

State of Rhode Island

County of Washington

In Hopkinton on the twenty third day of July 2018 A.D., a Joint Town Council and Planning Board Workshop was held beginning at 6:30 P.M. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833 to discuss proposed revisions to the Solar Ordinances.

PRESENT: Frank Landolfi, Thomas Buck, Barbara Capalbo, Sylvia Thompson, David Husband; Town Solicitor Kevin McAllister; Town Clerk Elizabeth Cook-Martin.

Absent: Town Manager William McGarry.

Also present: Town Planner James Lamphere; Planner Assistant Sean Henry;

Planning Board Members: Al DiOrio, Amy Williams, Ronald Prellwitz.

Absent: Planning Board Members: Joshua Bedoya, Thomas Holberton.

Council President Landolfi explained that this was a joint workshop between the Planning Board and the Town Council and there would be no public input; once they had all of the revisions to the ordinance it would thereafter be scheduled on an agenda and then they would have a public hearing where the public can weigh in on any aspect of the changes to the existing ordinance. Council President Landolfi asked Alfred DiOrio of the Planning Board to provide an overview on the document that they had received. Alfred DiOrio confirmed that verbiage which was underscored and in black was added earlier in time; anything underscored and in color was added after their last meeting; and, anything struck out will be removed from the ordinance. Council President Landolfi stated that they would go through the ordinance page by page. They began with page 1 and it was agreed that there were not any changes required. Councilor Thompson suggested that on Page 2, at the very top, Section 5.3, that sentence be combined with section D, Applicability, and it should basically state that this ordinance applies to all PSES systems whose main purpose is to generate energy for sale back into the energy grid system. She wished to make it clear that the sentence applied to the entire ordinance. Amy Williams of the Planning Board asked if the ordinance should state net metering versus direct sale or if that would be too confusing. Councilor Capalbo suggested that there is net metering and virtual net

metering and homes do not generally apply under either of those definitions for this was the commercial ordinance they were dealing with. Councilor Thompson added that on page 2 under General requirements, No. 1, rather than have the minimum front, side and rear yard setbacks refer to zoning, she suggests that they increase the setbacks and she would like to see them doubled. She wished that to read: “Front, side and rear yard setbacks in zoning districts for RFR-80, commercial and manufacturing, are doubled. The maximum building height...” that sentence would stay for this does refer to the zoning district. There was discussion that a manufacturing zone should not be included in that requirement and property in an R-1 zone would not apply. Council President Landolfi indicated that he was okay with RFR-80 but not commercial or manufacturing. Councilor Thompson suggested it say commercial and manufacturing only if it abuts a residential zone? Amy Williams responded in theory, yes, she would agree to increase the buffer; however, they are attempting to do this on an applicant specific basis now; however, she would be okay with doubling it. Councilor Husband asked if that would be on all sides of the property or just the sides that are against residential property and it was agreed this would be for just the sides that abutted residential property. Councilor Thompson asked that this read: “Commercial and manufacturing properties are doubled on any side that abuts residential property.” Council President Landolfi stated that would be if they had the ability to do that. He felt that normally those type of lots were smaller lots. Mr. DiOrio indicated that the ordinance should state if the applicant had the land available the double setback would apply. Councilor Thompson indicated that the front yard setback for commercial property is 60 feet and manufacturing is 75 feet; side yard setback is 25 feet for commercial and 50 feet for manufacturing; and, rear is 50 feet for commercial and 75 feet for manufacturing. Council President Landolfi argued that he didn’t feel that these type properties would be big enough to support the proposed increase in setbacks. Councilor Thompson suggested they allow the Planning Board to increase the setback up to doubling the setbacks. Mr. DiOrio indicated that at the bottom of page 3 there is already some verbiage speaking about lot coverage that the Planning Board thought would be advantageous to add in to the ordinance

