

State of Rhode Island

County of Washington

In Hopkinton on the seventeenth day of December 2018 A.D. the said meeting was called to order by Town Council President Frank Landolfi at 7:00 P.M. in the Hope Valley Elementary School Auditorium, 15 Thelma Drive, Hope Valley, RI 02832.

PRESENT: Frank Landolfi, Scott Bill Hirst, Barbara Capalbo, Sylvia Thompson, Sharon Davis; Town Solicitor Kevin McAllister; Town Manager William McGarry; Town Clerk Elizabeth Cook-Martin.

The Meeting was called to order with a moment of silent meditation and a salute to the Flag.

Council President Landolfi indicated that he wished to move the Town business ahead of the ordinance as that will take a longer period of time.

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR HIRST TO MOVE THE CONSENT AGENDA AND THE LAST ITEM ON THE AGENDA AHEAD OF THE ORDINANCE AMENDMENT.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

**CONSENT AGENDA**

The Town Council Meeting Minutes of December 3, 2018 were removed from the Consent Agenda.

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR THOMPSON TO APPROVE THE CONSENT AGENDA AS FOLLOWS: Accept the November 13, 2018 transcript as the record of the hearing filed by Southern Sky Renewable Energy RI, LLC, LR6-A Owner LLC & Realty Financial Partners VI LP; Accept the following monthly financial/activity report:

Town Clerk; Approve refunds resulting from overpayment of 2018 real property tax submitted by the Tax Collector.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

Councilor Thompson wished to add into the minutes, page 6, after Justin Bentley's statement in the middle of the page, that she had stated that town residents were not burdens.

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR THOMPSON TO Approve the Town Council Meeting Minutes of December 3, 2018 with correction.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

#### **PUBLIC FORUM**

No one spoke during the first public forum.

#### **TOWN MANAGER REPORT**

Town Manager William McGarry reported that on December 5, 2018 his office began the process of developing annual goals for the upcoming FY 19/20 fiscal year and the multi-year goals for fiscal years 21-23. He explained that department heads submitted their perspective goals to his office and these goals were placed on two lists which will be discussed at their annual goals meeting scheduled for January 4, 2019. Once completed, they will be presented to the Town Council during the second meeting in January for consideration and possible adoption.

Town Manager McGarry also stated that on December 7, 2018 they convened a meeting between Hopkinton and Richmond Town officials, along with Eric Laframboise of the Water Company that serves both Richmond and Hopkinton, with respect to installing some sump pumps and electrical equipment in the water meter pit at the Hopkinton and Richmond town line. After considerable discussion, correspondence was forwarded from Mr. Laframboise to the

Department of Health informing them of the results of the meeting and our compliance issues and they will be following up at a later date.

**OLD BUSINESS**

**OMNIBUS MEETING AGENDA FORMAT**

Discuss, consider and vote to send a letter to the Chariho School Committee relative to the Omnibus Meeting Agenda to return to previous format where individual towns can request items to be placed on the agenda. This was requested by Councilor Hirst.

Councilor Hirst explained that for many prior years the towns were asked to submit items to be placed on the Omnibus agenda; however, the School Committee has gotten into the practice of eliminating that and only speaking about the budget. He felt this is short sighted, specifically because the General Assembly meets in January and if there were any legislation-related issues or other ideas that would be the time to state them. The only thing discussed at the Omnibus meeting now was the budget which is a living document and by the time that it comes for a hearing and vote, it can't be changed. Also, there are numerous workshops regarding the budget where people can state their opinion. He believes they should return to the prior format and because of the open meetings law he feels it is incumbent on the Council to bring forth this idea. Councilor Hirst indicated that he would like to make a motion to send a letter to the Chariho School Committee asking that in the future they adopt an Omnibus meeting agenda returning to the previous format, where individual towns can request items be placed on the agenda.

**A MOTION WAS MADE BY COUNCILOR HIRST AND SECONDED BY COUNCILOR THOMPSON TO send a letter to the Chariho School Committee.**

Discussion: Councilor Capalbo stated that the problem that she has with this is that the Omnibus Meeting, specifically held in January, and is an introduction of the Chariho budget so that the three Town Councils get a chance to look at the line items and look at the changes the Chariho School Department is trying to make. This is a very long process all by itself. Councilor Capalbo did not believe

that the three Town Councils could come to a consensus in one meeting to put things before the legislature. Councilor Capalbo would prefer that the Omnibus Meeting remain concentrated on the school budget which is three-quarters of the Town's budget. She felt that anything that you want to have brought up as an additional point or additional issue with the legislature could be brought up at a School Board Meeting through public forum or you could ask to have it brought forward. She believed that if they wished to send a letter to the other two Town Councils, to say we would like to have a consensus on this or that issue that would be acceptable via the Town Council but it would not have to go through Chariho. Councilor Thompson stated that previously the School Committee would send a letter to the three Town Councils and ask them to submit two agenda items and each Town would submit what they needed to have discussed; so in addition to the budget there would be other items brought forward. Never did it keep them out late at night; they were always done well before 9:30 p.m. She indicated that the only thing she would like to change about the Motion is that she would like to see the letter go to the two Town Councils since they will be the ones submitting items. She believes that if we have support of the other two Towns to add items to the agenda then the School Committee should go along with it. She would suggest that the School Committee get a copy of the letter being sent to the other Towns so they would be aware of this issue. She also stated that the only reason why they stopped the previous practice was because at one time Richmond wanted to have a separate meeting to change the Chariho Act and the three Town Councils got together at Chariho for that meeting. Thereafter, the Omnibus Meeting became just for the budget; however, currently they do not have the three Town Councils meet anymore; it was just temporary, so she would support going back to the old method.

