

State of Rhode Island

County of Washington

In Hopkinton on the fourteenth day of January 2019 A.D. the said meeting was called to order by Town Council President Frank Landolfi at 6:30 P.M. in the Chariho Middle School Auditorium, 455B Switch Road, Wood River Jct., RI 02894.

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.

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR CAPALBO TO MOVE UP THE SECOND HEARING MATTER TO THE FRONT OF THE AGENDA AND ADDRESS THE PSES ORDINANCE AMENDMENT SECOND.

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

OPPOSED: None

SO VOTED

HEARINGS:

2. PETITIONS FOR COMPREHENSIVE PLAN AND ZONING AMENDMENTS

Council President Landolfi reported receiving a request from the applicant's lawyer, Attorney Robert Craven for a continuance on the following matter:

A hearing to consider an amendment to the Hopkinton Zoning Ordinance and the Hopkinton Comprehensive Plan Future Land Use Map filed by Atlantic Solar LLC, 260 West Exchange Street, Providence, RI 02903 and Atlantic Control Systems, Inc., 318 Dry Bridge Road, North Kingstown, RI, RI 02903, the land owner for property located at 0 Main Street identified as Plat 7, Lot 32; Plat 10, Lot 87 and Plat 11, Lot 35 an RFR-80 Zone. The applicants propose to install a ground-mounted photovoltaic solar array on the existing 29.7 acre property listed as Assessor's Plat 7, Lot 32; Plat 10, Lot 87 and Plat 11, Lot 35 to construct a

ground mounted Solar array on the property. The proposal to utilize the property will require approval of the proposed Comprehensive Plan Future Land Use Map Amendment from RFR-80 to Commercial Special and a Zoning Map Amendment from RFR-80 to Commercial Special.

The applicant was not present nor was there a representative present. Town Clerk Elizabeth Cook-Martin reported she had attempted to determine availability of the Chariho Middle School Auditorium on various dates: March 25, April 1, 15, 22 & 29, 2019 but had not yet received confirmation at this point. The Town Council selected Monday, April 15, 2019 at 7:00 PM at the Chariho Middle School auditorium.

A MOTION WAS MADE BY COUNCILOR THOMPSON AND SECONDED BY COUNCILOR CAPALBO TO CONTINUE THE HEARING TO APRIL 15, 2019 AT 7:00 PM AT THE CHARIHO MIDDLE SCHOOL AUDITORIUM.

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

OPPOSED: None

SO VOTED

1. 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.

Council President Landolfi stated that they would go through the latest version of the ordinance page by page. There were no comments regarding pages 1 and 2. Regarding Page 3, No. 3, Councilor Thompson discussed the last sentence which read in part, “the Planning Board may approve of a vegetative buffer to be used to prevent unauthorized access.” She did not believe a vegetative buffer could be used to prevent access. Councilor Capalbo thought that the intent of that sentence was to allow for further screening and it was decided to leave this language as is. Councilor Thompson advised that there was a very similar sentence on Page 7,

No. 2(c). Thereafter, Page 4, No. 13 was discussed. Councilor Davis suggested alternate language which read: “13. Solar panels and all associated equipment are considered structures. The entirety of all structures and associated equipment constituting the PSES shall cover no more than 75% of Commercial and Manufacturing zoned parcels. If the parcel is zoned RFR-80, and the applicant is seeking to rezone the parcel, the maximum requested coverage shall be the lessor of 3% or 3 acres. For purposes of a PSES, lot coverage includes all of the land area upon which all structures and associated equipment are placed, including all of the land lying directly below the solar panels and associated equipment, as well as the interstitial spaces between the solar panels, and all of the land enclosed by any perimeter fencing. RFR-80 rezone requests are not guaranteed approval. During the pre-application phase of Development Plan Review, the Planning Board reserves the right to not recommend approval or to adjust the allowable coverage percentage based upon the unique characteristics of the parcel and in a manner that is consistent with the Town’s Comprehensive Plan, with the intent to balance environmental and aesthetic concerns, as well as the rights of the property owner to develop the parcel.” Councilor Thompson suggested the word “shall” should be changed to “may” regarding the maximum requested coverage. Councilor Capalbo felt that they should not allow any solar on RFR-80 properties by right in any size. She cited Murphy’s law and the unintended consequences which could occur and wished to see 0% by right on RFR-80 parcels. Councilor Thompson felt that property owners had the right to ask for a rezone but the Council did not have to approve that request. Councilor Capalbo argued that if you pass some and don’t pass others it would be arbitrary, subjective and capricious. Council President Landolfi indicated that he had not had enough time to review Councilor Davis’ proposed change and stated that there was also a second alternative. Councilor Davis read her second alternate language, “13. Solar panels and all associated equipment are considered structures. The entirety of all structures and associated equipment constituting the PSES shall cover no more than 75% of Commercial and Manufacturing zoned parcels. For purposes of a PSES, lot coverage includes all of the land area upon which all structures and associated equipment are placed, including all of the land lying directly below the

