch basin, which she had included in her first iteration. She added it.

AND THE CONNECTION TO THE CATCH BASIN NUMBER SEVEN ON FAIRVIEW AVENUE.

Mr. DiOrio said that he had a motion. Mr. Lamphere said that he “just want[ed] to clarify” if the Board wanted to “see this revised Master Plan come back to them in January [2021]”, which is what he thought Ms. Shumchenia “wanted to do.” Mr. DiOrio said that he “believe[d] that’s the intention.” Mr. Lamphere replied that that was okay, and Ms. Shumchenia replied in the affirmative.

THE MOTION WAS SECONDED BY MR. PRELLWITZ.

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

5-0, THE MOTION PASSED.

Development Plan Review – Photovoltaic Solar Energy System – 40 Maxson Hill Road – AP 4, Lot 38, 40 Maxson Hill Road. Centrica Business Solutions, applicant.

Mr. DiOrio asked if the Board was “good to go to the next agenda item.” Ms. Jalette replied that the Board “should be.” Mr. DiOrio explained that he was going to recuse himself, “as [he had] in the past”, as Centrica “has been a client of [his] firms in the past”. He said that he was “not, uh, involved with this project at all”, and that he had “previously submitted, today, a notice of recusal to [Ms. Jalette]”. He concluded by

“respectfully request[ing]” that Mr. Prellwitz “take the reins on this one.” Mr. Prellwitz said he accepted, and began.

He said that, like “last time”, [he] requested everybody keep their comments to five minutes or less.” He continued.

Mr. Prellwitz: “This is an excitable topic. Solar seems to be in a position to get people kind of charged up and enthusiastic, which is a good thing, so, let’s just, uh, kind of keep a little bit of control on it.”

He then asked if the applicant or their representative was in attendance. Ms. Jalette said that they were, and she asked them to press *9, then *6. The first person to speak was Attorney Steven Surdut, and he was accompanied by Jason Gold, an engineer with ESS Group.

Mr. Surdut began by thanking the Board for the “opportunity to make this presentation tonight.” He continued.

Mr. Surdut: “As the Board likely remembers, this will be our third, uh, meeting with the Board, uh, and our second, uh, Development Plan Review meeting. Uh, we have undertaken an extensive, and I would, uh, go so far as to call it collaborative effort, uh, with your staff members, and specifically with, uh, Crossman Engineering, based upon the comments that we received the last, uh, time that we appeared before the Board, as well as significant input from, uh, the abutters, who, uh, have expressed an interest in being involved, and are making direct comments to us. In fact, we had numerous on-site meetings with one abutter, and, in fact, he submitted a letter as part of this application. Uh, we have submitted extensive materials to you, in an effort to show you the detail that we have undertaken in coming before the Board the evening. Um, we understand that, as the acting Chairman said, that these can be, that that type of applications can be contentious, and we would like to, very much, uh, show that we have, uh, spent extensive time and diligence in meeting the requirements of your application. Uh, I will have, I have a number of witnesses here this evening, uh, most specifically, Jason Gold, who you briefly heard from, as well as a, um, landscape architect, who had additionally submitted, uh, two plan sheets, which were included in our submission, um, as well as details regarding their, uh, extensive experience with these type of projects. Uh, so, with that being said, Mr. Chairman, I would very much like to, uh, have Mr. Gold, who’s testified in front of this Board numerous times in the past, uh, put, uh, give a brief overview of the extensive documents he submitted, uh, to the, to the Board.”

Mr. Prellwitz thanked Mr. Surdut for his comments, and asked Mr. Gold if he “would like to proceed.” Mr. Gold then began his remarks.

Mr. Gold: “Hi. Good evening. Uh, my name is Jason Gold. I’m a civil engineer with ESS Group. Um, as Steve [Surdut] mentioned, there’s been quite a bit of documents submitted, so, to make the presentation easier, I did submit a presentation set. If you’re reviewing these online, it’s the link titled ’40 Maxson Hill Road Solar DPR Presentation,

11-19-20.' If you have the paper copies in front of you, these are the documents with the big red letters in the top corners. Uh, starting with Exhibit A – this is an aerial overview of the site and the project. Now, the project, the property is a twenty-five-acre property on the eastern side of Maxson Hill Road. It's zoned RFR-80, and defined as a 'large farm' under the Farm Viability Ordinance, which we discussed at the May meeting. The property is primarily wooded. There is a single-family home, and a, approximately, seventeen – 1,750-foot, square foot, garage as well. The topography in the project area slopes southwesterly, towards the driveway and Maxson Hill Road. There are some wetlands on the southern portion of the property, uh, that's on the far end of the property. You can see it's on the far end, far away from the actual project area. Uh, the property is not located within any Historic District, State-designated Scenic Areas, unfragmented forest tracts, Natural Heritage Areas, or State-designated Greenway Corridors. Uh, it is located, most of the, the project area, most of the site, is within a Primary Protection Zone, with the exception of the eastern corner, which is within the Secondary Protection Zone. Moving on to Exhibit B, this is, um, Drawing C-1, taken from the full plan set that was also submitted. This is very similar to the concept that we presented back in May. Uh, the design has been advanced, with some, um, additional details, uh, we submitted in August, incorporating feedback from the Board that was received in May, and then we've also made some additional revisions since August, uh, based on feedback from the Town's peer reviewer, Crossman Engineering, which reflected here. Uh, so, Crossman, uh, um, we have addressed, uh, their comments. Uh, the project has also been submitted and permitted by Rhode Island DEM [Department of Environmental Management]. So, the project is a relatively small – just a half-megawatt D/C, ground-mounted photovoltaic solar energy system. The array area is about 1.3-acres within a 1.8-acre fence. Interconnection's on Maxson Hill Road. As is typical with these projects, the areas within the fence will be grass. Uh, some shade trees outside the fence will be removed, however the existing ground cover will remain. As is shown in the plans, the, uh, project, the array has been set back further than is required by the Ordinance. It's beyond the property setbacks. The yard setbacks will remain vegetated, and, in addition, a landscape screen has been added to the northeastern corner, and the, the landscape architect will explain that in more detail, uh, after my presentation is complete. You see the multiple, uh, gray lines, uh, cutting kind of diagonally across the array. That is something that's been added. Those are multiple, um, they're level stone trenches, and those have been designed to encourage sheet flow, and so control gully formation, since these are on a slope. So, those are two-foot wide by one-foot deep, stone-filled trenches that are parallel with the contours. Exhibit C is taken from the Drainage Report, and I'm including this here because there were some questions about the storm water runoff at the Pre-App[lication] in May. So, what this is showing is the drainage area – it's actually the existing and the proposed drainage ar-, are the same, and what this shows is that the storm water runoff from this drainage area, that drains across the project, uh, flows to the existing driveway, and then down the driveway to Maxson Hill Road. There is no storm water runoff from this project that flows onto any abutting properties. The storm water modeling has demonstrated no significant change in the runoff characteristics, which means that there's no increase in runoff, uh, and that Drainage Report has been reviewed, um, and approved by both Crossman Engineering and Rhode Island DEM [Department of Environmental Management]. Exhibit D, really D through G, the next few exhibits, these are photo

simulations. There were some questions, uh, back in May from the Board regarding the view of the project, especially from Maxson Hill Road, so this is a, uh, visual simulation that we conducted, uh, back in August, prior to, uh, the last meeting. Exhibit D shows where the photograph was taken from. We took it from the driveway, uh, at Maxson Hill Road, as that's the most open area. Anywhere else on Maxson Hill Road is more wooded, so this, being the opening for the driveway, uh, seemed like the most conservative area to take a photo. Exhibit E is the photo simulation, and so, what you're looking at here is in the top left corner, the existing view. That the, um, untouched photograph that was taken from that location, shown in the previous exhibit, and what we do is create a, a 3D model of the array, and we, uh, photoshop out any trees that would be cut – whether they be shade trees, or trees within the array, and then overlay the two, to provide a view of the, uh, solar array. Now, looking at Exhibit E, you can't actually, you can't actually see the array, uh, and that's kind of the, the purpose – is showing that, uh, the array's not visible from this area. Uh, because you can't show something you can't see, we also provided Exhibit F, and this is the rendering. This is the 3D rendering without the photo overlay on top of it. So, this rendering, on Exhibit F, is actually beneath the picture in Exhibit G – I'm sorry, Exhibit E. It's just not visible because it's blocked. So, this shows that the array is not visible from even the driveway from Maxson Hill Road. Exhibit G – I provided – I know a common question when we do these arrays, these photo simulations is, 'Well, what's it going to look like in the wintertime, when there's no trees?' You know, just based on the timing of the year, you know, we take these photographs based on the project, and it happened to be August when all the, uh, the trees were, were, um, in full condition, full leaf condition, but I did happen to have a picture, um, that I took back in February, when we were beginning this project, and this is Exhibit G. It's not a photo simulation, uh, it's just a photo I happen to have, in the same general location as the photo that was taken for the simulation, uh, so it's pretty much the same area, but what this does is it shows you what it looks like in the wintertime, and you can see there's still some evergreens there, and even the trees, um, without even the deciduous trees that, that just the density of branches and, and, um, trunks offers some pretty good screening, too, and the landscape architect can speak to that, uh, in more detail, but that's just something that I wanted to, um, just show you, so you could see it in both, uh, winter and summer conditions. Uh, so, in summary, uh, the project's been designed in accordance with the Solar Ordinance and the Farm Viability Ordinance. I'll just review some of those, uh, key bullets. All the distribution lines within the system will be underground, and that's up until the first, um, utility pole. All the yard setbacks will be met – sixty-foot front, forty-foot, and fifty-foot rear. A seven-foot high chain link fence will surround the system, and the bottom will be raised six inches above the ground. It will be locked with a Knox lock to provide emergency access. No exterior lighting is proposed. The panel heights will not exceed twelve feet above final grade, uh, which is the maximum allowed in the Ordinance. Um, we're actually proposing a height of approximately nine feet. The existing vegetated buffer will be maintained within the yard setbacks, and additional screening will be provided on the north side. The equipment pad is outfitted with one-hundred-and-twenty-five percent secondary containment, uh, that's a stone trench, lined with a, uh, impermeable membrane, in a, um, a barrier that allows water but not oil through. Uh, the noise impact study was submitted in August – that's dated, uh, August 13th, 2020, and that demonstrates that sound levels are not expected to exceed forty

decibels at the property line. The levels of that study range from 4.2 to 34.5 decibels. An environmental impact statement was submitted – that’s dated October 16th, 2020, and that found that the net effect of the proposed project was expected to be minor, due to the small size, and the, um, grass habitat that’s, that’s created. The system will not exceed two acres, um, as required by the Farm Viability Ordinance. The project’s also been designed to meet the Development Plan Review standards. Uh, there’s limited traffic. There’s, as I’m sure you know by now, um, once these things are constructed, they’re only visited occasionally throughout the year. The Knox lock is provided for emergency access as I mentioned earlier, and the Fire Department has confirmed that the project can be accessed via the existing driveway. They have not yet reviewed, um, the project overall, but they have at least confirmed that they can, um, access the site, uh, via the existing driveway. No buildings are proposed. No water supply, septic systems, or solid waste generation is proposed. The post-development storm water runoff does not exceed pre-development runoff, and, lastly, a Soil Erosion [and] Sediment Control Plan has been provided, uh, that includes filter socks, a gravel berm, uh, stabilization measures, etcetera.”

Mr. Gold then said that that was his “overview”, and that he was “happy to take any, um, questions on the engineering design” before he turned it over to Mr. Surdut and the experts from Terraink. Mr. Prellwitz thanked Mr. Gold for his overview, and asked the Board if they had any questions. Mr. Lindelow and Ms. Light both said that they did not have any questions for Mr. Gold. Ms. Shumchenia said that she had one question. She said that she didn’t know if it was actually a question for Mr. Gold or for another member of the applicant’s team.

Ms. Shumchenia: “In the Operation and Maintenance Plan, um, it mentions a number of inspections happening at, at various intervals throughout the life of the project. What is the entity responsible for doing those inspections in the coordination with the Town?”

Mr. Gold: “The, uh, owner of the system is responsible, so that would be, uh, under Centrica, who’s, op-, operating the system.”

Ms. Shumchenia: “Okay.”

Mr. Prellwitz said that as there were not any other questions for Mr. Gold, that the Board could move on to the next witnesses. Mr. Surdut introduced the applicant’s landscape architect, Terraink. He explained that there were “two professionals associated” with the landscaping presentation, whose resumes had been “included as part of our documents submittal”, in conjunction with the landscaping plans they had designed. Mr. Surdut then requested that Jade Cummings and Kellie Connelly “just briefly describe their professional credentials”, and asked that they “be recognized as, uh, experts”. Mr. Prellwitz thanked Mr. Surdut, and Ms. Jalette told them that they would need to press *9, then *6. Mr. Surdut asked Ms. Connelly to speak first.

Ms. Connelly stated that she is “one of the principals” of Terraink, “a landscape architecture firm.” She continued.

Ms. Connelly: "I'm a registered landscape architect in multiple states. I am a visual expert for this New England region, dealing often with, um, energy projects, um, alternative energy projects, um, and have a substantial understanding of this region, having worked, um, within New England, especially Rhode Island, over the last several years."