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR CAPALBO TO amend Councilor Hirst's Motion to send a letter to the Richmond and Charlestown Town Councils with a copy going to the Chariho School Committee. Vote on the motion to amend:

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

Council President Landolfi commented that on the last agenda they hadn't put this matter on for a vote, so he reached out to a colleague of his on the Richmond Town Council who indicated that he wasn't of the opinion to add anymore to the agenda; however, that was just one person. That Councilor felt it was too cumbersome a meeting to add more to it. Councilor Hirst stated that by law the School Committee exclusively has the power to move line items around. In addition, since we are a regional school district we do not have the option as a Town Council; such the Westerly Town Council has, to set the bottom line for their school budget. Councilor Capalbo stated that the Town Councils did not set the bottom line of the school budget, but the citizens do at the Chariho Financial vote. Vote on the main motion as amended:

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

**STATE FUNDING OF EDUCATION**

Discuss, consider and vote to send a letter to municipalities, State agencies and other entities including school districts regarding state funding of education. This was requested by Councilor Hirst.

Councilor Hirst stated that the amount of funding from the State for education varies for every city and town. He indicated that the Rhode Island State Constitution, specifically Article XII, Section 1 says that the General Assembly promotes education and he doesn't believe the State of Rhode Island does a good job of that. He felt the State should be able to come up with more money to support our schools and that the League of Cities and Towns should hold State government accountable. The biggest tax issue in the State is property tax relief in our cities and towns. Councilor Hirst asked that the Council send letters to every Mayor and Town Administrator; City and Town Council and local School

Committee throughout the State; every member of RI General Assembly and RI Department of Elementary and Secondary Education; RI League of Cities and Towns; RI Association of School Committees; RI Superintendents Association; the RI AVA; and, American Federation of Teachers and ask if they are willing to get behind an effort to hold the State more accountable.

A MOTION WAS MADE BY COUNCILOR HIRST AND SECONDED BY COUNCILOR THOMPSON TO send a letter to every Mayor and Town Administrator; City Council and local School Committee throughout the State; every member of RI General Assembly and RI Department of Elementary and Secondary Education; RI League of Cities and Towns; RI Association of School Committees; RI Superintendents Association; the RI AVA; and, American Federation of Teachers and ask if they are willing to get behind an effort to hold the State more accountable.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

#### **NEW BUSINESS**

#### **WILD & SCENIC RIVERS STEWARDSHIP COUNCIL**

Discuss, consider and possibly vote on request from the Wood Pawcatuck Wild & Scenic Study Committee for an appointment of representatives (one representative and one alternate) to the Wild & Scenic Rivers Stewardship Council.

Council President Landolfi believed that the term was for two years and stated that he has a neighbor who was unable to recommit to this organization so they are looking for someone to serve. He advised that their office is located on Arcadia Road and an eligible person must be a resident of the Town and be prepared to represent the Town in this regard. They will be expected to provide communications between the Stewardship Council and the Town; they must commit to a high degree of involvement in the committee meetings, likely every other month; and an ancillary activity, such as participating on subcommittees,

conducting outreach and writing meeting documentation. Previous experience in these activities is a plus but not necessary. What they really need is a high level of enthusiasm for the protection and promotion of the special rivers in our Town. The term of each representative will be for two years or as determined as necessary by the Stewardship Council and the Town. If anyone is interested they should see Town Clerk, Elizabeth Cook-Martin.

**AWARD BID RE: STATISTICAL REAPPRAISAL AND REVALUATION**

Discuss, consider and vote to award bid for the Town’s Statistical Reappraisal and Revaluation of Taxable and Exempt Real Property, effective December 31, 2019, to Vision Government Solutions of Northboro, MA in the amount of \$53,800.00 with a cost of \$500.00 each run to attach title cards to property record cards in the CAMA software. Tax Assessor Elizabeth Monty was present.

Tax Assessor Monty explained that the two bids were very similar; however, the value and the experience that the Town would receive from Vision Government Solutions outweighed that of Northeast Revaluation. Vision’s estimate came in at \$53,800 and Northeast Revaluation’s estimate came in at \$58,000. Vision currently is the carrier of our software so we are already familiar with them and they performed our 12/31/2016 revaluation. There will be some of the same team members coming back such as Mr. Ferrara who is the project manager, who has been appraising properties since 1975; and, Mr. Bourque who is local to Hopkinton and knows the market very well and has been appraising properties since 1983. Councilor Thompson asked Tax Assessor Monty to explain a run and it was explained that the appraisers run through the cards to see if there is an attachment that would need to be included in the system regarding the chain of title for the property, but this option is not needed for it is not being done anymore.

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR THOMPSON TO AWARD THE BID FOR THE TOWN’S STATISTICAL REAPPRAISAL AND REVALUATION OF TAXABLE AND EXEMPT REAL PROPERTY, EFFECTIVE DECEMBER 31, 2019, TO VISION

GOVERNMENT SOLUTIONS OF NORTHBORO, MA IN THE AMOUNT OF \$53,800.00. Discussion: Thomas Buck of Church Street asked why the appraisers would be going out to the field if this was only a statistical evaluation. Tax Assessor Monty explained that every improvement that required a permit in the last three years would need to be re-examined for that improvement which would change the value of the property and real estate sales that occurred also affect the market so the appraisers will attempt to check the interior of any sold properties during the time frame of the three years. Discussion ended and the Council proceeded to vote.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

**ADVERTISE BOARD AND COMMISSION VACANCIES**

Discuss and consider authorizing the Town Clerk to advertise vacancies on Boards and Commissions.