allowing the flexibility to address lot coverage. He thought this same type of thinking could be used with regard to building setbacks. The Planning Board hoped that this flexibility would work for the Town, as well as assist the applicants; on some sites certain things would apply and on other sites they may not apply. Councilor Capalbo indicated that she would like to incorporate doubling the setbacks for RFR-80 abutting R-1 properties. Councilor Thompson added that if there was a side that abutted residential property then the Planning Board can vary it as much as double. Council President Landolfi cautioned them and added this would need to be on a case-by-case basis. Councilor Thompson asked who would be writing the ordinance, the Town Planner or the Town Clerk and it was suggested that it would be Mr. Lamphere, the Town Planner. On Page 3, Councilor Thompson suggested that the last sentence of paragraph 9: “During the pre-application phase of Development Plan Review...” all the way through to the end be deleted. Also in the beginning of paragraph 9 it states that for commercial and manufacturing zoned parcels, the lot coverage shall be 75% and she would recommend changing that to 55%. Councilor Capalbo stated that she would like to leave the last sentence because she feels this is where the Planning Board has some flexibility to work with the applicants. Ms. Williams stated that the Planning Board hears the pre-application phase and then they give their recommendations to the Council. At that meeting they say what they want to say and then they send it to the Town Council for the rezone. Mr. DiOrio stated that the items in the ordinance give them the control over projects that are essential to retain the character of our Town. Councilor Capalbo and Councilor Husband both indicated that they would like to keep the sentence in the ordinance. Councilor Thompson indicated that this paragraph stated the pre-application phase, but Ms. Williams explained that when it comes back to the Planning Board from the Council, they wish to have the flexibility to bury it. But if you read the sentence it says during the pre-application phase. Town Planner Lamphere suggested that they change the word ‘adjust’ to ‘increase’ and that would allow the Planning Board to increase it but not decrease it. The whole point of this paragraph was to give the Planning Board more flexibility. Councilor Thompson stated that she was going to propose a section for gravel banks because there were

exemptions that they could come up with; and, she indicated that she wished to leave the word as adjust and this was agreed by Councilor Husband. Ms. Williams read section 9 in full and indicated that they had wrestled with the lot coverage and by leaving this as is they felt they were being true to the zoning approach. Councilor Husband asked (Town Solicitor McAllister) if after a zone change they could adhere to the prior zone's lot coverage requirements. Mr. DiOrio stated that the Planning Board tried to think about what the expectations of abutting property owners might have been for that lot and they believed it would be whatever was in the zoning ordinance. If a neighbor rezoned their lot and now there was a lot more lot coverage, they didn't feel that would be right. Councilor Husband questioned if someone owned 100 acres of RFR-80 land and used the lot coverage of 30% to put up solar panels, could they thereafter sell off some of the remaining land as building lots? Mr. DiOrio indicated that lot coverage is lot coverage and that is all they get. Councilor Husband asked if the owner could do anything else with that property such as sell off some lots. Town Planner Lamphere indicated that they could not; if the owner took 10 acres away, it is already maxed out at 30%. Councilor Husband asked if we had any control over that such as indicating to the owner that they would not be able to do anything else with their land once they max out the lot coverage. Councilor Buck stated that the owners of land would have to be informed that once they do this, they cannot do anything else with their land and it has to stay as one parcel. Mr. DiOrio noted that it should be a requirement on the plan stating that the applicant is aware of the conditions and during the life of the solar project that land would be locked in and nothing else could be done with it. Councilor Buck explained that his concern was that if an owner of property with a solar array passed away, that their children could not subdivide and sell any of that property while the solar project was in effect. He wished to ensure that the owner of a piece of property proposing a solar array knew all of these conditions. Council President Landolfi wished to reiterate the percentages of lot coverage and Mr. DiOrio stated that for commercial property it would be no more than 75%; an R-1 zone, which they were not sure was applicable, would be 30%; and, RFR-80 was 30% for the array. Town Planner Lamphere indicated that the maximum coverage for RFR-80 was

15% and R-1 would be 30% and they would be allowing an applicant 30% for RFR-80 which is double and more than fair. Councilor Husband indicated that R-1 was not suitable for a solar array and should not be in the discussion at all and everyone agreed. Councilor Thompson indicated that she felt 30% would make a project not feasible. The word ‘adjust’ versus ‘increase’ was discussed and it was decided that they would leave the word ‘adjust’. Councilor Capalbo questioned page 4, number 7 under Roof Mounted Solar Panel Requirements, the last sentence stating that the equipment shall be screened with an architecturally compatible structure, indicating that this did not make any sense to her, which was agreed with by Council President Landolfi. Mr. DiOrio expounded that they had yet to deal with this issue, but he stated that if someone were to put solar panels on a flat roof the panels would not be lying flat, they would be standing up and therefore seen. Councilor Capalbo affirmed that if panels are on a pitched roof they would be seen and she really didn’t have a problem with seeing them if they were on a roof. She wished that sentence be stricken, which was agreed by Council President Landolfi. Councilor Capalbo questioned number 8 indicating that on the previous page in paragraph A(5) it stated that the maximum height of the panels shall be no greater than twelve feet. She did not feel that this height should be exceeded. Councilor Thompson announced that she would like to add a paragraph (A) 11 at the top of page 4, which would read: “Before construction begins, the Town will have a signed and notarized Stormwater Facility Maintenance Agreement between the applicant/owner and the Town.” This allows the Town certain protections against liability issues. Councilor Capalbo asked the Planning Board if they would review that agreement and incorporate that into the ordinance. Mr. DiOrio agreed that it is good to have a stormwater management plan, but that also means we have to have a cost estimate and bond program; and, just having a program doesn’t reduce the liability of the Town or allow the Town to go in and make it right. Town Planner Lamphere indicated that he would take a look at the plan and its verbiage. Moving on to page 5, Councilor Thompson indicated that there was a conflict on page 5 with page 3. On page 5, number 1, second paragraph, in the middle where it says, “Clearing of any existing vegetation within the front, rear and side yard setback areas is