solar panels and associated equipment, as well as the interstitial spaces between the solar panels, and all of the land enclosed by any perimeter fencing. During the pre-application phase of Development Plan Review, the Planning Board reserves the right to adjust the allowable coverage percentage based upon the unique characteristics of the parcel and in a manner that is consistent with the Town's Comprehensive Plan, with the intent to balance environmental and aesthetic concerns, as well as the rights of the property owner to develop the parcel. Rezoning of an RFR-80 parcel to Commercial is not allowed." Solicitor McAllister addressed the last sentence in Councilor Davis' second alternative by stating that from a legal perspective to remove someone's right to petition the Town Council for a zone change would be unconstitutional and the last sentence would need to be stricken. Councilor Davis argued that the reason she put this in was because the title of the ordinance is "Non-Residential." Solicitor McAllister agreed that was the intent of the ordinance, but if they put that last sentence in it would be unconstitutional. Councilor Capalbo stated that solar was not allowed at all in an R-1 zone. Councilor Davis advised that Chapter 232, Appendix A of the zoning ordinance, with table; specifically, line 486 entitled Photovoltaic Solar Energy System is not permitted in R-1, RFR-80 or NB (neighborhood business) zones and is allowed in Commercial, Manufacturing, Aquifer primary and overlay districts. Council President Landolfi and Councilor Thompson agreed that they liked Councilor Davis' first amendment regarding 3% or three acres which will let people know that the Town does not want to see large scale solar projects. Councilor Hirst indicated that he thought 3% was a percentage that should apply to all sized lots and was more flexible. His concern was about all the changes; he did want to close the hearing at the last meeting and he asked for input from Al DiOrio of the Planning Board as to the wording of No. 13. Council President Landolfi asked if Councilor Davis' first proposal was by right. Solicitor McAllister advised that was correct and cautioned if the Council were to adopt Councilor Davis' first proposal with the last sentence stricken, that would preclude the Council from addressing certain areas, such as the Turrisi gravel site which had been a unanimous vote by the Town Council and which all abutters supported. There are other situations that may need the Town Council's

flexibility such as a dump or a capped landfill which may be in an RFR-80 zone and which there is no other productive use for that property. If they use such broad language, they eliminate any possibility of using a site for a solar project which may actually be the best thing for that property. Councilor Davis' second proposal, with the last sentence stricken, which is similar to what Councilor Capalbo was suggesting, would be the cleanest way to do this. There were no changes to Page 5. Eric Bibler asked Council President Landolfi to read the paragraph that they were accepting regarding Page 4, No. 13 and Council President Landolfi read Councilor Davis' first proposal. On Page 6, Councilor Davis stated that in the second paragraph she would have suggested changing the 40% if they had gone with her first alternate language for No. 13 on Page 4. Councilor Thompson felt 40% was too high. Also in the paragraph which read, "Clearing existing vegetation..." there needed to be a period at the end. Pages 7, 8, 9 and 10 were fine. Councilor Capalbo stated that on Page 11, No. 4(a) at the end where it states, "...grade foundations, transmission lines, and other..." she would like it to say transmission lines and distribution lines. Council President Landolfi asked for the public to comment on the proposed changes. Mr. Bibler stated that he was confused by some of the comments and wished some clarification, one being that solar installations are allowed by right on RFR-80 parcels. He stated that PSES installations are a prohibited use on RFR-80 land. Mr. Bibler stated that he personally does not like the way this PSES Ordinance was approached. He was encouraged by the reduced use percentage of the lesser of 3% or three acres because he thought that showed the Council's mindset and was setting out their expectations. Now if they eliminate that, they are right back to where they originally started and applicants are at the discretion of the Town Council. Different Councils have different opinions about what are good projects and what are bad projects. What is discouraging to him is that the Planning Board has disapproved the past five petitions, but that hasn't prevented the Town Council from entertaining them and the Town Council does not have a history of deferring to the judgment of the Planning Board. Mr. Bibler stated that before the meeting he had stopped by the Town Clerk's Office and there had been five new applications filed applying for rezones of RFR-80 zones to Commercial for solar