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR HIRST TO AUTHORIZE THE TOWN CLERK TO ADVERTISE VACANCIES ON BOARDS AND COMMISSIONS. Discussion: Councilor Thompson advised that she would like this advertised and also placed on the website. Town Clerk Cook-Martin indicated that she would include the Wild & Scenic Rivers Stewardship as well. Discussion ended and the Council proceeded to vote.

IN FAVOR: Landolfi, Hirst, Capalbo, Thompson, Davis

OPPOSED: None

SO VOTED

**HEARINGS**

**PSES ORDINANCE AMENDMENT**

The Council continued the hearing on proposed amendments to Chapter 246 Non-Residential Photovoltaic Solar Energy Systems (PSES) Code of Ordinances, Chapter 134 – Appendix A entitled “Zoning” introduced and sponsored by Councilors Landolfi, Buck, Capalbo, Husband & Thompson. The proposed

amendments would add, revise and/or strike language. Town Planner James Lamphere was present.

Town Planner Lamphere wished to highlight the significance of the ordinance and in order to do that he had to make a distinction between solar projects that require zone changes and comprehensive plan changes from those that do not. He stated that almost five years ago, in January of 2014, the Town Council passed an ordinance that allowed Photovoltaic Solar Energy Systems to be constructed in commercial and manufacturing zones. In July of 2016 the Council expanded upon that to allow small solar projects to be done on farms and also approved an Ordinance, No. 246. The significance of that ordinance is that it allows the Planning Board to review, regulate and shape these arrays that are allowed by right. To date, the Planning Board has approved six solar arrays that are on farms and six that are by right in commercial or manufacturing zones. This ordinance has been useful to the Planning Board in doing that. In the course of reviewing those projects the Planning Board and Town Council agreed that there are things in the ordinance that need to be revisited and improved. This ordinance is necessary for the solar projects that are being done by right. Any solar projects that require zone changes are entirely up to the Town Council. If a zone is changed to allow a solar array then this ordinance would definitely apply to that project. This ordinance is no way an attempt to encourage or facilitate the Town Council to do anything. The Town Council does have to respond to every request to change a zone as it comes in. Town Planner Lamphere reiterated that they were not present tonight to discuss any potential moratorium or review any particular solar projects, they are trying to focus on the merits of the ordinance to improve it so that the Planning Board can do a better job. Council President Landolfi stated that they would start with Council discussion and review the ordinance page by page. Regarding page 1, line 5 under Section 2, Definitions, Photovoltaic Solar Energy Systems (PSES), Councilor Davis asked what “SEF” meant and it was indicated that this was a mistake and it should be PSES. There were no questions regarding page 2. On page 3, Councilor Davis questioned section 2 which read at the end: “Electrical equipment between the facility and

the utility connection may be above ground if required by the utility.” She asked when would they know that the utility will require the connection to be above ground; what criteria will they be using to make this decision; and to date, what is the percentage of approved projects where the utility connection is planned to be above ground. Town Planner Lamphere stated that this determination would be made with a conversation between the utility company and the solar developer, but generally speaking, the first pole or two from the street would be above ground. He stated that the utility is going to want to see certain things above ground and with the installations that he has looked at, there are generally one or two poles that come off the main line and go to the facility; they might go to the main shut-off and then from that point on the utility probably would allow underground service. The utility company will not approve anything that is not up to their standards. Town Planner Lamphere went on to state that the Planning Board would make that request to the utility company to put underground everything that can be put underground. Councilor Davis indicated that they don’t want to see electrical lines so how do we know ahead of time if they will be underground or above ground? Councilor Capalbo stated that she assumed that the utility company has best practices because they are bringing in extremely high voltage. Town Planner Lamphere believed there were a certain amount of site specific conditions that had to be dealt with; however, he and the Planning Board were not electrical engineers so they can only do the best that they can. Councilor Davis suggested that some of those conditions would be into their decision as to whether or not they would be approving a project. Council President Landolfi noted that Councilor Davis had some concerns and asked if she would like to amend No. 2 in any way. Councilor Capalbo stated that they should be careful and assure that they are not determining what we feel is the best electrical equipment connection because then the Town would be responsible for any damage. Councilor Davis indicated that she was not asking that, she was looking for more information from the utility company upfront. Town Planner Lamphere reasoned that in the first sentence of that paragraph it stated that the distribution lines within the facility shall be underground. Council President Landolfi advised that Councilor Davis was looking for more information upfront from the utility as

to what constitutes underground and what would prevent that. Council President Landolfi believed that the Planning Board could probably take care of this issue. Councilor Thompson discussed No. 1 regarding minimum front, side and rear yard depth and the Planning Board having the authority to change the setbacks up to 100% and she would like to change that to 500%. Council President Landolfi questioned why she wanted to have this changed and Councilor Thompson stated that if this is near a residential area, as it states, then she would like the Planning Board to be able to go up to 500%. Councilor Capalbo believed that 500% was a number pulled out of the air. She believed they should change the sentence to allow the Planning Board the authority to increase the building setbacks pertaining to PSES as needed or in their judgment. Town Planner Lamphere asked if they could just strike out the words “by as much as 100%” and it was agreed by all. Councilor Davis asked what a full-cut off fixture is as noted on page 3, No. 4, line 2. Councilor Capalbo explained that this means that all lighting points down, no light points into the sky or into neighboring properties. Councilor Capalbo questioned No. 3 regarding the preventing of unauthorized access. Every once in a while she would like to see a project that has no fence, a privacy fence or a different kind of fence. She felt this statement was too narrow. She also agreed with Mr. Pennypacker’s statement that any time we can go without a fence is even better. She would like this sentence changed to allow some flexibility to the property owners. Town Planner Lamphere advised that it is his understanding that the utility companies require these projects to be fenced in for safety purposes. Council President Landolfi wished to add to No. 4, that this is in compliance with the Town’s Dark Sky Ordinance, but he wasn’t sure if the International Dark Sky Association was similar. Councilor Capalbo read No. 5 regarding the maximum height of ground-mounted panels shall be no greater than twelve (12) feet as measured from the ground surface. She was not sure where they would want to encourage having panels overhead in parking lots but that could be determined by the Planning Board. The height of the panels mounted above parking lots would have to be determined by the Planning Board because it has to address trucks, campers and other large vehicles that might be parked underneath. The ordinance doesn’t really address Planning Board