prohibited, unless explicitly approved...” She indicated that they want it prohibited period. They want to make sure that there is no clearing of existing vegetation from the front, rear or side yard is allowed unless it is for an access road. Mr. DiOrio justified that he felt that sentence allowed the Planning Board to be a little flexible and Mr. Prellwitz indicated that this would allow them to be site specific. It was decided to leave this sentence in. Councilor Capalbo discussed the last sentence in number 1, the fourth paragraph, which states: “The applicant will clearly state how erosion will be mitigated during construction and prior to the establishment of permanent vegetation.” She would like to change the word “mitigated” to “completely contained on the parcel”. She does not want this mitigated; she wants it done, because she does not want runoff on someone else’s property. Mr. DiOrio expounded that stormwater runoff and erosion were two different things. He explained that erosion happens regardless of their best practices and stormwater can be contained on the site. Councilor Capalbo asked if erosion could be contained on a parcel. She stated that erosion to her was when there was mud runoff. Mr. DiOrio indicated that this was known as surface water runoff. Mr. DiOrio explained that when you remove the vegetation from the soil and rain beats down on the soil you get erosion and no one can stop it but you can do certain things to make sure it stays on the site and does not go onto abutting property. Councilor Capalbo indicated that this was probably a combination of what Councilor Thompson had voiced about stormwater. Councilor Thompson suggested that this should explain how the Soil Erosion and Sedimentation Control Plan will mitigate erosion during construction and prior to the establishment of permanent vegetation. She would like this sentence to refer to that document which they would be requiring. Mr. DiOrio stated that they could state that all surface water runoff should remain on the site. Councilor Thompson announced that this detail also belongs on page 7, under paragraph 3, Landscape Plan; that a soil erosion plan is needed, which should specifically state what they are supposed to be doing and what the conditions are that are in place. Mr. DiOrio asked if it was okay to move the sentence at the end of 2(c)(1) directly to item 2 on page 7 and it was agreed that it was, with Councilor Capalbo’s suggested change. Council President Landolfi questioned Mr. DiOrio about the

second paragraph in item 1 which mentions 40% of the total area. He asked if that was in conflict of the 30% proposed. Mr. DiOrio explained that they were two separate items; 30% was lot coverage and the 40% was for clearing of vegetation. Councilor Thompson thereafter referred to page 5, paragraph 2(c), the last sentence where it states, "...in lieu of a planting screen, a decorative fence,..." she believed this conflicted with page 3, item 3, subparagraph 6 where it states that the ground level facility shall be enclosed by a vinyl-coated black chain link perimeter fence of no less than six feet high. Mr. DiOrio stated that on page 3 the black chain link fence was to prevent unauthorized access and on page 5, paragraph 2(c) was for screening purposes and to soften the impact. He went on to state that they might end up being one and the same but this has not happened yet to his knowledge. Councilor Capalbo indicated that the solar array being constructed at Exit 1 has residential property directly abutting it and the abutters may wish there to be a solid wood fence as opposed to chain link. Mr. Prellwitz asked if this would be instead of or in addition to and Councilor Capalbo stated she was not sure. Councilor Husband stated that he believed that live vegetation wouldn't cut down on noise and he wasn't too sure that a decorative fence would cut down on noise, but a stockade fence would. Council President Landolfi wished to add on to page 5, paragraph 3(a), the word "maintenance" so it would read: "... for safety, operational and maintenance purposes." On Page 6, Councilor Thompson questioned paragraph D. Mr. DiOrio responded that unlike almost any other set of submissions that he has seen, the applications that they have seen regarding solar installations have been very different. They are receiving plans portraying data certified by people that he is pretty sure shouldn't be certifying that data, but the ordinance isn't specific about this. They are bringing in a conglomeration of information that the Planning Board is looking at and it is really not qualified properly. They suggest to take away the verbiage that allows anybody to submit anything and go back to what they are accustomed to seeing, which is development plan review; the Planning Board felt that rather than trying to re-write this section they would use something that is already in place. Page 7, paragraph 3, Councilor Capalbo asked for the word "mitigation" to be changed to "containing all". Councilor Thompson stated that a reforestation plan

