

Talia Jalette

From: Eric Bibler <ebibler@gmail.com>
Sent: Tuesday, May 4, 2021 4:14 PM
To: Alfred W. DiOrio; James Lamphere; Talia Jalette; Ron Prellwitz; Carolyn Light; Keith Lindelow; Emily Shumchenia; John Pennypacker; Margaret Hogan; Stephen Moffitt; Sharon Davis; Bob Marvel; Scott Bill Hirst; Geary, Michael J {FLNA}; Stephen Sypole
Subject: Re: Objections to Approval of Master Plan Application for Comolli Granite Solar Proposal
Attachments: 2020.09.02 PB Advisory Opinion_Comolli Solar_0 Chase Hill Road.pdf

Mr. James Lamphere
Town Planner
Town of Hopkinton

Mr. Alfred DiOrio
Chair
Hopkinton Planning Board

May 4, 2021

Re: Objections to Approval of Master Plan Application for Comolli Granite Solar Proposal

Dear Mr. Lamphere, Chairman DiOrio and Members of the Hopkinton Planning Board,

I respectfully resubmit the following list of specific objections to master plan approval by the planning board of the above referenced solar proposal.

I also respectfully request that the objections enumerated in this letter be posted to the town's website with other documents that have been submitted for the planning board's consideration in hearing and deciding this land development application.

As you know, under the applicable state statutes enumerated under RIGL 45-23-60 and under Chapter 3.5 of the Hopkinton Land Development and Subdivision Regulations, the planning board is required to make certain "positive findings of fact" as a condition of approval.

If a majority of the members board cannot make these positive findings - *regardless of any opposing opinions expressed by the town council, town solicitor, town planner or other town official* - then the planning board must deny the application.

This authority belongs to the planning board alone.

None of the above referenced entities or officials can instruct or compel the planning board to make any findings of fact that are contrary to the planning board's own determination regarding compliance with these requirements.

In the event of any controversy, the applicant or any other party that disagrees with the decision of the planning board may appeal the decision to the Zoning Board of Appeals and to Superior Court. But nothing should deter the planning board from performing its duty to render its own independent judgement on all of the required findings, based upon the evidence presented, without surrendering any of the responsibility or authority that is invested in the planning board by the General Assembly through the enactment of Chapter 45-23.

I believe that it should be evident that all of the considerations listed below must be resolved by the planning board prior to the issuance of any findings of fact.

On September 1, 2020, the planning board decided by unanimous vote to issue a negative advisory opinion on the proposed zone change to enable a plan for commercial solar development *on a land condominium* within the lot designated as AP 2, Lot 73 after determining that the proposed **zone change** was "not consistent with the Hopkinton Comprehensive Plan." The planning board cited several specific reasons why it could not recommend the requested zone change for this specific plan (see planning board opinion attached).

Notwithstanding the negative assessment of the planning board by unanimous vote, the Hopkinton Town Council voted on November 2, 2020 by a vote of 3-2 to grant "conditional zoning approval" for the proposed zone change.

This "conditional approval" is **subject to** all further required approvals of the planning board, including master plan approval. And the master plan approval is **subject to a** "positive finding" by the planning board - exercising its sole discretion - that the proposed solar development is "consistent with the Hopkinton Comprehensive Plan.

On May 5, 2021, the applicant is now reappearing before the planning board seeking master plan approval *for a specific **plan for development*** that is slightly revised from the proposed plan that was outlined on September 1, 2020.

In this instance, the planning board must decide whether the **plan for development** - as opposed to the proposed zoning - is consistent with the Hopkinton Comprehensive Plan.

The planning board is now tasked with exercising its own best judgement as to whether the proposed **development plan** is consistent with the comprehensive plan.

I invite the planning board members to read the list of objections that were cited by the planning board on September 1, 2020 and ask whether any of these objections to the proposed zone change have been magically erased by any actions of the Hopkinton Town Council or the applicant?

If not, the planning board should cite all of the same objections - as they relate to the master plan application for this specific plan, regardless of the zone - and deny the

application on the basis that it is *still* "not consistent with the town's comprehensive plan for development."

As we are all aware, the town council, as a legislature, has the final determination over all *zoning* approvals - *except when such approvals are "conditional approvals" that require further approvals from the planning board or another board.*

But the planning board has the sole authority - and the responsibility - to make the "positive findings" that are required for approval of any master plan application.

The planning board's duty to make an unequivocal "positive finding" that a master plan application for a particular land development proposal is "consistent with the comprehensive plan" (regardless of any interference by the town council) is familiar terrain for the planning board.

What is less familiar to the board is the requirement under the state statute that the planning board make a "positive finding" that *"the proposed development is in compliance with the standard's and provisions of the municipality's zoning ordinance."*

I have personally raised three (4) significant and well-documented concerns as to whether *"the proposed development is in compliance with the standard's and provisions of the municipality's zoning ordinance"* as enumerated below in items #2 through #5.

As of this writing, NONE OF THESE CONCERNS HAS BEEN ADDRESSED BY THE PLANNING BOARD.

As with the question of whether the proposed development is consistent with the Hopkinton Comprehensive Plan, it does not matter whether the *opinion* held by the applicant or any town official differs from the opinion of the planning board on any of these points.

It is the responsibility of the **planning board** to render its **own** opinion as to whether the proposed development is *"in compliance with the [applicable] standards and provisions."*

It is *the planning board* that has the sole authority to use its own best judgement to make the required "positive findings" on all of these controversial points.

It would be absurd for any member of the planning board, reading these instructions from the General Assembly under RIGL 45-23-60, to make a "positive finding" on any point, based upon the opinion of some other entity, if the board member held the exact opposite conviction on this point.

The planning board is not directed to "go along to get along"; or to submit to the preference or the authority of a previous town council; or to avoid legal controversy stemming from the courage of the convictions of its members.

On the contrary, the planning board is directed to make its own findings on whether or not the application has truly met ALL procedural requirements under the applicable ordinances - including all of those implicated below.

Clearly, the planning board also has the authority to disagree with my conclusions on whether the requirements enumerated below have been met.

But I would submit that the planning board does not have the luxury of ignoring these questions and that they must be resolved in order for the planning board to faithfully complete its due diligence in evaluating this master plan application.

I respectfully beg the planning board to publicly consider and address all of these questions in its findings, all of which have been raised on multiple occasions over the past several months.

Respectfully submitted,

Eric Bibler

On Wed, Feb 3, 2021 at 9:06 PM Eric Bibler <ebibler@gmail.com> wrote:

Dear Chairman DiOrio and Members of the Planning Board,

Please see below my letter of January 6, 2021 to which I referred at the planning board meeting this evening which itemizes the critical legal questions that I believe should be addressed by the planning board solicitor to the satisfaction of the planning board.

Thank you.

Eric Bibler

On Wed, Jan 6, 2021 at 4:33 PM Eric Bibler <ebibler@gmail.com> wrote:

Please see below (PDF copy also attached).

Mr. Alfred DiOrio
Chair
Hopkinton Planning Board

Mr. James Lamphere
Town Planner
Town of Hopkinton

January 6, 2021