possibilities for parking lots. Councilor Thompson believed that parking lots were addressed later in the ordinance. There were no questions on Nos. 6, 7, 8, 9 or 10. On Page 4, No. 13, Councilor Hirst read: “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 rezone the parcel, no more than 30% of the parcel shall be covered.” He felt this was ridiculous for if people have property zoned RFR-80 it was supposed to be Rural Farming Residential and lot sizes vary in this type of zone. He would like to see a reduction in that amount. Councilor Thompson proposed that this percentage go down to 10% or less and then on Page 5 there is a corresponding correction that would need to be made if this was changed. Council President Landolfi asked Alfred DiOrio of the Planning Board to restate what he had stated earlier about the 30%. Mr. DiOrio explained the percentages that were listed are the current lot coverages in those zones right now. Residential coverage is 15% so they felt that it would be appropriate to double that; however, these numbers are very subjective. Councilor Davis advised that she supported 10% as well and Councilor Hirst said he would agree with that. Council President Landolfi stated that he liked 15% which is currently what a residential zone is. Councilor Thompson stated that when they made the change to the Farm Viability Ordinance, they did so by determining how much acreage a farmer had and if they had fifteen acres it could be one acre of solar and over fifty acres could be as much as three acres. They offered a way for the farmers to earn a little extra income. In this ordinance if there is a landowner having trouble paying their taxes, this offers them an option to earn a little bit of income. Eric Bibler stated that he believed these two ordinances were inconsistent in that farms with over fifty acres of land could use only three acres for solar; however, a residential property owner with one hundred acres could have ten acres or more of solar. He wondered why the Town wouldn’t match the Farm Viability Ordinance by saying 10% with a maximum of three acres. Council President Landolfi agreed with Mr. Bibler that this was inconsistent; however, he would like to stay with 15% lot coverage and have the Farm Viability Ordinance re-addressed. If this amended Ordinance is adopted it would also apply to commercial,

manufacturing and farms. Councilor Davis stated that the farm ordinance allowed a maximum of three acres and she felt that they should allow a maximum of three acres for residential properties as well. An audience member stated that Town Planner Lamphere had suggested that this ordinance was for existing zoned properties and not for properties requiring rezoning; however, in the statement it talks about a parcel being rezoned. Town Planner Lamphere explained that if the Town Council was to change a zone from RFR-80 to commercial, it is then commercial so in that instance when an RFR-80 goes to commercial then the 10% or three acres comes into play, however, if it is originally commercial the 75% applies. A farm could be rezoned; however, the Farm Viability Ordinance was adopted for farmers who wished to keep their farm and have an accessory use. The Farm Viability Ordinance does not require a rezone. Councilor Thompson stated that rather than just say three acres if they want to make this similar to the Farm Viability Ordinance, then they should look at No. 13 and rework that section. Council President Landolfi felt that three acres was insufficient and he liked percentages better. Councilor Capalbo believed that No. 13 should be redesigned in its entirety by Town Planner Lamphere. Council President Landolfi went on to state that the longer it takes to change this ordinance, the longer it will take for it to take effect. He took a consensus of the councilors: Councilor Davis supported three acres; Councilor Capalbo supported 15%; Councilor Hirst supported 10% or lower; Councilor Thompson believed the Council recognized that they need to halt large solar arrays and they need to come up with some language and if they mirror the Farm Viability Ordinance that would be perfect. She didn't feel they would need to have another hearing about the changing of this section for anyone could write a proposed section and read it at the night of the decision and it could either be agreed to or revised that night. Councilor Capalbo was of the opinion that she would like to continue the hearing in order to see the ordinance in full before the hearing is closed. Councilor Capalbo wished to add to the last sentence of No. 14 "A PSES that exceeds this standard shall not be permitted to operate by the Town of Hopkinton." If the Planning Board is reviewing the PSES than there is already permission to proceed and if the PSES gets done incorrectly no one will know until it is turned on and this section will

allow the Town to close it down if it is not done correctly. Regarding Page 5, Councilor Davis had a question on the last sentence of No. 10 and wished to end it after "...regardless of slopes" for this is regarding non-residential roofs.