Ms. Cummings: "Hello, my name is Jade Cummings. I also am the principal landscape architect at Terraink. Uh, licensed in several states, uh, Rhode Island, Connecticut, Massachusetts, uh, and it a pleasure to be here this evening."

Mr. Surdut then asked Mr. Prellwitz to have Ms. Connelly and Ms. Cummings "recognized as experts" within their fields. He also said that they could be sworn in, and that they would then "describe the documents that they've submitted" to the Board. Mr. Prellwitz replied that that would be fine, and Ms. Connelly asked if she could proceed. Ms. Jalette replied in the affirmative, as did Mr. Prellwitz, and Ms. Connelly began her presentation.

Ms. Connelly: "As Jason [Gold] has described, the Maxson Hill Road site is typically, um, a[n] Appalachian oak forest ecotone, with oak trees being the dominant canopy species, um, on the site, along with maples and pines. I'm going to talk a little bit about how I interpret the site, and how we are working within it, just to sort of give you a sense of how I see the project area. In this, um, type of woodland, there's typically a robust, um, understory, because the sunlight is able to reach the woodland floor, versus being under heavy evergreen shade, which is beneficial in a project like this. Typical shrubs species include, but are not limited to dogwoods, viburnums, rhododendrons, as well as a rich matrix of grasses and herbaceous species. In a woodland of this nature, during the leaf season, you know, the green season of summer months, the tree cover is pretty visually dense from sky to grade, due to the well-established canopy, understory trees, and the herbaceous vegetation. During the winter, uh leaf-off months, the view through the woodlands would still have a visual density, due to the overlapping tree trunks and branching, as well as the understory shrubbery, and sort of their nature and habit in branching. Therefore, when looking at Sheet L-301, which is our Screen Planting Plan, we can anticipate that the vegetative buffers, um, on the site that are maintained between the setback and the property line, and those are shown with a hexagonal hatch, will provide a level of visual screening in both, uh, summer and winter months. In addition, the undisturbed, existing woodland vegetation that are outside of the limit of disturbance line – that's basically the white area on the plan with no hatch, and the retained understory between the seven-foot-high chain link fence, and the limit of disturbance line - which is a hat, shown with small crosses – will contribute to the natural screening of the solar arrays when viewing the project from the property line inward. To enhance the existing visual screening that I've just described - especially from 48 Maxson Hill Road, which is located in the upper right-hand corner of the plan - we've chosen to install a selection of eastern red cedars to provide evergreen screening, in addition to the existing Appalachian oak forest matrix. We've utilized the eastern red cedars, which are noted in the University of Rhode Island's Sustainable Tree and Shrub List, and the Hopkinton Zoning By-laws, excuse me, Appendix A, due to their hardy, drought-tolerant and deer-resistant naturalizing characteristics, which is really important when we're doing

naturalized, um, plantings. On Sheet L-301, the row of eastern red cedars is planted in the upper northern corner of the project site, just beyond the seven-foot-high chain link fence that encloses the solar farm. The first eastern red cedar is proposed to be installed at elevation one-eight-five, and then that planting extends east upward – uphill, excuse me – towards the property line to elevation one-nine-three. Therefore, we gain greater visual cover, as the evergreens are installed along that higher elevation of the site. In addition to the Screen Planting Plan, the L-301, we also developed a set of site screen planting sections, which are found on Sheet L-302. These are eval-, these are to evaluate the level of potential visibility of the solar arrays from key observation points adjacent to the property. Looking at this sheet, we've included a locus plan in the upper right-hand corner to assist in locating where the various section lines are occurring, and what direction they're looking at. Starting with Section A to A Prime, from the Maxson Hill Road driveway entry, looking east to the project, our conservative line of sight from the driveway entr-, entry indicated that there could be some level of visual permeability to the solar array when standing at the west property line, however, the existing deciduous tree woodland, and existing evergreen and herbaceous understory plantings would intercept some of the viewer's attention and provide visual distraction to the eye before reaching the first corner of the solar array. In Section B to B Prime, a line of sight was cut from the 48 Maxson Hill Road property, which is in the upper right corner of the locus map, looking west towards the proposed solar arrays. The line of sight is taken adjacent to the private residence, and extends downward, through the forty-foot-wide deciduous woodland vegetative buffer, and retained understory plant materials that are maintained outside of the project limit of disturbance, which includes understory shrubbery. It is highly probable that there will be limited visibility to the solar arrays during the leaf-on months, due to the density of the deciduous shade trees and understory growth in this area during the summer. However, in the leaf-off months, the dense layering of existing tree trunks and branching, as well as any remaining understory vegetation that would be in the view, would only partially obstruct the views to the solar farm, and existing work barn, beyond. Therefore, it is in this area of the project that a row of proposed native eastern red cedars, which I described previously, is suggested to provide additional evergreen screening. In Section C to C Prime and Section D to D Prime, the line of sight to the project is obstructed by both the landform topography and the existing Appalachian oak forest matrix. In Section C to C Prime, the line of sight is taken from the eastern property line, looking west and downwards towards the solar farm through the woodland matrix, which has a greater component of evergreen understory vegetation in this portion of the site. Given the long viewing distance to the project, as well as the dense woodland cover, with intercepting topology, it is unlikely that there would be significant views to the project, if at all. In Section D to D Prime, the line of the sight is drawn from the 34 Maxson Hill Road residence, which is in the lower left corner of the locus map, looking upwards, to the east, towards the project. Once again, the topography and the deciduous woodland obstructs views to the solar arrays, in combination with the, uh, assortment of machinery that tends to be, uh, located adjacent to the driveway and work barn in that area. It is possible that limited views to the top of the existing work barn are available from 34 Maxson Hill Road residence, although filtered through the deciduous woodland canopy understory vegetation, just as the solar arrays would be filtered through that same matrix. Therefore, it is our opinion that there is limited visib-, excuse me, there is limited

visibility to the solar farm from the edges of the property and the adjacent residences due to the following: the density of the existing Appalachian oak forest that is retained outside of the limited disturbance, and within the property lines, provides a visual buffer to the solar arrays; the solar farm has a small footprint; and the proposed addition of native evergreen screening in the area of the potential visibility from the neighbor, neighboring property, um, is a benefit to the project.”

Ms. Cummings completed her testimony by stating that if anyone had any questions on what she had presented, she would be “happy to entertain those”. She thanked the Board for their time. Mr. Prellwitz thanked Ms. Cummings for her comments, and asked the Board if they had any questions for her. Mr. Lindelow said that he did not have any questions for Ms. Cummings. Mr. Surdut asked Mr. Prellwitz if he could “briefly, um, bring back” Mr. Gold to “briefly describe the interactions and the exchange” between his firm and Crossman Engineering, as he was “expecting that we’ll be hearing from [Crossman Engineering] next”. Mr. Surdut asked Mr. Gold to “just touch on some of the conditions that [Mr. Gold] and Crossman [Engineering] have crafted to ensure that, despite the topography of the site, that there are no - sediments or storm water leaves the site.” Mr. Gold spoke.

Mr. Gold: “Yes, um, so I described, uh, many of those, um, during my original, uh, presentation, so some of the things that were, uh, came out of that was the stone trenches that I had mentioned, um, as well as the erosion controls, um, they were beefed up a bit. For example, we added a stone berm along the top of the steep slope to provide, uh, further, uh, control than the silt sock that was originally proposed. Uh, there’s also some silt fence and some silt sock, uh, double layer and sensitive areas, uh, that were provided to provide additional sediment controls as well.”

Mr. Surdut: “Jason [Gold], you’ve also included some limitations on the type of equipment, uh, that can be used on the site, correct, and sharing that there’s won’t be a compaction, and then there’s also a monitoring component that we’ve agreed to, correct?”

Mr. Gold: “Yes.”

Mr. Surdut: “Thank you. Mr. Chairman, I would, uh, defer to the Board, if you’d like to, uh, ask questions, additional questions of the witnesses, or if, um, the Board would prefer to defer and, uh, hear from Croftsman, Crossman [Engineering].”

Mr. Prellwitz thanked Mr. Surdut, and asked the Board members what they wanted to do. Ms. Light asked if she could chime in. Mr. Prellwitz said that she could, and she began.

Ms. Light: “Okay. So, there’s an elephant in the room, and, uh, we don’t have to answer to it right now, but there’s significant amount of attention brought to some of, what is perceived as, uh, junk equipment on the property, and I suggest there might be an answer to that, so, if we could have somebody speak to that?”

Mr. Surdut: “Uh, are you looking on – Steven Surdut – are you looking for the applicant to address it, or are you looking for, uh, someone on, from your staff, to address it?”

Ms. Light: “We just need clarification on what, what, um, what the concerns are, um, about the, the, uh, equipment that’s collected on the property.”

Mr. Prellwitz: "So, I could answer that for you."

Ms. Light: "Okay. Have that answer. Let's go."

Mr. Prellwitz: "Would you like to hear the applicant, or would you like to hear from me, Carolyn [Light]?"

Ms. Light: "Oh, if the applicant wants you to answer, you're more than welcome to pass the torch. Go ahead, Ron [Prellwitz]."

Mr. Prellwitz: "Mr. Surdut, okay -"

Mr. Surdut: "Ron [Prellwitz], please – okay -"

Mr. Prellwitz: "Go ahead, a couple of people spoke at the same time."

Mr. Surdut: "Mr. Chairman."

Mr. Prellwitz: "Yes?"

Mr. Surdut: "Please, please feel free to speak, and then I'll be, if, if necessary, I'll respond."

Mr. Prellwitz: "Okay. Thank you. Now, I was asked by the, uh, the property owner – I received the phone call Saturday – and he said that he had been posed the same questions. So, I went up there and looked at what he had around, just a couple of small items that are gonna be junked. He's got his son working on that every day. Most of the equipment that's there is serviceable construction equipment that he uses in his business, uh, excavation business. When they're not used, they look like junk, but they are actually serviceable pieces of equipment, that's being used. Other than that, there's, uh, I think it was two motors, sittin' on the ground, sitting on blocking, for machines that he's working on. You'll notice there's a, uh, small bulldozer there, and the motor's out of it – they're doing maintenance work to it, with the idea the motor's going back into it, and it'll be on the job in the spring. There's a crane there that he's gonna cut up and junk. He had planned to restore it, because it's an antique, but he doesn't feel he has enough time left in his lifetime to get that job done. It's a big job for a crew. One person? That's a real big job. So, that's, that's where we're going with that, and if anybody else would like to chime in, feel free. Oh, Attorney Surdut, I'd just like to add that I was in construction for fifty years, so I have a knowledge of what these machines are, and what they're capable of doing and why he has them. You know, I'm not just one of the farmers, chiming in as a, as a favor, or a person in the community."

Mr. Surdut: "Ah, well, uh. Mr. Chair, that far exceeds my experience in the, uh, construction arena, so I defer to you."

Mr. Prellwitz: "Thank you. Carolyn [Light], does that answer your question?"

Ms. Light: "Yeah, that does. That satisfies it. It's functional equipment. Uh, there is exception to that, but, uh, it's, uh, it's not something that you view from the, um, the street, anyway, when you, when you drive by it. So, but, it needs to be tended to. Now, the other question that I have is: looking at the plan, we know we're talking about 1.3 acres for the site. That includes the fencing that's going to contain it. Um, it's the, the amount of clear cutting is going to be 1.3 acres, plus how much more land? What is the total footprint that is going to be disturbed for this project?"

Mr. Gold: "So, the fence is 1.8 acres – I'm sorry, this is Jason Gold, uh, ESS Group. Uh, the area to be, um, cleared for the array, that's gonna be grass is, within the fence, that's 1.8 acres. The total, overall, limit of disturbance, which includes the shade tree clearing, is 4.0 acres."

Mr. Surdut: “And Jason [Gold] if I may – Attorney Steven Surdut – uh, the four point acres include some areas that will be very minimally disturbed, correct? The pri-, the 1.88 acreage is the primary disturbance area.”

Mr. Gold: “That’s right. The difference between the two are shade trees being cut, but not grubbed, so, um, the ground cover remains.”

Ms. Light: “So, this additional clearing that is going to be done is, um – I, I’m concerned that it’s doing the additional clearing could, in fact, create some kind of a visual impact for the abutter. Uh, it doesn’t look like there’s gonna be any impact from Maxson [Hill Road].”

Mr. Gold: “Um, so, the setback itself is not cleared, because that’s outside the limits of disturbance. That remains, um, vegetated. So, all the, all the visual represent, I guess, Terraink can answer this, but all the visual, uh, representations have been made takes into account that this, um, additional shade tree clearing.”

Ms. Light initially replied that those were here only comments. Mr. Prellwitz thanked her before she stated that she did, in fact, have another question. She proceeded.

Ms. Light: “I, I’m going to bring this back to, uh, our last meeting, um, this [was] in September, okay? I had a question for our Solicitor at this time, as to whether there was a potential conflict of interest, because the letter from the Fire Department came from within the Fire Department, which Mr. Sposato was a member, and, um, while I don’t have any objections to, or, or question the confidence of that recommendation in that letter, I think what I would prefer, uh, just to avoid any potential, uh, views of impropriety or, uh, you know, bring more clarity is that the, the Board consider having the State Fire Marshal do the review, and I’ll leave it there, and, you know, the Board can discuss it, but that, that’s my opinion, and, um, that, really, is all I have now. Thank you.”

