

Talia Jalette

From: Eric Bibler <ebibler@gmail.com>
Sent: Friday, March 12, 2021 2:34 PM
To: Stephen Moffitt; Sharon Davis; Scott Bill Hirst; Geary, Michael J (FLNA); Bob Marvel; Stephen Sypole; James Marusak; Margaret Hogan; Alfred W. DiOrio; Ron Prellwitz; Emily Shumchenia; Carolyn Light; Keith Lindelow; John Pennypacker; James Lamphere; Talia Jalette; Brian Rosso
Subject: Apparent Conflicts of Interest and/or Attempts to Influence Decisions of the Hopkinton Planning Board

Mr. Stephen Moffitt
President
Hopkinton Town Council

March 12, 2021

Dear Mr. Moffitt and Members of the Town Council,

I was not able to attend the town council budget workshop on Monday, but I did review the entire video record at my earliest opportunity.

I was extremely disturbed by the comments of two town officials that occurred during the meeting, both of which, in my opinion, warrant remediation and possibly disciplinary action by the town council.

Re: \$20,000 Payment by "Atlantic Solar" to Hopkinton Land Trust

In the first instance, Marilyn Grant, the Chair of the Hopkinton Land Trust informed the town council, seemingly for the first time, that "Atlantic Solar," a current petitioner for master plan approval before the planning board on two major land development projects, had made a one-time donation of \$20,000 to the Hopkinton Land Trust.

Chairman Grant attempted to dissociate herself from the donation, stating that it was "negotiated by Councilor Capalbo" and that the Land Trust purportedly had nothing to do with it.

As you know, I have filed a series of public records requests to learn more about this unusual, and highly inappropriate, transaction (see below).

As you know - and as the Chair of the Land Trust knows - the previous town council granted conditional approval for zoning changes for two solar projects proposed by Atlantic Solar, but both approvals are currently under appeal in Washington County Superior Court. Neither one of the proposals has received any plan approvals or permits from the planning board or any other agency in the Town of Hopkinton.

Yet, the Chair of the Land Trust accepted this donation, on behalf of the Town of Hopkinton, from an active petitioner to the planning board (on two projects) nonetheless.

It is not known if the Chair of the Land Trust consulted the town solicitor prior to accepting this donation, but I urge the Council to find out.

Furthermore, from the public meeting minutes of the town council, it does not appear that Councilor Capalbo ever sought, or obtained, approval from the town council or the town solicitor to "negotiate" with the developer for this donation to the Land Trust, or what sort of proposal may have been advanced by Councilor Capalbo.

I respectfully urge the town council to call Councilor Capalbo before the town council to make public inquiries to learn the details of these "negotiations," including any initial offers and counteroffers between Councilor Capalbo and the developer before arriving at the final figure.

I respectfully urge the town council to consider disciplinary action against the Chair of the Land Trust for accepting this donation without the advice and consent of the town solicitor and the town council.

Finally, I respectfully insist that the town council direct that the money be immediately *returned* to the developer to avoid the obvious conflict of interest arising from the timing of the donation, while the developer is seeking necessary approvals from the planning board.

Inappropriate Comments by the Town Planner

At approximately 2:15 on the video record, the town planner, Jim Lamphere, was asked for his input on the timing of potential revenues from several solar land development projects that have not yet been approved, all of which are being contested.

The town finance director, town manager and town council focused most of their attention on the proposed development called Stone Ridge since, according to the town manager, this project was indicated by the town planner as having the highest probability of coming to fruition in FY2022.

But the town planner did not confine his remarks to timing issues relating the construction of approved, or non-controversial proposals.

Instead, he made completely inappropriate comments concerning the merits of the contested project and whether or not the planning board *should* approve the master plan application.

And he didn't stop there. The town planner also offered very definite opinions about the merits of any potential legal challenges to a denial or approval of the project application by the planning board.

In the tone and tenor of his remarks, the town planner was generally dismissive of the competence and authority of the planning board, even though it is the planning board - and not the town planner - that is invested with the legal authority under our town ordinances and Rhode Island General Law to review land development applications and decide whether to approve, amend, or deny them.