Councilor Capalbo suggested adding a No. 11 regarding parking lots where the Planning Board would have the ability to make the decision on the height of the panels. Regarding PSES Design Guidelines, Councilor Thompson stated that this corresponds with No. 13 on the previous page. If they went with a percent, such as 10%, then in the second paragraph where it states a maximum of 40% of the total area, this should also go down such as to 15%; however, if they following the Farm Viability Ordinance then this section would have to relate back to the decision they make; they will have to look at this as well as No. 13 on the previous page. Councilor Capalbo pointed out a typo at the bottom of the first paragraph "purposed" should be "purpose". Councilor Davis commented that in that first paragraph, line 7, where it states "...to the greatest extent practical," she thought they should add that a leveling plan must be approved by the Planning Board prior to implementing leveling techniques. On line 10 where it states that no blasting will be conducted on the parcel, Councilor Davis wondered how the ground would be leveled without blasting and that was why she felt a leveling plan would be needed, to see how they are planning on leveling the land without blasting. Council President Landolfi questioned if that concern would be handled in development plan review. Town Planner Lamphere indicated that it could be but there were ways around that by the developer if they really wanted to do that. They could possibly level the land before they even came before the Planning Board and we wouldn't necessarily know this had happened. He believed that most solar developers were not going to want to alter the land any more than they had to and they generally follow the contour of the land. Town Planner Lamphere stated that the second paragraph would need to be reworked in tandem with the previous page and only applies in instances where the property is rezoned. Town Solicitor McAllister stated that when a developer develops a solar project they not only design the acreage upon which the solar panels will be sited but they also have to cut trees in additional areas to remove shading. Town Planner Lamphere stated that they could keep that number at 40% and then preface it by stating in

instances where the zone is changed from RFR-80 to commercial for solar purposes that they can't clear more than 40% for any reason, if they are going down to 15% coverage. Councilor Thompson advised that they will need to come up with some language that will correspond to the Farm Viability Ordinance and Town Planner Lamphere added that both ordinances need work. Councilor Capalbo suggested that this read: "Clearing of any existing vegetation on the subject parcel for the purposes of constructing, operating and maintaining a PSES shall be determined by the Planning Board review limited to a maximum of 40% of the total area of the parcel." Town Planner Lamphere advised that this would not work for commercial and manufacturing zones and he believed they would still have to preface it as they did on the previous page in instances where a zone is changed. Councilor Davis asked what the definition of "significant" was regarding paragraph two, the last sentence where it read: "The PSES and equipment shall not have a significant impact upon the soils, water resources, air quality..." There was discussion to change the word significant to adverse and Town Planner Lamphere added that if it read, "...shall not have a significant adverse impact..." but stated that they would have to look at these things on a case by case basis. Councilor Davis felt that they should hem these statements in more and Town Planner Lamphere felt that there were other aspects of the ordinance to prevent adverse impacts. Councilor Capalbo advised that she would like to see the Planning Board given more flexibility in order to give them more control and more room to make changes. Councilors Thompson and Capalbo agreed to add "significant adverse;" and Councilor Davis wished to have some way to quantify what "significant" is. Councilor Hirst stated that he felt the Planning Board should use the same language which is in the Town Charter regarding the health and welfare of the community. Councilor Davis asked, regarding page 6, the second paragraph, in the second to the last line where it states, "...granted by the Public Utility at the appropriate time, which is at the completion of..." to delete the words 'at the appropriate time, which is'. She also wished to know what is reasonable to expect. Councilor Capalbo answered that the public utility has to say that the project is feasible and also give them an assurance that they can tag into the line. They have to give permission and an

assurance that they will be able to go into the grid before they do any clearing. Regarding the paragraph entitled Tribal Cultural Impacts, Councilor Capalbo wished to have that whole paragraph taken out. She felt they were mixing up private and public lands and she did not want to allow the federal government on private property. Council President Landolfi agreed that this paragraph and the next one should be stricken. Councilor Thompson used development that was contemplated on Lawton Foster Road North as an example where they had found some ceremonial rocks. The Planning Board was in support of the protection of that area, as well as the person who was subdividing. Planning Board member Al DiOrio explained that the Planning Board required that this site be protected, though in all of his experience he has only encountered a few of these issues. They don't require tribal inspections in the subdivision regulations. He agreed with the striking of these paragraphs. Councilor Hirst wished to keep these paragraphs in but indicated that he was open to have them taken out when they had the final vote. It was agreed to strike these two paragraphs. On Page 7 (c), Councilor Thompson read the last sentence regarding the screening material being no less than six feet in height, and stated that she wished to add a sentence that stated that in addition the Planning Board may require understory plantings in the Planning Board's discretion. Councilor Capalbo indicated that the plantings would be in a gradiated pattern. They don't all come in six foot sizes; rhododendrons, mountain laurels, barberry and other landscape plants come in smaller sizes. She felt the Planning Board should have some flexibility to determine what that landscape would become. Councilor Davis argued that the Planning Board is the party who said they wanted six foot minimum plantings. Council President Landolfi stated that arborvitaes should be a minimum of six feet, but in between other plants could be less than six feet. Mr. DiOrio agreed that this should be left to the Planning Board to decide. Regarding Section D, at the end of No. 2, Councilor Capalbo asked to strike the last two words, 'if possible' and that was agreed by all. On Page 8, Section 2, Operation and Maintenance Plan, Councilor Davis suggested that this stated that the applicant provide a contact person and phone number for the public to contact with inquiries about the project; but what happens when the developer sells the project,