Mr. Prellwitz asked Mr. Clough if he has “any input on that.” Mr. Clough said that the did not, and explained why.

Mr. Clough: “No, Mr. Chairman. That’s, uh, Carolyn [Light] has, uh, addressed is – comports with my, uh, advice, uh, to the Planning Board as it relates to it’s wanting to get a second opinion, in light of the fact that they believe, in their, in your estimation, as a Planning Board, that there may be, in fact, a conflict.”

Mr. Prellwitz thanked Mr. Clough for his comment. At this point, Ms. Light and Mr. Surdut tried to speak at the same time, but he deferred to Ms. Light. Ms. Light replied that she wanted to say that it was “not [her] opinion that there’s any impropriety”, but that, “to avoid any potential conflict, or, uh, references to it, it would be, probably, in the owner’s best interest if we just had a neutral party come and make the same recommendation”. Mr. Prellwitz said that that was okay, and then said that he thought it was “about time for public comment”, though he wanted to “get a little bit of input from our Town Planner” first. He continued.

Mr. Prellwitz: “Jim [Lamphere], do you think we’ve covered this adequately, so that we can move on?”

Mr. Lamphere: “I, I would say so. In my memo, uh, Mr. Chairman, I, uh, put a proposed motion for the Board to consider, if they feel as though all the, uh, items have been addressed. Um, I think we should hear from Steve Cabral, from Crossman [Engineering] on this.”

Mr. Prellwitz replied that “that sounds like a great idea.” He asked if Mr. Cabral was in attendance, and Ms. Jalette directed Mr. Cabral to press *9, and then *6. Mr. Cabral then spoke before the Board.

Mr. Cabral began by explaining that Mr. Gold “did give a good, accurate, uh, summary of the past discussions” between Crossman Engineering and ESS Group, but that he wanted to “hit on a few of [Crossman Engineering]’s original concerns” which had been addressed. He continued.

Mr. Cabral: “The theory behind storm water runoff being negligible from a solar field is really dependent upon an assumption that the solar panels run parallel to the hillside, so that, as runoff cascades off of the panels, it does so in a manner that allows sheet flow to continue flowing over the new lawn surface. The unique feature with this site is that that doesn’t occur. The panels are actually laid out – they run perpendicular to the slope, so the row of the panels are actually going to be running up the hill, as opposed to parallel to the hill. So, the concern we had was that, as the rainfall cascades off of the solar panels, there’s going to be a defined drip edge that, as the water drips off, instead of sheet flowing across the grass, it’s gonna, essentially, take a ninety degree turn and flow in the channel, you know, down the hill. So, that’s why we recommended that, that the project incorporate the series of parallel stone trenches, and the reason for that is to – it’s an attempt to take that channelized flow, which is going to occur, and force it to sheet flow, which is the, the desire, for one of them, from solar panels. So, therefore, one of the, the first conditions we had in in our memo dated November 21st, 2020, is that, following construction, we would like to make sure that the owner, or the owner’s inspector, or the designer, monitor the performance of those stone channels, and that they have to be prepared to provide additional measures if the stone channels that are built are not sufficient. Now, those, those measures could be the addition of a wider stone trenches, or adding in additional rows of stone trenches. It’s, it’s certainly a feature that can be mitigated, but we feel that, because of the slope of this site, it’s important that it be monitored and addressed. The other concern we had is that, right at the base of the solar field, is that there’s a very steep slope, going down towards that existing garage. So, as part of the standard O and M – Operation and Maintenance program – we want to make sure that the inspector also monitor the condition of that, that steep slope going down to the garage, and be prepared to take action if there’s any gullying that forms. Uh, the other item I’d like to note about the drainage is that we agree with Jason Gold, that the one-and-a-half-acre solar field, if it’s, if we get a good, thick, grass surface beneath it, will have a negligible impact on an increase in flow towards Maxson Hill Road. Just for the record, we want to make sure that everyone understood that there’s a significant hillside that drains down to Maxson Hill Road, through the site, and the drainage system in Maxson Hill [Road] really cannot handle the flow that occurs today. We’re saying that just in case, in the future, after this site is built, someone observes that there’s excessive

flow in Maxson Hill [Road], we do believe that that wouldn't be caused by the solar field alone – it's an existing condition that exists due to the topography of, of the hillside today. Another item we wanted to bring out is that we've observed over the past year or so that there have been some contractors who, that, while they're building and grading the solar field site, they do a thorough job of grubbing the, the woodland layers, and we've seen some contractors actually use paving rollers, meaning compaction equipment that you would typically use on a roadway project to compact the, the ground surface. We want to make sure that that type of equipment is not used in, and that the only roller compaction equipment that's allowed on site would be your typical seed roller that would normally be used in a yard, to make sure that the underlying soil does not get overly compacted, and, of course, the reason is, if you compact the soil, you minimize the porosity of the soil, and you end up with an increased, an increase in runoff, more so than what's designed in Jason [Gold]'s storm water analysis, and, as the attorney did indicate, that was also agreed to his condition. And, last but not least is the decommissioning estimate. As we indicate in our memo, we still believe that there are a few unit prices that should be elevated. We, we believe that the decommissioning cost is understated, so that's something that we're certainly willing to work with the applicant to come up with a number that we feel is more appropriate. Right now, the estimate for the present day value is \$14,911, but we feel once prevailing wage rates are used, as well as fully loaded cost for the equipment, that that value will, will increase, and that, that's a very quick summary.”

Mr. Prellwitz asked Mr. Cabral if that was the end of his presentation. He replied that it was, and thanked Mr. Prellwitz. Mr. Prellwitz thanked him in return, and asked the Planning Board members how they would like to proceed. Ms. Light said that she didn't want to “jump on” any of the other Board members, and asked if they wanted to speak before she did. Both Mr. Lindelow and Ms. Shumchenia gave Ms. Light the go-ahead. She spoke.

Ms. Light: “Um, we have to talk about the salvaging, um, that's in here – and this is a decommissioning estimate that was put together by the engineer, right? And, during our last project discussion, there were questions about the salvage value being included or not included, so if I could ask Steve Cabral to give us a little more thought on the number that's in there.”

Ms. Jalette: “Carolyn [Light], do you want Steve Cabral to respond?”

Mr. Prellwitz: “Carolyn [Light], would you like to speak to Mr. Cabral?”

Ms. Light: “Yeah, I, I would like some more insight as to his comfort level about that being in there, because it's, it's, uh, an assumption, and we need to feel comfortable that with the reiterations that we've gone through on other projects, that, that this is acceptable.”

Mr. Cabral: “Oh. Yes, this is Steve Cabral. Now, as I, I briefly mentioned, I do feel that the decommissioning estimate is on the low side, and I would like an opportunity to work with the applicant to, to refine that, that number. And, again, with the, the salvage value, the same, my same concern applies. I'm not comfortable with the cost, as well as the salvage values at this time, but, this is the number that was provided by the applicants. We have not prepared an independent number on this project.”

Mr. Prellwitz asked if he could “throw something out there.” He said that in the package that the Board had received from Mr. Lamphere “says the applicant posts an amount of \$19,765 for the decommissioning, not fourteen thousand, so there’s a little discrepancy in our – on where we’re going with this.” At this point, Mr. Gold weighed in.

Mr. Gold: “The – I can – this is Jason [Gold] at ESS [Group], I can, uh, just speak to that. So, the number that’s in, um, Steve [Cabral]’s memo, the \$14,9[11] – that’s after the salvage, but the \$19,765 that is in Jim [Lamphere]’s memos before salvage, so I think that answers both questions.”

Mr. Prellwitz: “Okay. Thank you.”

Ms. Light had other questions for Mr. Gold.

Ms. Light: “Okay. Just for further clarification, the proposed amount to go into a bond for decommissioning is the \$14,911, with, with the 2.5% inflation rate after twenty years, being twenty-four. So, that, that’s correct, at what was, what we’re considering for this project, correct? Am I right?”

Mr. Cabral: “Oh. If, if I may, that’s -”

Ms. Light: “Yeah. Okay.”

Mr. Cabral: “Hello? Yeah, if I may – this is Steve Cabral again. Yeah, those are numbers presented by the applicant, but, but I’m, I’m still – I feel that they understate the cost. So, I would like an opportunity, or recommend an opportunity to work with the applicant to, to refine those numbers further, to make sure that the rates used are representative of what the cost would be for the Town, if the Town had to subcontract this work. For example, some of the hourly rates for labor do not appear to be a prevailing wage rate that the Town would have to use, or the fully loaded overhead costs, and the same with some of the equipment and trucks, that the values, the unit values seem low compared to what we actually have to pay on another project.”

Ms. Light: “Okay, so similar to other, uh, solar efforts that we’ve walked through here together, would - this is something that will have to be negotiated once you do your review?”

Mr. Cabral: “Mhm.”

Ms. Light: “Thank you.”

Mr. Cabral: “Yes, we -”

Here, Mr. Lamphere asked Mr. Prellwitz if he could interject. He replied that he could. Mr. Lamphere then continued.

Mr. Lamphere: “Um, if you notice, if you notice, in my memo, I recommended that the applicant post an amount of \$19,765, as was stated. That’s the amount that is not including any salvage value. In the past, the Planning Board has not been crazy about including salvage value in here, so, that is why I put in my, in my memo, uh, the cost excluding salvage. Now, if, if the Planning Board does not feel, or if Mr. Cabral doesn’t feel as though \$19,765 is adequate, keep in mind that the Planning Board has the authority to increase that by twenty-five percent. So, if you don’t like \$19,765, would, would twenty-five percent more, on top of that, be adequate in your opinion? And if it is,

I would, I would suggest that you impost that tonight, and I wouldn't want this to be a stumbling block to approving this project.”

In response, Mr. Surdut replied that the applicant “would be agreeable to the recommendations that, um, your Planner has put forth in his memo to [the Board], in that [the applicant] would put forth a nineteen thousand and change bond, uh, as part of this project.” A number of Planning Board members tried to speak at once. Ms. Shumchenia said that she had a follow-up question.

Ms. Shumchenia: “Um, it sounded to me like Mr. Cabral from Crossman [Engineering] said that the \$19,765 is likely inadequate. Um, Jim [Lamphere] just let us know we could increase that by twenty-five percent. Uh, I could do the calculation real quick, but, um, Mr. Cabral, do you feel that that would be an adequate amount to cover the discrepancies you noted, with various labor rates for all these different itemized components of the decommissioning, or, is it better to have you provide an independent decommissioning estimate to come up with, you know, some actual numbers behind this value?”

Mr. Cabral: “Let's see. Now, being an engineer that's conservative, I, my, my feeling would be I'd like an opportunity to refine the numbers, but I don't want to be an obstacle in moving forward. I don't believe the number is going to double just to give an order of magnitude, like, say, uh, they're proposing twenty thousand – I'm just rounding the nineteen-seven, so, twenty-five percent of that brings it to about twenty-five thousand dollars. That's getting closer – within reason. If I, at – off the top of my head, I would say that the number may be closer to thirty thousand – if we were to break down everything individually.”

For a brief period of time, someone spoke over Mr. Cabral, so what he said was unintelligible. Mr. Lamphere then interjected.

Mr. Lamphere: “Uh, Steve [Cabral], in the past, when you've done these estimates, you have included the salvage value. So, I heard, I think I heard you say earlier that you, you felt that \$14,911, um, is probably the number that you should go with, although that's a little bit low, okay? So, you, now, you're talkin' about – are you saying doubling the fourteen thousand to twenty-eight – now we're getting twenty-eight, twenty-eight to thirty [thousand dollars] range, but, again, when we just did the arithmetic here – twenty-five, one hundred and twenty-five percent of nineteen is what, twenty-five something, so, I, I don't know.”

Mr. Prellwitz: “\$25,706.”

Mr. Lamphere: “Okay. Well, I, I suppose the Planning Board could, uh, could, uh, could approve this, uh, subject to, uh, uh, Mr. Cabral putting a definite number on it, if that's what you, if you trust Crossman [Engineering] to put a number on it. I'd hate to have to come back -”

Mr. Surdut: “Uh, Mr. -”

Mr. Lamphere: “I wouldn't want to have to come back to the Planning Board with this application again, just be-, just because of this number, um.”

Mr. Cabral: “Hmm. Yes. Yeah, that, that would be appropriate, if we could agree on a minimum that it would be, after we go through it independently, so that we would all leave tonight, knowing that it would be no less than the \$25,000.”

Mr. Prellwitz asked the Planning Board members what their thoughts were on setting the decommissioning bond at \$25,000. Ms. Shumchenia replied.

Ms. Shumchenia: “I think what we, what I would say is, as a condition of approval, we would – the condition of approval would be acceptance of a revised Crossman [Engineering] estimate for decommissioning, no less than \$25,000. That’s kind of how I’d phrase the motion.”

Mr. Surdut responded.

Mr. Surdut: “Mr. Chairman?”

Mr. Prellwitz: “Go ahead, Steve [Surdut].”