must be submitted if the applicant is requesting a zone change from RFR-80 to commercial special and stated that this should be done the same way it is being done already where the Board is requiring a reforestation bond, which is prepared by a forester, and required the applicant to put trees back. Ms. Williams stated that this was different and that Councilor Thompson was talking about removal of the solar panels. Mr. DiOrio stated that they do not have a reforestation plan in effect and they do not require the putting back of trees, just a decommissioning package to take the solar panels down. Councilor Thompson suggested this be put in the ordinance. There was discussion about making people plant trees on their property after the solar panels are removed and that people may not want to do that. Councilor Thompson indicated that they also should add the Soil Erosion and Sedimentation Control Plan but Council President Landolfi indicated that this was already in the development plan review. Mr. DiOrio stated that the Operation and Maintenance Plan does belong in this ordinance, as well as the landscape plan and as-built plans. Councilor Thompson questioned whether the stormwater management report should be added into the ordinance as well and Mr. DiOrio reported that most of the applicants have supplied elaborate plans in this regard. Councilor Husband read paragraph 2, the second paragraph and indicated that “low in volatile compounds” could vary greatly. He would like to see a comma after that and then have inserted, “as approved by the Planning Board,…” Councilor Thompson recommended that this sentence state that no chemicals be used. Ms. Williams indicated that there was one item she had discussed with Town Planner Lamphere and Mr. DiOrio and that was that they add in the requirement of an Interconnection Agreement to be in place prior to clearing and construction. Councilor Thompson theorized that there may be provisions or requirements that may change over time regarding state agencies, such as Rhode Island Department of Environmental Management, and they should assure that the Town would receive a copy of them, and assure that the applicant will be required to comply with any and all requests for the life of the project. Mr. DiOrio indicated that they have some sweeping language which he would defer to the Solicitor, such that throughout the life of the project, all permits, federal, state and local are maintained by the applicant, with copies to the Town, and that would be

added into the ordinance. Town Planner Lamphere indicated that in the second paragraph under number 3, just to be consistent, they took out the pollinator mix among these panels, in favor of a low and slow growing seed. He felt the sentence that starts, “A long-term maintenance plan ensuring the livelihood of the Pollinator Habitat...” should be stricken, which was agreed by all. On Page 8, number 7, Councilor Capalbo indicated that starting with, “Decommissioning shall include the removal of the PSES,...” and she would like it to read, “Decommissioning shall include the total removal of the PSES, underground and above ground utilities and structures, with any other associated facilities, and the cleaning and restoration of the site.” Her concern is the underground utilities being removed and she wishes them to know that this has to be a total removal not just cutting it off at the base. There was discussion and it was indicated that underground utilities should be added on to page 9 under removal requirements. Councilor Thompson stated that on page 9 she wished to add that the Town’s engineering firm or designee shall perform an inspection monthly during construction and in April of every year for the life of the project, as well as review any and all reports as required by the State of Rhode Island and Town of Hopkinton. The applicant shall reimburse the Town for any cost incurred as specified in the Stormwater Facility Maintenance Agreement. It was indicated that the Manager would decide whether the engineering firm should go out or the building inspector. Mr. DiOrio indicated that he had no objection to this; however, he wished assure that they were not burdening some other office. Councilor Thompson also indicated that she wished to discuss exemptions from this ordinance. She felt the Planning Board should have the ability to waive any part of this ordinance for a solar array that may go on the Stubtown landfill. She felt that if they put a solar array on that property it would cover more than 30%. Mr. DiOrio indicated that as long as they were very specific on the sites that the exemption would apply to, this could be done. Councilor Thompson also asked about earth removal operations or gravel banks that have received Town approval, if they wish to get rid of their gravel business and put in solar, possibly allowing them to increase their coverage. Council President Landolfi indicated that they would be placing the discussion of a moratorium on solar projects on the next

Town Council agenda scheduled for August 6, 2018. Councilor Capalbo asked how would they handle the sale of these properties. Her concern is the maintenance bond, operation, lighting, signage and landscape plans, as her understanding is that a solar company puts in these projects and then sells it to the next solar company or sells it to someone. She wished to assure that the property continued in conformance with the ordinance. Ms. Williams responded that this was specifically stated in the documents that the applicant submitted. Town Planner Lamphere indicated that the approval of the project and all conditions placed on the property run with the land. Councilor Capalbo questioned how the bond would transfer and Town Planner Lamphere indicated that there have not been very many bonds posted at this point; applicants have given the Town cash escrows. Councilor Capalbo stated that the biggest projects were bonded so how would that work if the property exchanged hands? Who would own the bond? Council President Landolfi indicated that the insurance company holds the bond. Councilor Thompson thought the language concerning this issue may be in the Operation and Maintenance Plan. Ms. Williams asked what happens next and Council President Landolfi explained that Town Planner Lamphere would incorporate all of the changes that had been discussed; provide the Council with a copy; and thereafter, the matter would be placed on the agenda and then they will set a hearing date. Thereafter they will continue the hearing or set a date for decision.

The Workshop was closed at 7:55 PM.

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Breault

Deputy Town Clerk