would they be given new contact information? Councilor Capalbo thought this should read that the applicant and/or its successors shall provide a contact name and phone number. Councilor Thompson advised that there are national companies that buy these projects and manage them. She also noted in that same sentence that it should be for the Town to contact the developer and not the public. In the third paragraph under No. 2 it was agreed to add, “...the owner and its successors of the PSES...” Council President Landolfi had a question regarding No. 3, Landscape Plan, and asked Mr. DiOrio if the landscapers had to be licensed. Mr. DiOrio stated that his prior comment had been addressed on Page 7, Section D, Planning Board Review, No. 1. The concern had been that they were seeing applications that had information represented on them that people were pulling out of thin air and no one was being responsible for it, which was inappropriate, but this has now been addressed. On Page 9, No. 5, Councilor Davis wished to have the estimated cost of removal of the facility be verified by the Town’s engineer. Councilor Capalbo stated that she believed the Planning Board did this regularly, but having it here in writing was not a bad idea. Councilor Capalbo wished to add to the end of that sentence, “as determined by the Planning Board’s consultant.” Also, in the last paragraph of Section 5, Councilor Davis did not like the word ‘drives’ and it was agreed to change that to ‘roads.’ On Page 10, letter F, Inspection/Enforcement, Councilor Thompson wished to add to the last line, “provisions of this Ordinance or any condition imposed by the Town, State or Federal agencies shall be deemed...”; and also, in the second paragraph, regarding the applicant being responsible for the cost of maintaining the PSES and any access road, for any damage occurring as a result of operation and construction, whether this included damage from a storm. Town Manager McGarry added that in addition to the Building/Zoning Official they should add the Town’s engineering consultant because sometimes this is beyond the scope of the Building Official. Regarding the top of Page 11 and penalties, Councilor Thompson asked to change the penalty amount to \$2,000. Council President Landolfi stated that a zoning violation penalty is \$500 per day and that is where that amount came from. Councilor Hirst added that he would be in favor of raising the penalty to \$2,000 a day. Town Solicitor McAllister stated that one

of the reasons the Zoning Ordinance violations are capped at \$500 is because that is the difference in criminal law between something that is a misdemeanor and something that is a felony. Those numbers are not random; they have a global significance in the law. He would be extremely uncomfortable going over the \$500 amount for he believes that is inviting a legal challenge and he did not believe anything over \$500 would be enforceable. Councilor Capalbo wished to stay with the \$500 penalty for in some instances it may not be their fault that they cannot comply. Councilor Hirst would like to strike the “not to exceed \$500” and just make it \$500 per day. Town Solicitor McAllister stated that the Municipal Court jurisdiction is capped at \$500 as well and these fines are something that are subject to appeals and judicial enforcement. He would be very uncomfortable striking the language “not to exceed” and is confident that the Municipal Court Judge would make the proper decision. Councilor Hirst stated that he would be okay with going with what the Town Solicitor suggested; however, stated that many people in town felt that the solar companies are taking advantage and he would like to see them kept on a very tight leash. Joseph Moreau stated that Hopkinton currently has a solar developer working on a project in our Town who had been cited in Cranston. According to the guidelines, he was supposed to clear cut no more than five acres and then plant barriers to retain the water. The developer went in and clear cut forty acres and caused a flooding issue. A \$500 fine to him is nothing. Mr. Moreau asked who was going to monitor these solar developers and assure they do the right thing; they could go in and blast and then say they were sorry, they didn’t realize they weren’t supposed to do that. Council President Landolfi stated there was an inspection process throughout the project of once a month so he didn’t believe this could happen and their fine is \$500 per day and anything over that would be a felony. Councilor Thompson stated that they could also issue a restraining order or cease and desist order. Councilor Capalbo went on to the next paragraph which read that the Town’s Engineer or designee shall inspect the PSES at the expense of the applicant on a monthly basis and suggested that be changed to a weekly basis during construction because a great deal can happen in a month. After completion, once a year in April would be fine. This was agreed to by all of the Councilors. There were no other

changes requested. Council President Landolfi asked if they should close the hearing or continue the hearing. Councilor Capalbo wished to continue the hearing. Councilor Thompson advised that if this hearing is not closed then other applications can be filed and they could vote no; however, they will still need to hear each application. Mr. Moreau indicated that there was a simple way to stop this and that was for the Planning Board to review the application, issue an adverse opinion and reject the project. It would thereafter go to the Town Council who could review it and reject it based on the fact that it is not consistent with the comprehensive plan. Council President Landolfi explained that it was not that simple. Carol Light asked if the meeting was closed now, and there was a disagreement on what the limitations were going to be, such as the three acres or 15%, what would happen. Councilor Thompson stated that this would get decided when they make their decision. Ms. Light stated that the public would have no opinion then because they would not be able to speak again. Councilor Thompson stated this was correct so they should speak tonight. Council President Landolfi announced that the public could now comment. Eric Bibler was first and stated that he believed the Comprehensive Plan was written to protect and preserve the rural character of the Town. He felt there was limited commercial space in town and it tends to be clustered around Hope Valley and around Exits 1 and 2. This PSES ordinance is for non-residential properties and these solar projects are for profit. This activity is strictly prohibited in RFR-80 parcels. The purpose of the ordinance is to promote the safe and effective use to regulate it and to provide standards of placement. Mr. Bibler stated that he believed the purpose of this ordinance reflected the sentiments that were in the Town Council workshop of two years ago, January 9, 2017, where the stated purpose of that workshop was to discuss options relative to commercial solar arrays on appropriate parcels of land zoned RFR-80; it was to discuss options including but not limited to possible application of planned unit development ordinance and other potential vehicles that the town might consider in facilitating developers and property owners considering the installation of commercial solar arrays on appropriate parcels of land zoned RFR-80 and there was a program that was prescribed, discussed and virtually agreed to by the Town Council wherein step 1