Mr. Surdut: “Um, I, I think that the nineteen thousand and change number, or twenty thousand and change number is consistent with, uh, prior, with the prior, most recent approval that this Board has put forth. Um, while I und-, and I understand that each site is slightly different, um, if you look at those numbers, based upon a per megawatt evaluation, the nineteen [thousand and] change number is adequate, um, and addresses that – we believe addresses the concerns. Um, ih, ih, ih, ih – and we would be caught – we, I, I, you know, if the Board, thereafter feels that they have the right, statutorily, to increase it by an, another one hundred and twenty-five percent, um, to twenty-four thousand and change, there’s, uh, we wouldn’t, statutorily, we can’t object to that. So, we would feel that those numbers are appropriate and consistent with other actions of the, the Board, um, and I understand that each flight – site – is slightly different, and that there’s some topography on this site, but that twenty-four thousand and, uh, number, ih-, ih-, is, certainly statutorily appropriate.”

Mr. Gold: “This is, uh, Jason Gold, ESS Group – Steve [Surdut], I happen to have the numbers in front of me, if you, if you want me to, um, just read them out. Um, Frontier Road, uh, I believe the approved, uh, decommissioning value worked out to \$37,108 per megawatt. Uh, we’re at half a megawatt. Um, and, so, that actually comes out to \$18,554, which is less than what the Town Planner is proposing. So, just to put that in perspective.”

Mr. Prellwitz: “Okay, thank you.”

Mr. Cabral: “Yeah, if I may – that the difference is, as the attorney stated, every site is unique, and it’s not – it can’t be prorated evenly, because there’s a – the larger the site, the lower the cost will be per megawatt. The smaller the site, the higher the cost per megawatt is what would be expected.”

Mr. Prellwitz: “So, Mr. Cabral, what would be your, what would be your suggestion, your opinion?”

Mr. Cabral: “Uh, it was my opinion that the draft motion that was made by your members sounded very good.”

Mr. Prellwitz: “And – refresh my memory on which draft motion that was?”

Mr. Cabral: “Oh, I, believe -”

Ms. Shumchenia: “It was hypothetical. It was from me, Ron [Prellwitz]. This is Emily [Shumchenia]. I hypothetically said, you know, if we make a motion associated with approving this project, as a condition of approval, I would say, acceptance of a revised Crossman [Engineering] estimate for decommissioning, no less than \$25,000.”

Mr. Prellwitz: “Okay. Now, our Planner estimated \$19,765, and you just said twenty-five [thousand] – what about a compromise at \$22,500, with the add-on that, that’s an estimate.”

Ms. Shumchenia: “Well, Ron [Prellwitz], my, my reasoning on that is that our independent engineer is telling us that he hasn’t had a chance to fully flesh out this decommissioning plan himself, and check all the numbers, and he’d like an opportunity to do that, to ensure that the Town is covered in this project, in the case that the Town has to undertake this work, right? So, barring him doing that, we don’t want to actually extend this project, we want to be able to make a decision tonight, so, we want to add a condition of approval to this acceptance of the project, saying we’re gonna have Crossman [Engineering] do their own, independent decommissioning estimate, because right now, we’re just relying on the estimate from the developer alone, um, no one’s checked it yet, and, so, Crossman [Engineering]’s going to do that, and Steve Cabral estimates it’s not gonna be less than \$25,000, that, you know, surely, at least \$25,000 would cover it, and that, indeed, is that twenty-five percent more of the \$19,765 is, which is within our, you know, purview, as a Board to just arbitrarily say. So, that’s where, that’s where my numbers come from.”

Mr. Prellwitz: “Okay. That’s reasonable. Would you like to make a motion?”

Ms. Shumchenia: “Well, I don’t think we’re at the point yet, where we’re gonna do that. We’ll probably stop to hear from the public, and there’s maybe other comments – I have a couple other things to note, but, um, the -”

Ms. Light: “This is Carolyn [Light] -”

Ms. Shumchenia: “Decommissioning, unless – yeah, go ahead, Carolyn [Light].”

Ms. Light: “Um, I, I’m asking Jim [Lamphere] for clarification. A little, a little while ago, you said that the Planning Board has the authority to increase the decommissioning value by twenty-five percent, up to, and that was in reference to the \$19,765 number, correct?”

Mr. Lamphere: “So, that’s correct, Carolyn [Light].”

Ms. Light: “Or is that – okay. So, uh, we’re close, that twenty-five thousand, because that number would be \$24,706, and then we would be able to, uh, work with, with Crossman [Engineering], to come up with a reasonable number, and it could, in fact, be under that \$25,000 threshold, and Emily [Shumchenia] stating that it would be a minimum of twenty-five, correct? Right? Okay.”

Mr. Surdut replied. He said that he thought an “appropriate way to do it, that [the applicant] could agree with, is a not less than condition of the \$19,000.” He continued.

Mr. Surdut: “Um, and then, if the Board was insistent, um, I, I would also want to put a cap on that as well. I think that’s appropriate, if we’re going to put a minimum, and, um, we can discuss what that number is, based on the dot-, what we’ve suggested here, um, but I, I, I think that a not less than, uh, you having a minimum – quite frankly, I don’t think we need a minimum or a top, I think we can work it out between the engineers, as the history of this project has shown, uh, both engineers have noted that they’ve been

able to resolve the outstanding issues. Um, um, uh, so that's where I would leave it – that the two parties can confer, come up with a number, um, and if we're unable to, then we could return to the Board to address it, but I'm quite confident, uh, with two very capable professionals, that we can address that concern, uh, and, and, without prejudicing either party, or the, the Town, or the applicant and setting, uh, these kind of arbitrary caps or minimums."

Mr. Lamphere: "Mr. Chairman -"

Mr. Prellwitz: "So, I'm understanding what you're proposing is leave the dollar amount open-ended, to be, uh, clarified or certified or officialized, that they could be determined."

Mr. Surdut: "Uh, I think I, I would suggest that, at least, initially, I would suggest that, initially, if the Board is uncomfortable with that, then, um, we can discuss it further, but I, I really believe that the, the most effective way to do this is to leave it up to the two engineers to resolve, um, and, if we're unable to, then we can come back to the Board, but these, the, the parties involved here have been able to work collaboratively quite well."

At this interval, Mr. Prellwitz and Ms. Light tried to speak at the same time. Ms. Light then spoke before the Board.

Ms. Light: "I just don't feel comfortable, uh, putting that kind of responsibility on Crossman [Engineering] to negotiate a decommissioning rate. I, I do feel comfortable with Crossman [Engineering], uh, doing a peer review, and making a recommendation. I'm not – and I also don't want to hold this project up. I think diligent – for all intents and purposes, we need to do due diligence on this project, as we do with all other projects, and I am comfortable with the recommendation that Emily [Shumchenia] made, of having a minimum of \$25,000, but, and, and then, I am not comfortable having Crossman [Engineering] be responsible for the negotiations. We're not talking about, uh, drainage systems here. We're, we're talking about cash, and that's something that I don't think Crossman [Engineering] gets paid to do, to negotiate dollar amounts for the Town, and if Steve Cabral would be comfortable doing that -"

Ms. Shumchenia: "Just to be clear, Carolyn [Light], I don't think that I – your, your assessment of my motion was correct, but I don't think that, in that, for that, hypothetical motion – I don't think in that hypothetical motion, we're, we're, uh, assigning negotiation tasks to Crossman [Engineering]. The hypothetical -"

Ms. Light: "We're not – no, no, no, Emily [Shumchenia], not in your motion. This is what Mr. Surdut is proposing, that Cross-"

Ms. Shumchenia: "Right. Yes."

Ms. Light: "-man [Engineering] work directly with the engineer to come up with that decommissioning figure, and I don't think that's their responsibility. It's not in your motion at all."

Ms. Shumchenia: "Right, okay, we're on the same page."

Mr. Surdut: "Um?"

Mr. Prellwitz: "Ladies, before we get into a fist fight here, what we're actually -"

Ms. Shumchenia: "What!?"

Mr. Prellwitz: “Entering, back and forth here, is just about a week’s pay for a construction worker – you know, we’re putting a lot of time and effort into this, and, for a company like Centrica – to post \$25,000 as opposed to \$20,000 is not that big of an item. I hate to sound crude and harsh on this, but we’re spending a lot of energy where it doesn’t need to be expended.”

Ms. Light: “That’s, that’s it. Brilliant, Ron. That’s so true.”

Mr. Surdut asked Mr. Prellwitz said that he had a comment “in that vein”. He continued.

Mr. Surdut: “Um, in conferring with the applicant and Centrica, um, we would – because of the nature of financing, we, we, we can’t have something open-ended. It’s more – it’s very difficult when something is open-ended. So, we would be willing to agree to a minimum of \$25,000 bond, a maximum of \$30,000 bond for decommissioning cost.”

Mr. Prellwitz: “How does that sound to the rest of the Planning Board members?”

Before the rest of the members could respond, Mr. Clough weighed in.

Mr. Clough: “I just want to remind the, the Planning Board, and the applicant that, under the Ordinance, uh, this decommissioning value needs to be based off of, uh, competent expert, uh, testimony, and, what we have before us is not something that can be, uh, negotiated. Uh, we need to have, uh, either the applicant’s expert, and/or Crossman [Engineering] develop a data driven estimate for decommissioning costs. Now, from what I can hear, the Planning Board is trying to achieve some sort of, what I will probably inapp-, inevitability call a compromise, where we can, at a minimum, agree to your decommission-, the applicant decommissioning cost, plus the twenty-five percent increase that the Planning Board, uh, has the right, under the Ordinance, to, uh, set as a minimum, and allow for Crossman [Engineering], who has under, with his expert testimony, indicated that it is not confident with this estimate, to come back with its own estimate, uh, and if that is, in fact, higher than the estimate that you have provided, then the Planning Board, in its discretion wishes to go with that. So, I think, uh, quite frankly, uh, I agree with the Chairman that this discussion, uh, is a bit overkill, and, that if the Planning Board wishes to move forward, as, uh, Planning Board member Emily [Shumchenia] has indicated, I think that that is appropriate, uh, under the circumstances, uh, but we will – and I’m advising the Planning Board not to get into discussions about negotiating, uh, maximum caps, because I, I have – nor does the Planning Board – have any expert knowledge of what, uh, decommissioning costs ought to be. The only individuals who have that are the, the individuals or entities that the applicant has hired, and that of Crossman [Engineering]. Uh, so, I’m hoping that we can – I’m helping, with shepherding this forward, and if not, I apologize, but, uh, that is the Planning Board members, that is what I’m recommending you do to move forward on this item, uh, and that we not engage in setting an arbitrary cap, uh, for Crossman [Engineering]. It seems in all likelihood that Crossman [Engineering] will come into a reasonable value, uh, but, until Crossman [Engineering] has done its work, I don’t think it would be appropriate to engage, on the record, that you are not going to, uh, or, you’re going to limit yourself to an arbitrary cap, without knowing where Crossman [Engineering] will come in, once it has done its due diligence.”

Ms. Jalette interjected, as Charles Kovacic, a member of the Centrica team, had requested an opportunity to speak for some time. She stated that he would need to press *6, which she had told him to do on numerous occasions, and that if he was not interested in making a comment, he would have to “lower” his hand. Mr. Prellwitz then asked Mr. Clough a question.

Mr. Prellwitz: “Okay, Sean [Clough], as I’m understanding it, you’re, you’re comfortable with the not any lower than, but delete the cap? Is that correct?”

Mr. Clough: “Uh, yes, I -”

Mr. Prellwitz: “Which I just think that - I agree with that. We don’t have a crystal ball. Nobody knows what it’s going to be in twenty-five years.”

Mr. Clough: “That is my recommendation. Um, you need to – the Planning Board needs to make a determination based off of competent, expert, uh, testimony. We have here a bare minimum, but, we have an expert who’s indicated it may be more than that. We don’t know what that ‘more’ may be, so I don’t see it be appropriate to have a cap set in any motion that you may propose and vote on this evening.”

Mr. Prellwitz: “Okay. Thank you. Emily [Shumchenia], are you good with that?”

Ms. Shumchenia: “Yep. I would revise my motion. I’m going to share a hypothetical revised motion, okay? ‘Acceptance of a revised Crossman estimate for Decommissioning, no less than \$24,706.25, which is the estimate of \$19,765, plus twenty-five percent, provided by the developer.’”

Mr. Prellwitz: “Okay. Thank you. For the Planning Board members: input, please.”

Ms. Light: “This, this is Carolyn [Light]. Um, it appears to me that because we have to get this review done by Crossman [Engineering] – that we’re not going to be able to accommodate the December sixth deadline. Am I -”

Ms. Shumchenia: “Carolyn [Light], that’s what – that’s what the motion does. It, it says that we can approve it today, but Crossman [Engineering] is gonna come up with a revised estimate and the developer will accept that.”

Mr. Lindelow: “But will we accept it?”

Ms. Light: “Uh, okay, so the developer will accept the Crossman [Engineering] decommissioning fee, and decommissioning estimate? What if that does not happen?”

Ms. Shumchenia: “It is a condition of approval.”

Ms. Light: “Okay. Alright. Uh, we can move on. I’m good.”

Mr. Lamphere then said that he had a question for the applicant.

