

## Talia Jalette

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**From:** Eric Bibler <ebibler@gmail.com>  
**Sent:** Wednesday, May 5, 2021 2:51 PM  
**To:** James Lamphere; Alfred W. DiOrio; Emily Shumchenia; Ron Prellwitz; Carolyn Light; Keith Lindelow; John Pennypacker; Margaret Hogan; Talia Jalette; Stephen Moffitt; Sharon Davis; Bob Marvel; Scott Bill Hirst; Geary, Michael J {FLNA}  
**Subject:** Comolli Granite Solar Development Proposal / Legal & Procedural Questions for Planning Solicitor / Planning Board  
**Attachments:** Comolli Granite Solar Development Proposal \_ Legal & Procedural Questions.pdf

Mr. James Lamphere  
Town Planner

Mr. Alfred DiOrio  
Chair

Ms. Emily Shumchenia  
Vice Chair

Mr. Ronald Prellwitz  
Vice Chair  
Hopkinton Planning Board

Ms. Margaret Hogan  
Planning Solicitor  
Town of Hopkinton

May 5, 2021

Re: Comolli Granite Solar Development Proposal / Legal and Procedural Questions

Dear Mr. Lamphere, Mr. DiOrio and Solicitor Hogan,

Please find attached a specific list of legal and procedural questions which I plan to ask the planning solicitor, through the chair, to address at the public hearing for the above referenced proposal this evening.

I strongly believe that the planning board cannot perform its statutory duties and obligations in rendering a decision on the above referenced master plan application without making a determination on all of these points, with the input of the planning solicitor.

I further believe that it is detrimental to the interests of all Hopkinton residents and to the planning board not to resolve these questions which are directly pertinent to any final determination by the board.

I am forwarding the list of questions in advance to provide the planning solicitor and the members of the planning board to preview the questions prior to the meeting.

Since tonight's meeting is being conducted remotely, I respectfully request that this correspondence and the attached questions be entered into the official record for the hearing since it will be impossible for me to do so personally in hard copy form.

Thank you in advance for your cooperation.

Sincerely,

Eric Bibler

Cc: Hopkinton Planning Board

Cc: Hopkinton Town Council

Cc: Assistant Town Planner

**Comolli Granite Solar Development Proposal**  
**Legal & Procedural Questions**  
**For Planning Solicitor and Planning Board**  
**May 5, 2021**

1. **Section 3.2 Hopkinton Land Development and Subdivision Regulations reads in relevant part as follows:**

**3.2 PROCEDURE FOR APPROVALS BETWEEN PLANNING BOARD AND OTHER LOCAL PERMITTING AUTHORITIES**

3.2.2 Town Council

Where an applicant requires both Planning Board approval and Town Council approval for a Zoning Ordinance or Zoning Map change, the Applicant shall first obtain an advisory recommendation on the zoning change from the Planning Board as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional Zoning Change from the Town Council, and then return to the Planning Board for subsequent required approval(s).

*Is it the opinion of the planning solicitor that that the applicant has **complied** with Section 3.2 of the Hopkinton Land Development and Subdivision Regulations in making this application for approval by the planning board for this land development proposal?*

2. **RIGL Chapter 45-23-61 reads in relevant part as follows:**

§ 45-23-61. Procedure – Precedence of approvals between planning board and other local permitting authorities.

(b) *City or town council.* Where an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s).

*Is it the opinion of the planning solicitor that that the applicant has **complied** with RIGL 45-23-61 in making this application for approval by the planning board for this land development proposal?*

3. **Chapter 246, Non-Residential Photovoltaic Energy Systems (PSES), as amended on January 22, 2019, stipulates the following provisions under General Requirements:**

13. Solar panels and all associated equipment are considered structures. The entirety of all structures and associated equipment constituting the PSES shall cover no more than 75% of Commercial and Manufacturing zoned parcels. If the parcel is zoned RFR-80, and the applicant is seeking to re-zone the parcel, then the maximum requested coverage may be the lesser of 3% or 3 acres. For purposes of a PSES, lot coverage includes all of the land area upon which all structures and associated equipment are placed, including all of the land lying directly below the solar panels and associated equipment, as well as the interstitial spaces between the solar panels, and all of the land enclosed by any perimeter

fencing. RFR-80 re-zone requests are not guaranteed approval. The Town of Hopkinton encourages PSES on former gravel banks, brownfields and landfills. Such locations shall be consistent with the Hopkinton Comprehensive Plan and shall strive to minimize the visual impacts of these systems from streets and neighboring properties. In the event the Town Council has re-zoned a parcel to allow a PSES installation and use, then the proposed PSES project shall be referred to the Planning Board for Master Plan approval. As part of its Advisory Opinion to the Town Council on a proposed zone change, the Planning Board may recommend an appropriate lot coverage for a proposed PSES based upon the unique characteristics of the parcel and in a manner that is consistent with the Town's Comprehensive Plan, with the intent to balance environmental and aesthetic concerns, as well as the rights of the property owner to develop the parcel. [emphasis added].