It is completely inappropriate for the town planner to speculate on whether the planning board, may, or may not, decide to approve any project application on its merits, or why.

It is even worse for the town planner to be proclaiming, to the town council and the general public, his opinion on what action the planning board should take when the application is formally presented to them for decision.

And it is inexcusable for the town planner to be volunteering his inexpert legal opinion about the potential merits of any challenges to a denial or approval. Not only is the town planner not an attorney, but it is entirely possible - as he himself notes - that the town may be in the position of defending the planning board's decision on appeal if the planning board decides to deny the application, or any elements thereof.

The budgeting process does not depend upon the town planner's handicapping of the chances of any potential litigants on a contested development plan approval. The only appropriate input from the town planner on the timing issues associated with any revenues is to comment on projects that are either approved, or possibly uncontested.

Here are some of the comments of the town planner:

<https://www.youtube.com/watch?v=Owou73j1rA>

"Personally, I believe that Stone Ridge should go forth and get approval. I just don't know how the town would prevail in this should it go to court if we were to deny these people an opportunity to go forth and put a solar project on their property. It would astound me.... I would bet pretty heavily my own money that Stone Ridge is going to be an approved solar project at some point in time."

"If the project goes through, as it probably should, I think the revenue would come in FY22. But again, it's awful tough for me to predict what the planning board might do. I hate to speculate what they might do. They could do a lot of things. And they could do some things that possibly stretch it out until FY23 if they really wanted to stretch that review process out. They could even deny it, let's say, which could lead to an appeal, which would stretch this out. But again, myself personally as a planner, I don't think that there is any justification for giving that project a hard time."

What would the town council do if the town planner publicly questioned - or vehemently disagreed - with a decision by the town council to grant a zone change, or a decision by the planning board to approve, or deny, a project application, after the decision had been rendered?

Undoubtedly, the town planner would be disciplined.

I submit that it is worse for the town planner to be making these public statements before the planning board has even convened to review and decide the extant application for Stone Ridge.

The town planner can communicate his opinions as a planner, in an appropriate manner, via a staff memorandum to the planning board that limits itself to issues that are relevant to the project and within the scope of his expertise.

But it is completely inappropriate for the planner to be publicly taking sides on a land development proposal currently under review, that has opposing parties, namely the applicant and a group of objectors.

I urge the town council to take appropriate and firm action to address these inappropriate actions, both of which are examples of attempts to exert undue influence over the planning board's process of review for these three land development projects, in order to demonstrate that the town council will not tolerate such tampering.

Sincerely,

Eric Bibler

Cc: Town Council
Cc: Town Manager
Cc: Planning Board
Cc: Town Planner
Cc: Town Solicitor
Cc: Planning Solicitor

----- Forwarded message -----

From: **Eric Bibler** <ebibler@gmail.com>

Date: Fri, Mar 12, 2021 at 1:05 PM

Subject: Public Records Requests

To: Elizabeth Cook-Martin <townclerk@hopkintonri.org>, Brian Rosso <townmanager@hopkintonri.org>

Cc: Stephen Moffitt <smoffitt11@yahoo.com>, Sharon Davis <sadavis1000@gmail.com>, Scott Bill Hirst <scottbillhirst@gmail.com>, Geary, Michael J {FLNA} <michael.j.geary@pepsico.com>, Bob Marvel <bob.marvel7@gmail.com>, Stephen Sypole <ssypole@gsm-law.com>, James Marusak <jpm@gsm-law.com>, Margaret Hogan <mhoganesq@verizon.net>, Alfred W. DiOrio <al@awdrils.com>, Ron Prellwitz <Battruck40@yahoo.com>, Emily Shumchenia <emily.shumchenia@gmail.com>, Carolyn Light <4hiheelz@gmail.com>, Keith Lindelow <kdglindelow@yahoo.com>, John Pennypacker <john@pennypacker.net>, James Lamphere <planner@hopkintonri.org>, Talia Jalette <tjalette@hopkintonri.org>, Harvey Buford <harvey.t.buford@gmail.com>

Elizabeth Cook-Martin
Town Clerk