Mr. Lamphere: “The Ordinance, the Ordinance says the applicant shall submit a fully inclusive estimate of the cost associated with removal, prepared by a qualified engineer, licensed in the State of Rhode Island, and verified by the Town engineering consultant. So, the only thing that hasn’t been done here so far is it hasn’t been verified by Crossman [Engineering], but they, the, the applicant did provide numbers here. So, Crossman [Engineering] was never directed to come up with their own, independent estimate, as they have on other projects that have come before the Board. So, uh, you know, we, we have numbers here, by the, uh, by the applicant. I just heard, uh, Mr. Cabral. He pretty much went down to [\$]14,9[00] as a starting point, uh, after, after salvage is taken in-, into play. Now, in the past, the Planning Board has not been crazy about the estimate

when you take the salvage out of it, alright, so, my, I guess my thought is this: if we're gonna send, if we're gonna send this out to Crossman [Engineering] now, and say, 'Okay, we want you to verify these numbers', I guess, what is Crossman [Engineering]'s starting point gonna be? Is he gonna start off now at \$14,911, and then, and then look at these numbers? I mean, if he going to include salvage or not, okay? Uh, because, depending upon where Crossman [Engineering] starts off with, what number, that, that, that they go up from, I just wonder what, what the ultimate number is gonna be, that Crossman [Engineering] comes up with. I mean, we might, we might already be higher than what he's gonna come up with up. I mean, I'd like to know what he, he's gonna come up with, and, I think, in the future, if we're gonna go through this time and time again in the future, then I think when Crossman [Engineering] deals with, with these developers, and they see decommissioning estimate, then verify it right there. We, we shouldn't even be here. If we're going to go this, this route, where we're going right now, we shouldn't even be here. We should have a number, from Crossman [Engineering] right now. And, again, keep in mind now, on, on other projects, Crossman [Engineering] came up with their estimate – the Planning Board increased it by twenty-five percent, okay? And, on this other project that I'm thinking about, it wasn't done on a megawatt basis that I, that I, uh, compared it with. It was \$343,000 and change, which was twenty-five percent more than the estimate, and it was for thirty-seven acres, and it comes out to about \$9,200 per acre. So, we only have two acres we're dealing with here. That's eighteen, that's \$18,4[00], and that's including a twenty-five percent increase, in that. So, I guess my, my question is, uh, where do you want to go that's reasonable? I mean, I picked out, I picked out the high number that was given by the applicant here of \$19,765, and I didn't include salvage in it because I didn't think the Planning Board wanted to include salvage. They weren't happy with putting salvage values in. They, they want to include zero on that. Okay. Fine. Is Crossman [Engineering], is Crossman [Engineering] going to include salvage when they verify this? I mean, we don't know what Crossman [Engineering]'s number is going to be. I'm suggesting here – and the applicant's already agreed to it - \$19,765, and then you can throw twenty-five percent on top of it, bringing it up to twenty-four and change. I mean, I don't know, I don't know what we're doing here tonight. Again, I think we're -"

Ms. Shumchenia: "With all due respect, Jim [Lamphere], I asked Crossman [Engineering] that exactly. If a twenty-five percent more than \$19,765 would be enough, and Mr. Cabral said probably not. So, that's why we're going this route."

Mr. Lamphere: "Okay."

Ms. Shumchenia: "That's simple. I think we've justified the motion at least four times."

Mr. Lamphere: "Okay."

Ms. Light: "Okay, I think – this is Carolyn [Light]. I think Sean [Clough] clarified the direct for the Planning Board. I think Sean [Clough] told us that we're required to have an expert review, and we need to have Crossman [Engineering] do an estimate, and I would hope that Crossman [Engineering] is going to do an independent cost analysis, and not do, use, this, uh, information here as a starting point, like he's done on other projects."

Ms. Shumchenia: "Exactly."

Ms. Light: "I mean, there would be no value in having a peer review if they're going to use the, uh, the outline, uh, and the information that's been provided by the applicant,

and, for, for what it's worth, the applicant's decommissioning, plus the twenty-five percent that we're talking about could be accurate, but we know better – that we need to utilize the experts like we should. And, Sean [Clough], if I'm interpreting what you said incorrectly – that the Ordinance requires we get an, a peer review, an expert review, let me know, because that's what popped out when you were speaking.”

Mr. Clough: “I believe -”

Mr. Lamphere: “Jim Lamphere, Town Planner. So, so, basically, going forward now, basically, what you're saying is you want Crossman [Engineering] to do its own estimate for each project going forward, because they're all unique, and, and that's, that's, that's what you're gonna go by – whatever, whatever Crossman [Engineering] comes up with, that's what you're gonna go by, right? Is that what we're saying?”

Ms. Light: “No, we're saying that -”

Ms. Shumchenia: “I'm not sure that's necessarily needed – right.”

Mr. Lamphere: “I'm fine with that! I just want some clarity, so I, so I can, you know, you know, talk with these people intelligently. I, I want to know what you're going to do. I mean, either you want salvage value in there, or you don't. Let's see what Crossman [Engineering] comes back with. You didn't like what Crossman [Engineering] came back with last time! So, I'm, I'm just trying to get a little bit more direction here, so that we can give other people direction, so -”

Ms. Light: “I think that – I don't think we had any critiques of what Crossman [Engineering] came back with the last time.”

Mr. Lamphere: “Okay.”

Ms. Light: “I, I think, I think what I would say, what would make me comfortable is that, it is that we do get a review by Crossman [Engineering] on these decommissioning projects. We continue to learn as we go along. I don't think there's any harm in doing that. It's protecting the Town, it's protecting the developer as well, uh, and I, I, you know, unless Sean [Clough] says that it's unnecessary for us to get that expert review – because he indicated that we, we needed to do it, according to the Ordinance.”

Mr. Lamphere: “Yeah, no, I'm fine with that, Carol [Light], and the Ordinance does say ‘verified by the Town's engineering consultant’, so I'm fine with that. I'm not, I'm not arguing here or anything. I just want to know – I just want some direction and some clarity. So, basically, let's see what Crossman [Engineering] comes up with, whatever that number is. I'm certainly not gonna give him any guidance. I'm gonna say, ‘Here.’ I'm going to – the only thing, the only thing we have to go by right now it what the applicant gave us, which you have in your packet, and I guess Crossman [Engineering] is gonna, Crossman [Engineering] is gonna quote, ‘verify’, it in some way. I don't know. Is – what do we mean by ‘verify’? Are they gonna redo it? I guess they can do whatever they want, but I'd be interested to hear what Crossman [Engineering] has to say about it myself, and then? So, do you want to come back to the Planning Board again with that number, or, or -”

Ms. Davis: “Yes.”

Mr. Lamphere: “I mean, on one hand, I, I heard, I heard somebody say that they don't – ‘this isn't a negotiation’, ‘we're not gonna leave it up to Crossman [Engineering] to come up with the -’, or ‘between the two engineers’. I, I don't – I don't know.”

Ms. Light: “Okay, so, what I said was – I don't think it should be Crossman [Engineering]'s responsibility to negotiate decommissioning with the client.”

Mr. Lamphere: "Okay."

Ms. Light: "Uh, that – it, it shouldn't be left for Steve Cabral and the client to sit down, and come up with an agreeable figure. He's being, uh, commissioned to do a review, and provide his expert opinion on what a decommissioning for this project looks like. That's it."

Mr. Lamphere: "Okay."

Ms. Light: "Yeah. You know, I, I -"

Mr. Lamphere: "Okay."

Ms. Light: "We've -"

Mr. Lamphere: "Alright, so, basically, Carolyn [Light], Crossman [Engineering]'s gonna come in, Crossman [Engineering]'s gonna come in, and come up with it – their own estimate. Now, let me, let me -"

Ms. Light: "Yes."

Mr. Lamphere: "Ask you this question. When Crossman [Engineering] comes up with a number, and they bring it to us, or, if, if this comes back, okay, do you want the ability to put twenty-five percent on whatever Crossman [Engineering] comes up with? Because I don't know, I don't know what number – of even how they're gonna make their, uh, estimate, okay, but, uh, that's what, that's what we're gonna come back to the Planning Board with. We're gonna come back with a number from Crossman [Engineering], and then, the, the option for the Board to increase it by twenty-five percent. Is that what you want? Is that where we're going?"

At this point, Ms. Light suggested that they hear from "other people on the Board." She said that she "would like to be able to do a comparison of the two quotes", and that she "would like to feel comfortable with this decision", but that she wanted to "hear from other people on the Board about how they see this going forward". She said that she thought it "should be consistent from project to project."

Ms. Light: "Nobody should be, uh, excused from any step in what we're doing, and, you know, while the applicant reviewed the last project that we approved, the applicant didn't hear the discussion behind where those numbers came from either. We're the only people that are a party to it, so, let's hear from the rest of the Board on this."

Ms. Shumchenia commented first. She said that she thought that "a really important piece of information", or "the key thing" that would help the Board "apply what's happening right now to future projects" was that "Crossman [Engineering] came to this meeting, telling [the Board] that the decommissioning estimate provided by the applicant was low, in his opinion." She continued.

Ms. Shumchenia: "[Mr. Cabral] had not yet come up with his own quote, but, if he had said, for example, 'Oh, this seems reasonable. I checked it out. I looked over it. At face value, I'm willing to accept this.', then I think we'd be in a different position. We'd be having a different discussion right now. It's simply because Crossman [Engineering] flags this estimate as too low, in their professional opinion, that we are moving down this road of obtaining a separate estimate from Crossman [Engineering], okay? So that's con-, that's been consistent across all of our projects. If we take the developer's estimate, we

get advice from Crossman [Engineering] about whether it's too low, and we see another estimate from them to be able to compare. Um, so, I, I don't think we're being inconsistent in this discussion at this point. I think the road we were going down, um, and, this was, again, based on the guidance received from the expert, from Crossman [Engineering]. He highlighted some, some line items in his estimate - specific line items, that he felt would change when they did any independent estimate, uh, themselves. So, uh, we've decided, or, you know, I proposed, that we would accept Crossman [Engineering]'s estimate in this case, because he was able to put some pretty strong bounds on what it would be. He, essentially, said it would be between \$25[,000] and \$30,000, which I think we are starting to learn is probably appropriate for this project, um, and I'm just speaking for myself, but that's how I interpreted, uh, Mr. Cabral's guidance to us, and that's how I felt we could move forward on this project today, without having to receive a separate estimate from Crossman [Engineering], and compare it, side by side with the developer, um, because Crossman [Engineering] had such, you know, honed ideas about how his estimate would be different from the applicant's, um, I was comfortable moving forward with it. I understand if not everyone's comfortable with that, and they want to see this project again before us, but that's, that's sort of where I'm landing on this. Hopefully that's helpful."

Mr. Prellwitz responded by asking where the Board stood "on this", and gave his opinion. Ms. Light replied.

Mr. Prellwitz: "Now, here's my opinion. We've got a[n] estimate from the developer, and, typically, we ask Crossman [Engineering] for their opinion. We're not asking them to sit down and negotiate with these other people. We're asking them for their opinion, and it's up to us to decide where we want to go from there. Am I incorrect in that?"

Ms. Light: "This is Carol [Light], and I feel good with that, and, and-"

Mr. Prellwitz: "Okay."

Ms. Light: "One of the other comments that I would want to make is that if, if Crossman [Engineering] came in, and said that they're recommending a cost of \$26,002.83, that we don't put an additional twenty-five percent on that - that if, if, his number comes in, that's the number that we accept."

Mr. Prellwitz: "Okay."

Ms. Light: "I mean, that's what I feel comfortable with."

Mr. Prellwitz: "Okay. Thank you."

Mr. Lamphere interjected to say that he wanted to mention "one final thing". He continued.

Mr. Lamphere: "Um, I, I listened to Mr. Cabral's testimony, and I kind of felt that he was ultimately resting on the \$14,000 number, uh, with, with the salvage value taken into con-, consideration, and I, and I think I heard him say that, basically, he felt that number was too low. So, I, I don't know how he's gonna feel about, you know, the \$19,7[00], or, like you said, you know, he, I guess he's - I guess he was thinking off the top of his head, somewhere around \$30[,000], or close to \$30[,000]. But, again, we haven't seen any numbers that he's put together yet, so, um, I guess, I guess let's see what numbers he

comes up with, but, um, again, from, from what Mr. Cabral has done in the past, and from what I heard him just say, I think we can expect him to include some salvage value in this, and, and the number that I put forth here tonight doesn't include any salvage value, so I thought that was – I, I, personally, as a layperson, thought that was a conservative way to go, but, let's see, let's see exactly what Crossman [Engineering] comes back with. Whether they include salvage, whether they don't include salvage, and we'll take it from there.”

Mr. Prellwitz: “So, if I'm understanding this correctly, it looks like we're going in the direction where we may be tabling this, this whole project until we get some input from Mr. Cabral? Is that correct?”

Mr. Lamphere: “We'll need an extension. Uh, this, this, uh – we'll have to have the applicant agree to an extension to the January meeting. The Board has until December 6th to render an opinion on this, so.”

Mr. Cabral: “Okay, where do we go with that? Do we just ask the applicant for the extension now, or – I guess we have to ask for it now, right?”

Ms. Shumchenia: “Just to be clear –”

Mr. Lamphere: “Well, you have to make a decision tonight, if, otherwise, if, if, he doesn't grant you an extension, you have to make a decision, unless you want it to be approved by default.”

Ms. Davis: “No.”

Mr. Lamphere: “Then, we don't know what number we're going to talk, talk about at all, at that point, do we? So, we need an extension to have Crossman [Engineering] do his work.”