On September 2, 2020, the Planning Board issued a negative advisory opinion, by unanimous vote of the members present and voting (4-0), finding that the proposed Comprehensive Plan amendment and zone change for this project from the RFR-80 zone to a new “commercial solar” zone was “not consistent with the Hopkinton Comprehensive Plan” for seven (7) itemized reasons.

At no time did the planning board ever recommend approval of the zone change to the town council under any conditions, nor did the planning board ever *“recommend an appropriate lot coverage for a proposed PSES based upon the unique characteristics of the parcel, in a manner that is consistent with the Town's Comprehensive Plan, with the intent to balance environmental and aesthetic concerns, as well as rights of the property owner to develop the parcel.”*

There is no provision in the above referenced PSES that grants any authority to the town council to ignore, adjust, or even approve an amendment to *“the maximum requested coverage”* which is stipulated to be *“the lesser of 3% or 3 acres.”*

Notwithstanding the “maximum lot coverage ratio” stipulated in the PSES – and the lack of any planning board recommendation to allow a larger coverage ratio – the applicant has requested approval of a solar array not to exceed 9.07 acres on a 38.9 acre lot (a 23% lot coverage ratio).

Notwithstanding the lack of any such provision in the PSES, the applicant proposes to substitute the approval of the town council for this expanded lot coverage ratio for the approval of the planning board, effectively **usurping the authority invested in the planning board by applicable state statutes and the Hopkinton Code of Ordinances, including this provision of Chapter 246, “to recommend an appropriate lot coverage for a proposed PSES based upon the unique characteristics of the parcel, in a manner that is consistent with the Comprehensive Plan, with the intent to balance environmental and aesthetic concerns, as well as rights of the property owner of the parcel.”**

The applicant insists that the planning board in the project narrative that the town council has now conferred upon the developer a new “right” to this new “maximum coverage ratio” which the planning board may not deny – which is a stark inversion of the plain language of Chapter 246 and a complete perversion of the respective authorities – and limits of authority – that are conferred upon the town council and the planning board.

*Is it the opinion of the planning solicitor that that the master plan application submitted to the planning board **complies** with all of the requirements in Paragraph 13 under “General Requirements” in the PSES?*

*Does the planning solicitor **agree** with the applicant that the planning board may not require exercise its judgement to require a smaller "maximum coverage area" for the solar project – or simply deny the application outright on the basis that the planning board cannot render a positive finding that a solar project with an enclosed area of 9 acres (or even 3 acres) is "consistent with the Comprehensive Plan"?*

*Please advise as to the scope and limits of the planning board authority relating to these legal controversies.*

- 4. The master plan application proposes to rezone a "land condominium" designated as "Unit #2" within the parcel denoted as Plat 2, lot 73 from the RFR-80 zone to a new "commercial special" zone, without any apparent subdivision of Plat 2, lot 73.**

"Unit #2" is not a lot but a land condominium subject to condominium declarations on file with the town of Hopkinton.

The former town solicitor has previously opined in reference to two (2) other proposed solar developments that a "split zone" of a property in the RFR-80 residential zone into subsections that are zoned as "residential" and "commercial special," respectively, requires a lot subdivision approval from the planning board.

Since land condominium Units #1, #2 and #3 of Plat 2, lot 73 are not currently designated as "lots," it seems apparent under the Hopkinton Code of Ordinances that the proposed rezoning of Plat 2, lot 73 into lots that are designated as "commercial special" or "residential" must require a **separate approval** from the planning board for a lot subdivision.

**To my knowledge, there is no provision in the Hopkinton Code of Ordinances, or any state statute, that allows the town council or the town of Hopkinton to approve a zone change for a "condominium," notwithstanding the applicant's unfounded assertion that no approval by the planning board for a lot subdivision is required.**

If this were true, the obvious implication would be that an applicant, acting in concert with a compliant town council, could evade the statutory authority of the planning board to consider and approve lot subdivisions, which would clearly frustrate the will of the Rhode Island General Assembly.

Does the planning solicitor agree with the applicant that no planning board approval for a lot subdivision of Plat 2, lot 73 is required in order to effect the rezoning of one of the "land condominiums" within this parcel?

If so, I respectfully ask the planning solicitor to cite the appropriate authority in RIGL and in the Hopkinton Code of Ordinances that permits the town council to rezone, or "split zone," a land condominium without approval of a lot subdivision by the planning board.

Thank you in advance for addressing these questions and for citing all of the appropriate authorities.

Sincerely,

Eric Bibler  
Hopkinton resident