was to complete and adopt a solar ordinance to regulate commercial solar arrays on commercial and manufacturing zoned property. Step 1 went on to say that they were to determine the best way for the town to allow commercial solar farms in RFR-80 zones and after decommissioning to retain the RFR-80 designation and revert back to residential. That is the plan that was being reviewed this entire year. He felt there is a direct conflict between wanting to be a rural residential community and having that land zoned as an outright prohibition against commercial and industrial activity, and then trying to rezone it and make it commercial and industrial without reference to the comprehensive plan. Mr. Bibler stated that the Planning Board gave adverse opinions to the Town Council on numerous projects and the Town Council has ignored them. He does not support a 10% conversion but felt it should be a lot less such as 3% which is basically what the Farm Viability Ordinance suggests. He also felt that the decibel noise standard should not be based on some model because it is very easy to cheat and this should be applied not just in the beginning of the project but over time for projects may get noisier over time. He stated that the ordinance was a great idea, but the purpose of the ordinance will be to regulate these projects appropriately. You can't apply these regulations to projects that have already applied and submitted applications; however, the Town Council does not have to approve those projects. They do not have to state why they disapprove they can just say that the Planning Board did not approve them. When the projects come to the Town Council they should look at the Planning Board's recommendation and ask themselves if the Planning Board did it right and if not be able to state why they felt the Planning Board was wrong. Regarding the ordinance, Mr. Bibler hoped that the Town Council would consider 3%, for under Section 3 of the Town Charter there is a provision for referendum and initiative and they already have 513 people who have signed a petition and if this ordinance was to pass at a 10% ratio, he believes this group would be willing to knock on doors to obtain 5% of the electors in order to be able to rescind the ordinance and bring a new ordinance to the Town Council. Sherri Aharonian had a question regarding page 2, Section D, Applicability, where the second and third sentences read: "This ordinance applies to all PSES to be constructed after the effective date of this ordinance.

PSES constructed prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance.” Her question was regarding the word “constructed” because things that are in the hopper have not been constructed yet. Council President Landolfi stated that if they closed the hearing and made a decision, this ordinance would apply to anything that came into the Town Clerk’s Office thereafter. He felt the word “constructed” could be changed to projects submitted to the Town. Mr. DiOrio’s position was that if this ordinance was passed, it would apply to any project that has not been built for it says constructed. Town Solicitor McAllister stated that there is a general principal in the law that prohibits, on constitutional grounds, ex post facto laws. This means you cannot retroactively pass an ordinance that adversely affects someone that has already obtained some rights to develop a project by beginning the process with the Town, which usually starts with filing an application. He suggested that this provision may not be enforceable. Ms. Aharonian felt that projects that are under review have not been constructed. Council President Landolfi advised that any application that has already been filed in the Town Clerk’s Office has to be heard under the current guidelines. Councilor Thompson asked Town Solicitor McAllister to further review this matter and advise them of his opinion at the next hearing. Councilor Capalbo agreed that they need an opinion from the Town Solicitor and suggested they delete that sentence regarding constructed in its entirety if need be. Loren Petruska asked what Council President Landolfi’s intent was regarding that sentence and he stated that he was under the impression that anyone who submitted an application under the current guidelines would be under the current guidelines and that is why he believes they should close this hearing and set a date for a decision, so that nothing else can come in under the old guidelines. Ms. Petruska questioned the projects that had not been approved by the Town Council yet and were still in the hopper, asking why that language couldn’t be buttoned up so that this ordinance would apply to those, because some of these projects may not be approved. She also questioned what would happen to the decommissioning plans if these solar projects were sold and felt that one year was a long time for the project to remain abandoned; she felt if it remained abandoned for four months that should send up

some red flags. Also, who would be responsible if any of the residents have a problem with their well or if something happens in a hurricane or lightning strike; who is going to be monitoring those containments underneath; and, what happens if a spill doesn't go into a containment facility? Other towns are now having problems with these projects and have put moratoriums in place. Maybe Hopkinton should be doing the same. She asked if any of the Council members had contacted any of the other towns that had put moratoriums in place. Council President Landolfi asked if she had any proposed changes to the ordinance and she stated that she was frustrated because she had emailed the Council several times but had not heard back. It was stated by an audience member that she should speak at Public Forum; however, she indicated that she wished to have answers to her questions. Council President Landolfi asked her to call him and he would be happy to answer her questions. Ms. Petruska stated that on page 10, Abandonment, one year was a long time and believes that should be much less. Councilor Capalbo stated that if they needed to replace shields, that would take a while to do; possibly six months in order to allow for maintenance. Councilor Capalbo also stated that if the solar project sold, the regulations that had been put in place would run with the project. Ms. Petruska asked about cleaning of the panels and where would they get the amount of water that they would need; would they be drilling wells? Council President Landolfi stated that at the bottom of page 9 it stated that the applicant shall maintain the PSES in a neat, clean, operable condition at all times, ensuring the structural and technical integrity of the facility. All maintenance shall be performed in a timely manner. Maintenance shall include, but not be limited to, structural repairs and integrity of security measures. Councilor Thompson stated that if the applicant would need a well, this was something that the Planning Board would need to know. Ms. Petruska went on to state that the ordinance said no blasting and asked if jack-hammering would be allowed. Council President Landolfi stated that it didn't specify that so he thought it might be allowed. She also said that she had spoken with DEM who indicated that when those trucks are coming into the project there would be toxic fumes; how long would the developer have for the construction of the project? Councilor Thompson stated that this was outlined in the development