Mr. Prellwitz asked the Board if they wanted to “ask for an extension”, or if they wanted to “go ahead and vote on this”, or if they wanted to “hear from the, the, uh, populace of Hopkinton”. Ms. Light said that asking for an extension was her “favorite”, and that if the Board couldn't “do that, then [the Board would] have to figure it out”. She continued.

Ms. Light: “If, if the client can talk to us about the flexibility, then they'll have more to talk about after that. Can we ask the applicant?”

Mr. Surdut replied that “at this point in time”, the applicant expressed that they “would very much like to move forward tonight”. He said that they would “like to craft something with the Board.” He continued.

Mr. Surdut: “Um, if we could ha-, you know, we could – if we even have to, have an on the record discussion with Crossman [Engineering], then so be it, um, but the – we've really worked hard to be prepared and move forward tonight, um, uh, the, are – the way these projects are structured, the timing is important, and, uh, we would like to try to settle on something here with the, the Board, this evening. Um, we've offered, uh, some different alternatives, and, and, uh, attempted to, and would like to continue to attempt to work with the Board to try to find a way to put this project, to move forward with this project. The Board has a number of projects that are before it, and a very busy set of, um, agendas upcoming, and, uh, we would suggest that, that the, that the high side number of the nineteen, of \$25,000, which is, uh, just slightly in excess of the statutorily allowed

\$19,000 and change, um, put forth by a multiplier of 1.25, um, as has been noted numerous times by this Board. This is, to some extent, all conjecture, whether or not salvage should be included, whether it shouldn't. Um, I think that twenty, I think that, based on all the discussions here tonight, the \$25,000 is in excess of what your Planner's recommendations are, um, and is, arguably, statutorily in excess of what would be allowed, uh, and it's something that, that is a, that is supported by competent evidence in your record, uh, so we would, we would really like, would think that that would be an appropriate number to move forward with tonight."

Mr. Prellwitz: "So, what you're saying is you're good with the \$19,765? Is that correct?"

Ms. Davis: "No. That's not what he said."

Mr. Prellwitz: "Uh, I'm, I'm suggesting that we're, we're – we believe that that is an appropriate value, and agree that the Board has every right to increase that by another one hundred and twenty-five – by that number by one hundred and twenty-five percent, and we are even willing to go slightly above that, and go to the round number of \$25,000, uh, in, in an interest of addressing the Board's concerns, and recognizing that this is conjecture on all party's part[s], uh, and, again, that's supported by your Planner's memo, uh, and we've, and those documents have been submitted, and, uh, been included as part of this packet for some time, oh, and, and, take into account a significant increase over the \$14,000 that Mr. Cabral was speaking to, um, and I'm certainly not an engineer, but, quick math, that's a pretty significant, um, increase – probably nearly double, somewhere around, uh, you know, one hundred and fifty plus percent increase."

Mr. Prellwitz: "Okay, so, you're good with the \$25[,000]. Emily [Shumchenia] proposed the \$25[,000] -"

Ms. Jalette: "Mr. Cabral would like to weigh in, Ron [Prellwitz]."

Mr. Prellwitz: "What's that?"

Ms. Jalette: "Mr. Cabral would like to weigh in."

Mr. Prellwitz: "Certainly. Go ahead."

Mr. Cabral: "Oh. Oh. Hello, this is, uh, Steve Cabral from Crossman [Engineering]. Oh, during the discussion, it's given me time to work out some rough numbers, and, you know, as I originally stated, the order of magnitude that I anticipate would certainly not exceed \$30,000, but, going through some of the major line items that I was concerned about, I, I am, I would be confidence to say that the number of \$25,000 is reasonable, and so, if, you know, although I don't have a document, I have reviewed the unit quantities prior to coming into tonight's meeting, and that's why, in my memo of [December] the twenty-first, I was able to point out specific line items that I felt were understated, but, I, I can testify that a value of \$25,000 would be within reason – would be a reasonable value -"

Mr. Prellwitz: "Thank you."

Mr. Cabral: "And if I were to, if I were to do a very detailed study, it would not be significantly greater than that. So, again, my recommendation, after hearing the testimony, and having the opportunity of going through the numbers during the discussion, I'm comfortable recommending \$25,000."

Mr. Prellwitz: "Very good. Thank you. We're having progress. Progress is good. Okay. Jim Lamphere, our Town Planner – should we get some public comment? Should we look for a motion now? What would be your pleasure, or your suggestion?"

Ms. Jalette: "I'll interject. So, there are two people who would like to make comments on this. We are about nine minutes away from where we are supposed to adjourn. We will have to have an extension if we are going to be discussing the final item on our agenda for old business. We have additional items to refer to. They're not particularly extensive, but, sorry to interject on Jim [Lamphere]'s behalf, but I can see what's happening behind the screen, so, I figured I could weigh in a little."

Mr. Lamphere: "No, thank you, Talia [Jalette]. I appreciate that. I was going to pretty much say the same thing. We have another – we have a Brushy Brook project that's, uh, that's up next, and that's why I was trying to facilitate the discussion on decommissioning here, but I guess, I guess we got bogged down, but I think we're close to a motion. Um, you don't really – we, we normally do entertain public comment on, on all these projects. If we have two people, I would say, you know, provide your comments, and then make a motion. I think we're ready to approve this project, uh, tonight, uh, this Maxson Hill [Road] project, so, I would – at the very least, I'd like to come out with that."

Mr. Prellwitz thanked Mr. Lamphere, and opened up the period for public comment on the proposal. The first person to comment was Joe Moreau, of Old Depot Road.

Mr. Moreau: "Boy, I promise – I'm not going to talk about decommissioning. Um, good evening. We've been told that this project, at 40 Maxson Hill Road, falls under the Farm Viability Ordinance. Section 5.5-1 states 'the purpose of this Chapter is to encourage farming and agriculture operations within the Town by permitting, in addition to the principal agricultural activity, supporting activities, which add to the economic viability of the farm.' The name of this farm is the Top of the Hill Farm. I have not heard any discussions about the principal agricultural activities of this farm. One of the documents provided concerning this project was a well-written letter from Mark [Couture], who is a direct abutter, and lives at 48 Maxson Hill Road. Um, I would encourage Mark, and anyone else that lives within one mile of this project [to] do some of their own research. There was a recent study, published by URI [University of Rhode Island]. Corey Lang is an associate professor of natural resource economics at URI [University of Rhode Island]. Basically, they reviewed four hundred thousand housing tract transactions, and what they found is, uh, in Rhode Island and Massachusetts, that prices within a mile of a solar array declined by an average of 1.7%. Homes within a tenth of a mile of the installation declined by seven percent. A couple of things I've eliminated, because Carolyn [Light] already discussed this, uh, talking about the conflict of interest, and I agree with that. When we have the applicant who is the Fire Chief. He's also, uh, the Vice Chair of the Zoning Board. Looking at the Operations and Maintenance Plan, revised 11-17-20, under 'Access and Safety Issues', it states 'no access or safety issues are anticipated, because BMPs are not proposed for this project.' Also, a letter from ESS Group, letter dated November 19, 2020, that was to Jim Lamphere, concerning the peer review on Page 3, the second item: the current proposed grading at the entrance to this site is fifteen percent. Typically, this would be considered too steep for the fire apparatus. This will need Fire Marshal approval. The Ashaway Fire District Fire Marshal has confirmed that his review of this project will not be conducted until after the municipal approval is received. Um, looking at the Crossman [Engineering] letter, dated November

21, 2020, the DPR [Development Plan Review] memorandum from Steven Cabral, Number 3, 'Emergency Access' – 'we recognize that determining if the layout is suitable for emergency access is within the jurisdiction of the Fire Marshal.' In the early stages of this project, I looked at aerial views of the site that were provided, and, to me, it looked more like a junkyard than a farm. I don't have forty years of experience in the construction business, but, my eyes told me a different story. Last Wednesday, I looked on our website, On-Line GIS, for 40 Maxson Hill Road. I zoomed in, and I could not believe the number of vehicles, equipment, on this property. I would suggest that you review this site, this site closely, if you haven't already done so. There appears to be a crane, um, a school bus. There's several, uh, other trucks on there, and there's an awful lot of vehicles that I would suggest that you would look at. Last year, a resident gave me a copy of a Notice of Inspection report, that our Town uses, and, uh, it just has, uh, for example, the issue was the accumulation of automobiles. If you look at the State of Rhode Island Property Maintenance Code, Section 302.8, [it] talks about motor vehicles. I'm not gonna read the whole thing, but the important point is Section 302.8 states, 'except as provided for in other regulations, no inoperative or unlicensed vehicles shall be parked, kept, or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled.' Well, I heard tonight that they're in the process of stripping or dismantling a crane. Uh, if you review the online photos again, this is what you'll see on that property. What would our rural Town look like if other residents decide to have many, many inoperable or unlicensed vehicles on their property. Section 22 of the Zoning Ordinance states you may be fined up to five hundred dollars per day per violation, and/or be subject to additional legal actions. Our Fire Chiefs in Town should be concerned with the hazardous waste from these vehicles that are either inoperative or unregistered. I've listened to many projects that are either in Farm Viability, Commercial or Manufacturing zones. Most times, these projects are referred to as 'by-right'. Myself, and many others want they projects done right. I believe there is a conflict of interest, because of the information I mentioned about the applicants. Um, I also believe there should be a site visit by our Police Department to determine if there are any inoperative or unlicensed vehicles. If any of these vehicles are found, all of these vehicles need to be removed before the start of any construction for solar. Section 5.5-6 of the Farm Viability Ordinance begins, under 'Farm-Based Service Business or Farm-Based Contracting Business', you need a Special Use Permit. Also, vehicles with a gross weight greater than thirty thousand pounds also need a Special Use Permit. I don't know what category the Top of the Hill Farm is in, or if they have all required permits, licensing, etcetera, but I feel they should be updated. Uh, lastly -"

Here, Mr. Surdut interrupted Mr. Moreau, and asked for a "point of order." Mr. Moreau replied that he had not interrupted Mr. Surdut during his testimony. He continued.

Mr. Moreau: "I've listened to you for almost two hours. Please be respectful and listen to me. I'm tired of your comments. In my opinion, I think DEM [Department of Environmental Management] needs to do a site visit to determine if there are any hazardous waste from this construction equipment before disturbing any of the land."

Here, Mr. Surdut interrupted Mr. Moreau again, calling for a “point of order”, as the Board was “coming up on ten o’clock”. He alleged that Mr. Moreau was “exceeding the five minute, uh, public comment period per person, so it may be appropriate for the Board to address those matters.” Mr. Moreau asked Mr. Surdut if he lived in Hopkinton. At this point, Ms. Jalette interjected.

Ms. Jalette: “Pardon me, both Joe [Moreau] and Steve [Surdut]. Steve [Surdut], that’s my role. I appreciate you taking initiative, um, but, please do not interrupt any additional speakers. I would like to have a motion to continue from the Planning Board, and then there are two other people who’d like to make comments, Joe [Moreau], so if you could wrap it up a little bit, that would be very much appreciated.”

Mr. Moreau: “I have very little left to say, and I want to add something that was not written. I called the State Fire Marshal’s Office on Monday, and I called them again today, and I did not get a response, but, after this, tonight, I will insist on speaking to the Fire Marshal to suggest about the conflict that appears here. Also, was not part of my written testimony, and I believe I’m less than five minutes. I do not appreciate the attorney interrupting me, or any other resident, when I am trying to speak. This is the second time Mr. Surdut has done this to me. The last time, I had asked the question, ‘Who is keeping track of all these comments made at the hearing?’, and Mr. Surdut piped in and said, ‘I’m sure, Mr. Moreau, you will do your research.’ I live in this Town. I pay taxes in this Town. I believe that Mr. Surdut probably does not live in this Town. I’m not gonna put up with that, and I don’t believe our Town, our Planning Board, or our Council should put up with attorneys that act this way. Thank you.”

Ms. Jalette began to ask the next person to comment, remembered that the Board needed an extension, and requested that instead.

MR. LINDELOW MADE A MOTION TO EXTEND THE MEETING UNTIL 10:30 P.M. IT WAS SECONDED BY MS. SHUMCHENIA.

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

4-0, MOTION PASSED.

The next person to call in was Barbara Capalbo, of Lynn Lane.

Ms. Capalbo: “This particular solar array is being presented under the Farm Viability Ordinance. Um, in my perusal of this Ordinance, both under ‘Intermediate Farm’ definition and ‘Large Farm’ definition, it says it is to be actively devoted to agricultural or horticultural production. This is silvicultural, um, anything to do with trees. Um, I don’t think it’s under either of the definitions for intermediate or large farms. It’s also not under most of the farm product. It does say you can have some firewood, but I would assume that would be from a crop farm, and a crop farm, again, is not silvicultural, it’s horticultural or agricultural. I’m not sure that this particular solar array can come in under

the Farm Viability Ordinance, and I would assume that would be something Sean [Clough] would look into. Thank you.”

The next person to speak before the Board was Lynn Lapierre, of Maxson Hill Road. She said that she still had some “grave concerns about the water runoff.” Ms. Jalette asked Ms. Lapierre if she could speak into the mic on the device she was using, as it was difficult to hear her. She continued, and stated that “there’s a lot of water on Maxson Hill” Road, as “the water table’s relatively high”. She said that “getting rid of trees is getting rid of a lot of the mechanisms that – to deal with the water.” She continued.

