

Hopkinton Planning Board
Skunk Hill Major Land Development Master Plan
Expert Witness Statement of Peter Friedrichs

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Qualifications and experience:

I currently serve as the City Planner for the City of Newport, Rhode Island. This work builds upon a decade of progressive responsibility in the planning field and development industry, where I have worked for local government, real estate developers, contractors, architects, preservationists, and community advocates. This includes three years as the Director of Planning and Economic Development for the City of Central Falls, where I staffed the Planning Board and Zoning Board of Review and performed a myriad of other planning and economic development-related issues. In this capacity, I was the recipient of several awards, including Neighborhood Plan of the Year from the Rhode Island Chapter of the American Planning Association and policy awards from Grow Smart Rhode Island and the Congress for the New Urbanism for serving as the chief architect of the Central Falls Green and Complete Streets Ordinance. My resume is attached as Exhibit A for reference.

Introduction of the Issue:

My professional analysis is intended as public testimony regarding the Hopkinton Planning Board's Master Plan review of Skunk Hill Road Solar's Major Land Development application for a 20-megawatt photovoltaic solar energy system at 0 Arcadia Road, 0 Lisa Lane, and 145 Skunk Hill Road, AP 18 Lots 8, 13, and 14, respectively. The applicant intends to install panels on much of the open fields of lot 14 and clear many acres of forest to develop a large-scale solar installation. The below analysis is based on my review of the Hopkinton Comprehensive Plan and Zoning Ordinance, as well as other pertinent information, including a review of publicly available information related to the applicant's request.

Analysis:

My analysis focuses on the findings of fact required to be made by the Board prior to granting of Master Plan approval, as described in the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, as amended (RIGL 45-23).

Those required findings are enumerated in RIGL 45-23-60:

- (1) *The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;*
- (2) *The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;*
- (3) *There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;*
- (4) *The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and*
- (5) *All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.*

Finding 4 only applies to subdivisions, which the applicant has not petitioned the Hopkinton Planning Board for. The remaining required findings are analyzed in numerical order below.

It should be noted that these required findings apply to the proposed plan for development, as specified in the master plan application, and that the planning board may not approve any plan unless it is able to render a “positive finding” in every instance set forth above.

Although the town council has previously voted to provide conditional approval for a zone change for the subject land parcels, this approval remains subject to obtaining all further necessary approvals from the planning board.

- (1) *The proposed development is not consistent with the comprehensive community plan and/or has not satisfactorily addressed the issues where there may be inconsistencies;*

As my analysis will show, the proposed development is not consistent with Hopkinton's Comprehensive Plan. The question, therefore, is if the proposed development satisfactorily addresses the inconsistencies.

The first inconsistency is with Goal NR 1: *To preserve, conserve, and protect the significant natural resources of Hopkinton as an endowment for the future of the town.*

Natural resources are described in Hopkinton's Comprehensive Plan as air quality, mineral resources, wildlife, farmland/soil, plant diversity, woodlands, and water (Appendix A page 3). Many of these natural resources are present on the subject property (pp. 23-25). Development is specifically cited in the Comprehensive Plan as threatening natural resources (p. 21), which is what is present in this instance. Continued deforestation should be minimized as much as possible. The applicant has not justified such a large installation. This is further substantiated by Objective NR 1 and Goal LU 4.

While renewable energy systems are not a direct goal of the Comprehensive Plan, various policies touch on the matter, such as Policy PSF 17: *Encourage renewable energy projects in the private sector* (although it remains unclear to this planner why this policy is tucked into the Public Services and Facilities chapter) and Policy NR 5: *Promote energy self-sufficiency using renewable energy and energy conservation*. Policy PSF 17 is further explained by PSF recommendation 17: "adopt regulations that encourage **small scale** renewable energy installations." (Emphasis added). This proposed facility is not small scale.

While not directly addressed, but especially considering the vast swath of the Town of Hopkinton identified as natural resources worthy of protection, it appears as though the intent of the Comprehensive Plan with regard to photovoltaic solar energy and other renewable energy systems is that small sites on already developed land would assist Hopkinton in becoming less reliant on outside energy sources. The idea remains in the mind of this planner that it does not appear that the intent of the comprehensive plan is for Hopkinton to become a major regional energy producer, which this project would help put it on the path towards. One would think such an economic opportunity would be described in the Economic Development chapter of the Comprehensive Plan if it were so desired, but *it is not*.

The importance of setting goals for renewable energy production in the Comprehensive Plan is essentially spelled out on slide 21 of a 2019 presentation on solar siting from the Rhode Island Division of Statewide Planning (who approve Comprehensive Plan amendments) and the Office of Energy Resources, available at:

http://www.energy.ri.gov/documents/renewable/Solar_Siting_Information_Public_PPT_Feb_2019.pdf.

An additional resource regarding the avoidance of greenfield sites for solar farms is a study by the Office of Energy Resources developed in response due the deluge of solar farm proposals in Rhode Island's rural communities. The study is available at https://www.synapse-energy.com/sites/default/files/Solar_Siting_Opportunities_for_Rhode_Island_19-076.pdf and a major conclusion is that no new development is needed to meet the state's energy needs.

The 2021 renewable energy request for proposals <http://www.purchasing.ri.gov/RIVIP/StateAgencyBids/7611868.pdf> incorporates this guidance and specifically prevents consideration of sources in "environmentally sensitive locations," further detailing that "Projects located on ... unfragmented forest parcels that are 250 acres or greater will not be considered as part of this RFP." This project appears to be in an unfragmented forest parcel that is at least 250 acres.