plan review process. Justin Bentley spoke next and stated that he was very happy with the details being put into the ordinance. On page 8, section 2 regarding the maintaining of records and contact information, he asked that they require a thirty day notification requirement for transfer contact information. He also questioned page 7 at the bottom regarding historic districts, he lives near the Tomaquag National Historic site and wondered what was envisioned by saving the view and he would like this clarified further. Councilor Thompson stated that this paragraph was for the town's one historic district which was in the city. Mr. Bentley asked if this could apply to national historic sites and asked what would constitute saving that view. Council President Landolfi reiterated that this section was only for the one historic district in town. Mr. Bentley asked if this section could be amended to include any national historic sites and Councilor Capalbo asked Town Planner Lamphere to look into adding something to that effect. An audience member spoke regarding page 9, section 5, Financial Security, he asked about the Town keeping the interest on the bond, but it was stated that this could not be done. Another audience member questioned what she called "page N", the unknown. She stated that every time they have these discussions with the people who want to build stuff something else comes up that no one anticipated and then they try to work back into it and fix the problem that they didn't know was coming. She did not want this ordinance rushed. The Council has ignored the comprehensive plan and the Planning Board in the past and they have rushed through and now they are stuck trying to amend this ordinance. Her concern is what they cannot anticipate. Deb O'Leary spoke about page 2, section D, Applicability. The sentence, "This ordinance applies to all PSES to be constructed after the effective date of this ordinance" has been here all along so why change it now? John Pennypacker spoke about the 'used to be language' that appears on page 5, section C (1); page 4, section 13 and stated in instances where a parcel is to be rezoned from residential to commercial or manufacturing (commercial special), if a project is decommissioned and another party wants to buy that property and Councilor Capalbo advised him that the conditions on the property would continue. Marty Sheldon asked about the percentage of lot coverage and was it 3%, 10% or 15% as it pertains to 100 acres. Councilor

Thompson indicated that she would be okay with 3% or something similar to the Farm Viability Ordinance. Councilor Hirst wished 3% and stated that his goal was to help farmers and large landowners keep their properties. Mr. Sheldon also stated regarding page 6 and tribal cultural aspects, there are Indian shelter rocks on an approved project and this should be checked and if they strike that clause from the ordinance then this would not come into play. Council President Landolfi stated that this was private land and they would be opening up repercussions for the town. He indicated that he is waiting to hear more from Mr. Brown. This language could be revisited but the Planning Board supports striking it. An audience member questioned Page 4, section 12 regarding exposure to radiation. She stated that one of her concerns has been high tension power lines and she wondered if this would fall into that category and if something could be added about them. She has read that they should not be within 700 feet of a residence. Also page 5 where they mention blasting she wished the Council to add that hydraulic hammers can't be used either. Council President Landolfi stated that they are putting metal posts in the ground and they cannot do that by hand. It was discussed by the Councilors and decided to possibly include language for no blasting and no hydraulic hammers. She went on to state that on page 5 at the bottom where it states that the applicant will submit an Environmental Impact Statement; she felt those were not objective. She asked that the Planning Board select who submits environmental impact reports. Councilor Capalbo responded that the Planning Board dealt with these matters. Another audience member stated that she was primarily concerned with page 4, section 13, and she felt very strongly that this should reflect something similar to the Farm Viability Ordinance such as the lesser of 3% or three acres. Also on page 6, the Tribal Cultural Impact, she felt that if they make the percentage a smaller amount than this would not be as important. Ms. Aharonian questioned page 3, section 9, which she read and she also read a statement that she had prepared in that regard: "If a utility scale industrial power plant project is to require six or more months of construction, as noted by the developer or extrapolated by the town based on other projects, then notification to all abutters and residents within five hundred feet shall be given in the form of formal written

notification of the possible disruptions, disturbances, as well as potential hazards that could occur to their home, property and animals, if applicable, as a result of said construction to install this industrial sized solar array. Any and all concerns by those receiving a formal notice shall be resolved in a public hearing format to insure all concerns, safety, health and well-being of residents as stated in the comprehensive plan are addressed to their satisfaction prior to the start of any construction.” It was asked that Ms. Aharonian provide her written statement to the Town Clerk so it could be distributed to the Council and Town Planner. John Pennypacker recapped the allotments under the Farm Viability Ordinance, stating that a fifteen acre farm is allowed one acre of solar so there would be a tangible benefit to subdivide any one hundred acre property into six lots because then they could get six acres. Council President Landolfi asked for a motion to either continue the hearing or close it.

A motion was made by Councilor Thompson to close the hearing and set a date for a decision. There was no second to the motion.

A motion was made by Councilor Capalbo to continue the hearing. There was no second to the motion.

A motion was made by Councilor Thompson to close the hearing and set a date for the decision. Councilor Hirst seconded Councilor Thompson’s motion for discussion. Councilor Capalbo stated that they had changed almost every single page and she wished to see these changes in writing before they closed the hearing and was against the motion on the floor. Councilor Hirst asked the Solicitor whether an extra two weeks or month was going to impact them that much for he is concerned about the risk and this would determine his vote. Town Solicitor McAllister replied that every day that passes without this ordinance being passed runs the risk of having another new solar project submitted. It is his opinion that once an application is filed and accepted with the town, any change in any ordinances which may have applied or affected that project will not be able to apply to it. The developer’s rights have vested at that time. He stated that the

longer it takes to pass an ordinance; there is an increased probability that more and more applications are going to be filed with the Town that this ordinance will not apply to. Councilor Hirst wished to support Councilor Capalbo's motion. Discussion ended and the Council proceeded to vote on the motion on the table:

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR HIRST TO CLOSE THE HEARING AND SET A DATE FOR A DECISION.

IN FAVOR: Thompson, Landolfi

OPPOSED: Hirst, Capalbo, Davis

**MOTION FAILED**

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR DAVIS TO CONTINUE THE HEARING AND SET A DATE FOR JANUARY 7, 2019.

IN FAVOR: Hirst, Capalbo, Davis

OPPOSED: Landolfi, Thompson

**MOTION CARRIED**

**PUBLIC FORUM**

No one spoke during the second public forum.

**ADJOURNMENT**

A MOTION WAS MADE BY COUNCILOR HIRST AND SECONDED BY COUNCILOR THOMPSON TO ADJOURN.

**SO VOTED**

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Breault

Deputy Town Clerk