Ms. Lapierre: “Just silt sleeves and shunting it down to Maxson Hill [Road], down the driveway, isn’t much of a, an appropriate response to the water. I live across the street from a solar farm. I raised these issues when they were building the Maxson Hill [Road] site. It’s been two days since it stopped raining, and we still have water coming out of that site, flooding my, in front of my neighbor’s house, and flowing, constantly. The, the wait and see attitude, once it’s, it’s done – I, I just find very disconcerting.”

After Ms. Lapierre spoke, Ms. Jalette told Mr. Prellwitz that there were not any other comments from the public. Mr. Prellwitz said that he believed that it was “time for a motion” from the Board, and asked if they were going to approve the Development Plan Review application or not. Ms. Light replied.

Ms. Light: “The clients indicated that they don’t want an extension, so if we don’t accept the terms now, with a motion, then, by default -”

Mr. Prellwitz: “They get it anyway.”

Ms. Light: “It’ll be adopted.”

Ms. Davis: “That doesn’t make sense.”

Ms. Light: “So, Sharon [Davis], what do you recommend?”

Ms. Shumchenia stated that Mr. Lamphere had written a motion for the Board in his memo, and that the motion was for “granting development plan approval.” She continued.

Ms. Shumchenia: “If you disagree with it, you just vote ‘No’.”

Mr. Surdut interjected that the applicant was “agreeable with Mr., uh, Cabral’s most recent, uh, statements, that the, uh, a, uh, um, bond regarding decommissioning in the amount of twenty-five thousand dollars is an appropriate, uh, amount.” Mr. Prellwitz thanked Mr. Surdut for his comment, and returned to the Planning Board members to ask them how they wanted to proceed. Ms. Shumchenia began to read the motion.

MS. SHUMCHENIA MADE A MOTION TO GRANT DEVELOPMENT PLAN APPROVAL TO THIS APPLICATION, A PHOTOVOLTAIC SOLAR ENERGY SYSTEM AT 40 MAXSON HILL ROAD, AP 4, LOT 38, SUBJECT TO THE APPLICANT ATTAINING ALL NECESSARY LOCAL, STATE, AND FEDERAL APPROVALS WITH THE FOLLOWING CONDITIONS:

THAT THE OWNER’S INSPECTOR OR DESIGNER BE REQUIRED TO MONITOR THE PERFORMANCE OF THE STONE SYSTEM, AND BE PREPARED TO INCORPORATE ADDITIONAL MEASURES IF CHANNELING OCCURS, OR IF ANY DOWNHILL EROSION RESULTS,

THAT MONITORING DOWNHILL SLOPE BE PART OF THE OPERATION AND MAINTENANCE CHECKLIST REPORT,

THAT COMPACTION OF THE FIELD SURFACE BE LIMITED TO ROLLING, BY USE OF A STANDARD SEED ROLLER, AND THAT GRAVEL AND PAVEMENT COMPACTION EQUIPMENT NOT BE ALLOWED,

THAT THE APPLICANT POST AN AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS IN THE FORM OF CASH ESCROW FOR DECOMMISSIONING OF THE PROJECT, AS OFFERED BY THE APPLICANT, AND,

WE MAKE THE FOLLOWING POSITIVE FINDINGS:

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 USE 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.

Ms. Light asked Ms. Shumchenia if she would “include in that that this, uh, approval is conditioned on a review by the State Fire Marshal.” She replied in the affirmative, and revised her motion.

Ms. Shumchenia: “So, I said initially that we would grant development plan approval subject to the attainment of all the following conditions, or the necessary State, Federal, Local approvals, and the following conditions. I named four things in Jim [Lamphere]’s memo. I’ll add a number five.”

THAT THE STATE FIRE MARSHAL COMPLETE THE EMERGENCY ACCESS ASSESSMENT.

Ms. Shumchenia asked Ms. Light if that worked for her, and she said that it was.

MS. LIGHT SECONDED THE MOTION.

IN FAVOR: PRELLWITZ, LIGHT

ABSTAIN: NONE

OPPOSED: LINDELOW, SHUMCHENIA

2-2, MOTION FAILED.

Mr. Prellwitz asked Mr. Lamphere and Mr. Clough where that left the Board, as the vote was two-to-two. Mr. Clough responded.

Mr. Clough: “And, and Jim [Lamphere], back me up on this if I’m, I’m incorrect, but my understanding is on it, in a tie, that is not the, uh – the Planning Board is not granting approval to the motion on a two-to-two basis.”

Mr. Lamphere: “That is, that is correct, Sean. The motion did not pass because you didn’t get three votes for it. So, with, so the ques-, the next question is ‘Where does that leave us?’ Uh, do you want to deny the project, do you want to ask the applicant for an extension until the January meeting, um – and I don’t know, and I guess, you know, from my standpoint here, uh, I guess I have a question as to why the Planning Board didn’t approve it, if, uh, uh, if, if, if all of these conditions were, uh, read. Uh, I, I guess I don’t know what the Planning Board is looking for, uh, beyond this. What, what, what, what do you need to, uh, to grant an approval? What, what, what are we coming back with? We got decommissioning settled. What, what else if there to talk about?”

Ms. Shumchenia replied that she thought that “there’s some pretty serious concerns raised in public comment throughout the review of this project.” She continued.

Ms. Shumchenia: “Um, namely, concerns from multiple abutters about storm water, uh, control, concerns from multiple residents about the applicability of the Farm Viability Ordinance in this case, um, and, overall, um, the applicant, I felt, did not adequately show consistency with the Comprehensive Plan.”

Mr. Lamphere: “Okay, okay, fine – but I’ll just address two of those things. Number one, we had our engineering consultant address storm water issues, number one, and, um, number two, this, this project does qualify under the Farm Viability Ordinance, okay? It’s timber production. That’s what their W-2, uh, W-9s to the Federal government, uh, were for, for the harvesting of timber. It could, as Mr., Mrs. Capalbo, uh, pointed out – it’s silviculture, which is harvesting a timber. That’s what, that’s what they do on, on the property. We have tax, tax returns for four years for, from these people. We have a tax-exempt number. They meet – we have a Zoning certificate from the Zoning Official. This qualifies under the Farm Viability Ordinance. Let’s put that issue to, to rest right now, okay? As far as the storm water? Crossman [Engineering] looked at storm water. We had

a public comment about springs in the area, relative to another project up the street, not, not so much this project. So, again, so – but if you, if you don't feel as though it comports with the Comprehensive Plan, fine. I'm not going to second-guess you on that one. But, I guess my question is: give, give the applicant some direction, as to what this need – what this project needs to do to comport with the Comprehensive Plan.”

Ms. Shumchenia: “Well, unfortunately for the applicant, it's a really uphill battle in Town right now to comport with a Comprehensive Plan, since we have, you know, several utility-scale solar developments within a few miles of this particular site, um, and we've heard from multiple residents, um, in the description of the Land Use Goals in the Comprehensive Plan don't really support industrial-scale solar development, scattered in a patchwork fashion, throughout, uh, the village of Ashaway, and around the Exit 1 area, quite frankly. That's just my opinion, my, my reading of the Comprehensive Plan.”

Mr. Surdut asked Ms. Shumchenia if she was “suggesting that this is a utility-scale project.” She replied that she did not, but “there are multiple, um, additional utility-scale projects planned in this area, um, and any solar project, uh, greater than, uh, an acre, for example, um, really stresses the intent of the Land Use and Development Goals articulated in the Comprehensive Plan of maintaining rural character.” She continued.

Ms. Shumchenia: “Um, when I'm thinking, cumulatively, and, again, I stress – not really the fault of the applicant, or any, uh, future applicant in this area, in this geographic area, um, but I can't, in good conscience, continue to vote 'yes' for solar projects in this particular neighborhood and location, and, and believe – I can't, I can't reconcile that very first, uh, requirement that we need to make to make a positive finding on these proposals, that 'this development is consistent with the Comprehensive Plan'.”

Mr. Lamphere began to ask Ms. Shumchenia a question, but Ms. Jalette interrupted him to ask Mr. Surdut to change how he was holding his phone, as there was feedback from his line that was “interfering with communication” amongst the Board members and those assembled. He said that was his “internet connection”, and apologized. Mr. Lamphere continued. He asked the Board if the “Board would entertain a motion to deny this application, in light of the foregoing, uh, comment” from Ms. Shumchenia. He continued.

Mr. Lamphere: “Because, if we don't deny it, when we're not approving it – if we don't deny it, what are we left with? Where are we at?”

Ms. Shumchenia asked what would happen if the Board made “a motion to deny, and that doesn't pass”. Mr. Lamphere said that he thought that if the Board reached that point, they would have “to ask the applicant if they're willing to give us an extension for, for January”. He continued.

Mr. Lamphere: “And I guess we'll have to come back in, and, I don't know, have a further discussion, but if we're at a stalemate – we only have four people, uh, eligible to vote on this thing. Uh, we don't have five. So, um -”

Ms. Light: “Applicants – the applicants already told us that they are not going to grant the extension.”

Mr. Lamphere: “Okay, all right. So, no extension, right. So, can – do we have a motion to deny it, then? Let’s deny it.”

Mr. Surdut responded that the applicant was “always open to discussion, uh, if there was a particular reason that the Board wanted to continue it”. He said he wasn’t going to “put a blanket ‘no’ out there, but continuing it, um, when we’ve already, we had an extensive discussion regarding decommissioning, um, we’ve worked [with] any and all abutters that have raised a direct issue over the course of the seven months that this application has been pending.” He continued.

Mr. Surdut: “We’ve met with, we’ve modified the array in light of their requests. Um, we put in additional buffering. We are maintaining buffers regarding your project in excess of what is required in your statute. Um, this is a site that meets all the qualifications of your staff – of a very specific statute. Um, we’ve vetted this out. We spent the seven months that this project has been pending working with your engineers. Uh, as Mr. Lamphere said, and as I’m saying, what, what more could we do to vet this project out? The Maxson Hill area is a, as your own engineer said, is a road that is already compromised by significant flooding, and that our, this proposed project will have no impact on that, um, and I think it’s also important to clarify: the Fire Marshal’s office - which is the office that does the review of this - has nothing to do, and it’s wholly independent from the local Fire Department, which is where the, uh, owner of the property that is the subject of this application has worked, has been a member of, so the review that is conducted by the Town is already independent of that, um, but I have no objection to the State Fire Marshal’s being, office being involved, um, but, but the, the Fire Marshal’s office is independent of your, your Fire Department. So, we’d be happy, uh, we believe this project is allowed by statute, um, and is consistent with your Comprehensive Plan, in that it’s consistent with the promotion of agriculture and, uh, agricultural activities, which is very much in the rural nature and the rural characteristics of the Town, so, while I understand there are concerns regarding solar, and solar is a political, hot button issue in the Town right now, that, statutorily, this project meets the requirements, and is appropriate.”

Mr. Lamphere replied that he wanted “to read the last sentence of the Development Plan Review Ordinance, uh, under which this project came to the Planning Board”. He continued.

Mr. Lamphere: “And, last, under ‘Decision’ – the sentence says, ‘Failure on the part of the Planning Board to act within the time period specified herein shall be deemed to constitute approval, unless the time limit is extended by stipulation with the applicant.’ We have seven months to make a decision on this, from the date of the Pre-Application meeting. So, if the applicant doesn’t agree to an extension, and the Board can’t make a decision one way or another, whether to approve this project or deny this project, the project is approved, and, again, without any kind of decision from the Planning Board,

I'm not, I'm not sure what, uh, the decommissioning amount is gonna be to this default approval. So, I, I don't know. I'll leave it up to the Board to decide what to do."

Ms. Light said that she "wante[ed] to speak to the Board about why [her] vote was a 'yes'." She said that she voted 'yes' "because there is no visual impact to anybody in the neighborhood", because it supported agricultural work, and it was an "acceptable program" according to the Town's Farm Viability Ordinance. She continued.

Ms. Light: "I, I've objected to projects in the past, and, with my perspective, my view, my drive-by visit to the site, I thought that, this is, again, one of those locations where a solar project would be acceptable, versus, for instance, the one that is on Route 3, uh, the one that you drive by, and you say, 'Oh, there's a solar project', and then, 'Oh, there's a farm.' Um, this, this doesn't have any of the characteristics that grind my gears about the one that I have to look at every day, so, the direction that I went in is, is because this is private property, it is agricultural, it is a farm, there's no visual impact. Maxson Hill is a liquid mess anyway, um, that can't be blamed on, uh, solar projects anymore because, uh, the major one that's up has already, uh, contributed to it. It's up to the Town, it's the Town's responsibility to fix those roads now. Uh, it's a Town's responsibility to address whatever water there is there, so, we can continue to be angry at solar developers, but, right now, the biggest problem that we have on Maxson Hill with regards to, uh, the water and the drainage is it's now been made the Town's responsibility. Um, I don't have anything else to add. If you have any questions, let me know, but this is, those, those are the, the reasons that jump right out to me as to why I thought this would be a, a good program."

Mr. Prellwitz said that he thought that it sounded like the Board was "at an impasse." He asked where they could "go from here." Mr. Lamphere replied that it was "up to the Board", and that he thought he had "just laid it out for [them]." He said that the Board could ask Mr. Clough for his legal opinion. Mr. Clough responded.