This leads us to another inconsistency: Goal Conservation 1: To promote conservation of Hopkinton's natural resources, particularly protection of the ground and surface waters.

The twelve foot (12') high landscape berm required by the council as a condition of the map change is atrocious. Perhaps they did not understand the implications of their actions. Siting this berm within two-hundred feet (200') of Skunk Hill Road will destroy a scenic view, contrary to the aspirational language on page 21 of the Comprehensive Plan.

Furthermore, although the twelve-foot-high earthen berm may obstruct views of the solar installation from Skunk Hill Road for pedestrian and vehicular traffic, it seems likely that many of the 64 abutting residents may still have unobstructed, or partially obstructed, views of this vast utility-scale operation from the vantage point of second story windows and decks of their homes. Additionally, the access road from Arcardia Road lacks a vegetative buffer at the narrow point of lot 8.

These attributes are not consistent with the intent for Hopkinton to be characterized by safe, secure and attractive residential neighborhoods (Goal H 1) and not consistent with the protection of the quality of life and rural character of Hopkinton (Goal LU 1).

While the agricultural land on lot 14 appears old, it is not clear if it is historic. An analysis should be performed in accordance with Recommendation 19 of Objective HCR 1 during Preliminary Plan review.

Then there is the matter of the Future Land Use Map. Comprehensive plan amendments were submitted concurrent with the zoning amendments for the subject lots. At its November 7, 2018 meeting, the Hopkinton Planning Board voted 4-0 regarding lots 8 and 13 and 4-0 regarding lot 14 to advise the town council that the respective applications were “inconsistent with the Hopkinton Comprehensive Plan [and] does not support the proposed ... future land use map amendments.”

In accordance with RIGL 45-22.2-8(a)(1), this ended the Town of Hopkinton’s review of the requested comprehensive plan amendments. Under the applicable statute, only the planning board can propose amendments to the Comprehensive Plan. The Town Council erred in considering the matter further and Amendment HOP-19-02 is not valid.

The proposed project is for utility scale solar, which is inconsistent with the existing (agricultural and developed recreation) and future (agricultural and low density residential) land use designations for this area, as shown in the Hopkinton Comprehensive Plan correctly adopted by the council on February 5, 2017. The importance of this consistency is detailed in Policy PSF 15.

The project is much too large and deforests far too much land to have “satisfactorily addressed the issues where there may be inconsistencies.”

For all of these reasons, the proposed plan for utility scale solar development is not consistent with the comprehensive plan.

(1) The proposed development is not in compliance with the standards and provisions of the municipality's zoning ordinance;

In accordance with Section 12 of Hopkinton’s zoning ordinance and 1.6.4 of Hopkinton’s Land Development and Subdivision Regulations, the applicable zoning ordinance for this petition is the ordinance in effect on the date that the application was certified complete, which is April 29, 2021. This date is after the zoning ordinance was amended to prohibit solar uses in commercial zones, April 19, 2021. Therefore, the proposed development is not in compliance with the standards and provisions of the municipality’s zoning ordinance.

The planning board does not have any legal authority to “grandfather” the project under a previous, now obsolete, ordinance regardless of any previously expressed opinions. The Planning Board cannot waive the rights of abutters to protect their property through the unbiased

application of the law by the Planning Board. The only authority invested in the planning board is to apply the applicable ordinance as defined by the vesting requirements set forth in Hopkinton's Land Development and Subdivision Regulations and in the applicable State statutes.

Additionally, even if this was previously vested, development must have begun within six (6) months after development approval (as stated in the last paragraph of section 12), or those vested rights are lost. The decision for the zoning amendments for these parcels was executed June 10, 2019. A zoning ordinance limiting solar farms to 3% or 3 acres of the property was enacted by the Hopkinton Town Council on January 22, 2019 applies to this petition if the more recent solar amendment does not.

Confusion could have been avoided if the applicant had followed the specified approval process and secured Master Plan approval *prior to* submitting a zoning amendment. Under state law, Master Plan approval is vested for two (2) years and the Planning Board can be petitioned for extensions.

But the applicant did not follow the procedure prescribed in Section 3.2.2 of the Land Development & Subdivision Regulations and under RIGL 45-23-61(b), nor did the applicant perform any of the actions necessary to secure vested rights under any version of the solar ordinance prior to 2021.

Clearly, the proposed plan for solar development is not in compliance with the core standards and provisions of the applicable solar zoning ordinance chapter, regardless of whether the Planning Board applies the version enacted on April 19, 2021, or the one previously enacted on January 22, 2019, both of which would preclude consideration of the current plan.

- (2) ***There may be potentially significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;***

This finding should be further explored at a future review stage.

- (5) ***All proposed land developments and all subdivision lots must have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.***

While the site plans show driveways out to Arcadia Road and Skunk Hill Road for respective portions of the development, improvements to Skunk Hill Road may be needed in order to withstand the construction traffic for such a large development. The Public Works Department should be consulted subsequent during Preliminary Plan review.

In addition, it appears that the proposed access road from Arcadia Road across the lot designated as AP 18, lot 8 will not be compliant with the minimum setbacks to abutting residential property required under Section 6 of the town's zoning ordinance.

Recommendation:

It is unfortunate that the applicant has pursued a flawed submission. The Board should find the petition deficient with respect to consistency with the comprehensive plan and compliance with the standards and provisions of the zoning ordinance. The petition should be denied accordingly, as required by RIGL 45-23-60(a).

The Board must make its decision by the deadline prescribed in the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, as amended.