Mr. Clough: "But the way – the options that you have, since you have a tied vote, um, Jim [Lamphere] has laid out. If the, uh, applicant is not willing to give an extension, then [the Board could] approve the project under the motion that was originally made and voted down, uh, by Emily [Shumchenia], uh, or you deny. You don't do either of those, then the project, under the law, is approved by default. It, without further, uh, analysis that I can't perform at this time, uh, it's unclear what constraints would be placed on the applicant, other than, obviously, what is, uh, legal and lawful under the current ordinances and so forth. Um, so, uh, for the four of you who have voted, there, you know, there's a decision to make, uh, if the applicant is not willing to give more time, uh, for some consideration or discussion regarding concerns from the individuals who did not approve the project this evening."

Ms. Shumchenia: "There is no incentive for the applicant to grant us an extension, because if we, if he, if they deny the extension, then their project gets approved, so that can't make legal sense."

Ms. Light: “Um, this is Carolyn [Light]. There’s no incentive to ask for an extension from where I sit, because, if we are granted an extension, we’re still going to be a 2-2 vote. So -”

Mr. Surdut: “So, again, as the applicant, um, go ahead. I apologize, Mr. Chair.”

Mr. Clough: “Uh, no, this, uh, Sean Clough, Planning Board Solicitor. Uh, if it is the case that, uh, after this, uh, discussion, that’s now taking place for the past thirty minutes or so, whenever the vote occurred until now, uh, if no one is willing to, to change their mind, uh, regardless of what the applicant may say, or regardless of what may be done to, uh, ease some of the concerns, then, yeah, there’s, there’s no incentive for anyone to really budge, and I guess it’s just approved by default, and, and the two people who have voted against the motion will, that, that’s, that’s the end result of, of the Planning Board’s decision.”

Mr. Lamphere: “Yeah, Mr. Chairman? Jim Lamphere, Town Planner. Uh, question for Sean [Clough]. Um, if, if this gets approved by default, what – would there be a decommissioning amount at all attached to this, or would we go by, with what the applicant, I mean, they provided us, uh, that’s, that’s my first question, and the second thing I’d like to put some thought out there is: if the Board is inclined to deny this application, based upon the fact that it doesn’t comport with the Comprehensive Plan, um, you, I guess you could do that, but I would relay suggest that you put some, your, your reasons, specific reasons why it does not comport with the Comprehensive Plan, because, if, if you were to, if you were to deny this, it probably would get appealed to the Zoning Board of Review, on re-, on appeal, so, you’re gonna have to, you’re gonna have to make your denial rest on a firm foundation as well. So, that’s – those are my two thoughts that I, I throw out there.”

At this point, Ms. Jalette announced that the Board would need another extension. Mr. Prellwitz thanked Mr. Lamphere. Ms Shumchenia had a question.

Ms. Shumchenia: “Is not a failure to approve a project, an, essentially, a denial? I mean, like, I don’t see how it could be the exact opposite?”

Mr. Lamphere: “Well, the Ordinance, the Ordinance states what the Ordinance states. I just read it. Failure, failure to approve constitutes -”

Ms. Light: “It’s a no decision. It’s not a fail of, failure to approve or deny. It’s a no decision, which, automatically, by default, gives favor to the developer.”

Mr. Lamphere: “Well, just – it says now, ‘A failure on the part of the Planning Board to act within the time period specified’ – I don’t know. Did you, did you act?”

Ms. Shumchenia: “But we acted! The vote was an act.”

Mr. Lamphere: “Okay. Well, alright, if we’re going to play some Russian roulette -”

Ms. Shumchenia: “It’s a constructive denial.”

Mr. Lamphere: “Go ahead. We’ll see what the judge says about that.”

Ms. Shumchenia: “That’s why we have a Town Solicitor.”

Mr. Prellwitz: “You know, we can argue semantics all night, and it’s not going to prove anything.”

Mr. Lamphere: “I know what the judge would do. Let’s put it that way.”

Mr. Prellwitz: “The Ordinance says what the Ordinance says. If we have an issue with that, we have to attack the Ordinance, not each other.”

Ms. Jalette: “We also need an extension, please.”

Ms. Light made a motion to extend the meeting for the discussion and “wrapping up of this topic” for “an additional fifteen minutes.” She added that, “in the background”, she was “saying there’s no room on our schedules this evening to cover any more projects.”

MS. LIGHT MADE A MOTION TO EXTEND: 15 MINUTES. IT WAS SECONDED BY MR. LINDELOW.

IN FAVOR: PRELLWITZ, LIGHT, LINDELOW, SHUMCHENIA

ABSTAIN: NONE

OPPOSED: NONE

4-0, MOTION PASSED.

Mr. Lamphere suggested that Mr. Clough weigh in.

Mr. Lamphere: “In an effort to, um, to clarify this, can we just have Sean [Clough], uh, reiterate to the Planning Board exactly where we’re at if we have a deadlock here, and, and exactly what will happen, tell, tell the Board that, please?”

Mr. Clough: “So, my reading of the, uh, the Statute, uh, that we’re operating under is, if you don’t have an affirmative approval or a denial, um, you will be in a position where the applicant will move forward with the project. Um, now, if you can come, if you can, again, if you can ask the applicant for some time, if there is something that, that can be, uh, altered in the project, in order to bring it in compliance with any of your concerns, my suggestion would be to do so. I think, from what I’m hearing, the applicant may be willing to do that, and it wouldn’t leave you in this very ambiguous spot. There could be an argument raised that, uh, well, this is effectively a denial, um, but we’re deadlocked at 2-2, so, um, it’s, uh, uncharted territory to say the least, and, uh, I don’t want to represent that, affirmatively, the court would consider this, uh, a denial or wouldn’t consider it a denial, but, uh, I think you do run the risk of having the project just move forward, at – given – your current posture. So, I think you have to think hard about how you want to, to move forward, and, if not, uh, the meeting ends, and we’ll deal with the ramifications and get additional legal analysis if need be. I don’t know if the applicant, uh, has an interpretation as to what they believe would be the result of the vote if it were to stand as it is tonight.”

Ms. Shumchenia: “Why would we ask the applicant that? I’m sorry, but why?”

Mr. Clough: “Well, the applicant has, has the right to, uh, his legal opinion, if he wants to put it out there, um, but, that’s, that’s where we’re at. So. The Planning Board, ultimately – if you, if the Planning Board is not going to take a vote, then just move on to, uh -”

Ms. Shumchenia: “We voted. My opinion is that the Board voted, and the motion failed to pass. Therefore, essentially, a constructive denial of the motion. That’s my opinion.”

Mr. Clough: “And that’s, and that’s, and that’s fair, um, so, Mr., Mr. Chairman, uh, it does not sound like there is anyone willing to put forward a motion. Uh, a vote has already been taken. It was deadlocked, and I think we’re confirming – unless the members are gonna say something else – it sounds like we’re done here.”

Mr. Prellwitz said that he agreed. He continued.

Mr. Prellwitz: “Everything that was brought up against this project was, has had ample opportunities in seven months, and nothing have been brought up until after we make a motion, and we made a motion, and it was, you know, voted on then. I, I don’t know.”

Mr. Lamphere then said that he wanted to “make an observation”. He said that what the Board was “going through right now points to the, the fact that we need to have five members at the, at this desk, who can vote.” He continued.

Mr. Lamphere: “We don’t have two alternates. We need two alternates, okay, sitting in the wings, so they can take over in case someone is absent, in case someone has to recuse themselves. We can’t, we can’t operate on these applications with four, with four people. We can’t run the risk of having a deadlock. We, we need, we need people to step up, and, uh, come out to the Planning Board.”

Ms. Light said that the Board “need[ed] firm reasons for the denial.” She continued.

Ms. Light: “Um, we went through the project together as a team. Uh, we picked apart things that did, that we didn’t like, and we have to have a reason for that denial, and that’s up to Keith [Lindelov] and Emily [Shumchenia], because Ron [Prellwitz] and I have already looked at everything, and we agreed with the motion that was presented, so, if we have two ‘no’ votes, and we’re in a deadlock, just one more opportunity – let’s, let’s clear this out. Keith [Lindelov], you didn’t chime in about why you were voting ‘no.’ Maybe you could help sway one of the Board members in your direction, and that this is, this is what the conversation should be had right now.”

Mr. Lindelov: “Well, I’ll tell you what. In the name of, uh, Christmas Spirit, I’ll call it in, the time of day. Let’s cast our votes again, because I’ve been, felt guilty and shamed, and I just wanna, I don’t wanna put the whole Town in a position of this ambiguity and all that, so let’s just cast our votes again.”

Ms. Light: “You’re not being shamed. No, there’s no shame here.”

Mr. Lindelov: “Oh, there is. Let’s just cast our votes again, and I’ll, I’ll say ‘yes’, and we all vote, and then we’ll be done with this for tonight, and put this to bed. I, I don’t like the, um, again – where it, just the direction that this is gonna go, and any precedents that’s gonna set for other things, and, you know, I’ve been back and forth on this all the way through, and I really side with some of the public comments that I’m hearing, and that’s, that’s where my vote originates, you know, and the comments that Al [DiOrio] and Emily [Shumchenia] made, and I, I agree with that, but -”

Mr. Prellwitz: “Okay, then -”

Ms. Light: “Well, it doesn’t count when -”

Mr. Prellwitz: “Shall we vote again? Whoever’s speaking, go ahead. Speak. Go ahead.”

Ms. Light: “It just doesn’t, it doesn’t, it – to me, it doesn’t, it, it’s not fair, it’s not ethical to have a Board member change his reason, because he feels that he’s in a difficult place, um.”

Mr. Lindelow: “That’s where, that’s where the conversation went. No, nobody’s trying to talk either one of you two, and just saying ‘no’, but you’re trying to talk us into saying ‘yes’.

Ms. Light: “No, I, I, I asked, I specifically said, ‘Keith [Lindelow], chime in.’ Maybe, maybe, you know, you guys are talking, maybe you have something to offer the people who voted ‘yes’.”

Mr. Lindelow: “No. No.”

Ms. Light: “No, I’m not trying to shame you. I’m just trying to say, ‘Let’s all hear what everybody, uh, has going on, and, I don’t know.’”

At this interval, Mr. Lamphere interjected. He asked the Board to “consider the old adage, uh, ‘the lesser of two evils’”. He also asked the Board to “consider where [they were] at from a practical standpoint.” He continued.

Mr. Lamphere; “Do you want this thing to get approved by default, or do you want it to get approved with the motion that, that didn’t pass, because one of those, one of those two is probably gonna happen. So, pick the lesser of two evils.”

Mr. Lindelow: “If it’s gonna pass anyway, then I’ll change my mind and say ‘yes’, and then we’ll have some direction at least. That would be the reason for me to change my vote – is that, at least, the conditions that we set forth will apply, versus just having this deadlock vote, and the conditions don’t apply.”

Mr. Prellwitz: “Okay, then. Let’s have a, let’s, let’s have our vote again. Is everybody in agreement to having a vote again, and by everybody, I mean Sean [Clough] and Jim [Lamphere].”

Mr. Lamphere: “That’s fine with me, Ron [Prellwitz].”

Mr. Prellwitz began to vote, but Mr. Clough said that the Board needed “a motion on the floor” to proceed. Mr. Prellwitz said that they were voting on the “original motion” made by Ms. Shumchenia. Ms. Jalette asked them to read the motion again. Mr. Clough asked who was making the motion. Ms. Light explained that someone on the Board had to make the motion again. Mr. Clough said that he wanted to have “all this procedurally correct here”, and asked to “have a member make the motion”, and that it could be “any member.” He continued.

Mr. Clough: “Whoever’s going to do it, this, you can simply say that you wish to put forward the motion, um, that was presented by, uh, Emily [Shumchenia], so you don’t have to do all the language, read the language. It’s up to you.”

Ms. Light said that the Board did not need to repeat the motion, and made a motion to put forward the motion made previously by Ms. Shumchenia.

MS. LIGHT MADE A MOTION THAT THE PLANNING BOARD HAS THE SECOND VOTE ON THE MOTION THAT WAS PRESENTED EARLIER BY EMILY SHUMCHENIA.

IT WAS SECONDED BY MR. LINDELOW.

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

3-1, THE MOTION PASSED.

Mr. Prellwitz said that the motion passed, and he thought it was “time to move on”. He asked Mr. Lamphere if the board should “just have a motion to end”, and if it was “appropriate” to do that. Mr. Lamphere replied that the thought that the Board wanted to end the meeting for the night, and that he guessed the Board would “have to move Brushy Brook to, uh, January” 2021.

PLANNER’S REPORT:

Administrative Subdivision – AP 10, Lots 105C & 105D, Tomaquag Road. Philip J. and Laura A. Scalise, applicants.

He explained that this was a “simple Administrative” Subdivision that he had approved.

CORRESPONDENCE AND UPDATES:

None.

PUBLIC FORUM:

The Board did not hold a Public Forum due to time constraints.

DATE OF THE NEXT REGULAR MEETING: January 6, 2021

ADJOURNMENT:

MR. LINDELOW MADE A MOTION TO ADJOURN. IT WAS SECONDED BY MS. LIGHT.

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

4-0, MOTION PASSED.

MEETING WAS ADJOURNED AT APPROXIMATELY 10:43 P.M.

By: Talia Jalette, Senior Planning Clerk, Hopkinton, Rhode Island, 12-29-20