arrays. Mr. Bibler indicated that he felt that if the intent of this ordinance was to communicate to applicants that the Town Council is not going to embrace these projects on a case by case basis, he didn't feel they had done that. He stated that there was a suggestion from the Planner's Office that another way they could effectuate this would be to have a change to the District Use Table. The Council could simply vote to make these ground-mounted commercial solar arrays a prohibited use in commercial or manufacturing districts and just prohibit them in the Town, but what is happening now, because they are allowed in certain zones, is that developers are coming and petitioning for a reclassification or a change to another category so the PSES will be permitted. Mr. Bibler acknowledged that the Town Council had to hear these petitions and he felt that they should either agree or disagree with the Planning Board's recommendations. Council President Landolfi agreed with Mr. Bibler; however, felt that to restrict a by-right property would be a mistake. Councilor Hirst stated that he was prejudiced against big solar and the only solar he would consider is if it promotes the intent of the spirit of an RFR-80 zone, such as a farmer, to reduce their taxes so they can maintain their farm. He stated that he would like to see the revised ordinance again before the hearing is closed. Councilor Thompson agreed with Mr. Bibler and she would like to see the ordinance state the lesser of 3% or three acres. Ed Carapezza addressed the Council stating that he is a large property owner in Town and has been for over fifty years, with his property having over a half mile of road frontage and a side line of over a mile. For over fifty years he has kept his property undeveloped, though he has been approached by many developers who wished to purchase his property for various uses. He was happy to see solar come into Town for he believed it provided capital flow. A tentative proposal that he received from a solar company had all the numbers on it and indicated that the Town would receive \$2.6 Million in tax revenue for a modest sized solar array over the life of the project. He asked that the Council reflect on the positive aspects of a modest sized solar array and they should also be discussing financial aspects. He felt the Council should not restrict someone who owns 200 acres from using 30 acres in the back of the property where nobody would ever see it; he questioned why he should be restricted as a taxpayer who has paid property

taxes in the Town for fifty years, from making a buck, as well as the Town making a buck. He believed that if someone owned a large parcel of land and wanted to use 20% or less in an inconspicuous area than that would be modest. Mr. Carapezza stated that if someone wanted to put a solar array right next to his house and he had to look at these panels, then he probably would be complaining as well, but in cases where they can develop a modest solar array that nobody sees, the Council should consider that. Mr. Carapezza advised that he had spoken with Planning Board member, Al DiOrio, and Town Planner Lamphere, and asked what reasonable was; what would the Planning Board be saying about a modest sized project on his property. He went on to state that he has paid a lawyer several thousand dollars to review the solar leases. He asked the Town Council to do a cost/benefit analysis and come up with a reasonable approach. He believes the Town would be better off having the large landowners being able to put small to moderate sized solar in areas that people were not going to see and that are environmentally good and have good water management. They should make the ordinance flexible enough to allow solar in these situations for overall he believes solar is good. Councilor Hirst commented that if the Planning Board approved a project unanimously or by a majority, he would consider their recommendations. Mr. Bibler sympathized with Mr. Carapezza's concerns but stated that the issue in front of them was that there is a Comprehensive Plan with different zoning classifications and there are various permitted uses allowed in those classifications. There is no presumptive right for anyone to rezone their property so there can be different uses allowed. There are going to be hundreds of people who are dissatisfied. Mr. Bibler went on to state that if there are a certain number of people who think there is a disconnect between what they want and what their elected representatives are doing on their behalf, then they can have a referendum to rescind an ordinance that is enacted or propose a new ordinance to be enacted and this takes 5% of voters to force the Town Council to reconsider and 10% to put this up for an election and send this back to the voters. Councilor Thompson asked Mr. Bibler which of Councilor Davis' proposals he preferred. He stated that the first paragraph is imperfect, the lesser of 3% or three acres but he did prefer that language. Jack Yates indicated that he owned Plat 83 and from the

proposal that he had seen, all he will see from his back yard are solar panels. He asked who owned Plat 33. Council President Landolfi told Mr. Yates that they were only discussing the amendment to the solar ordinance and they were not speaking about specific projects. Mr. Bibler stated that Mr. Yates was a property owner near the Atlantic Solar proposed project. Marnie McNamara commented about the taking down of thousands of trees and destroying all of the habitats that residents have been nurturing for years. She argued that people have spent hours and hours of their time preparing the Comprehensive Plan and they had already decided what they wanted the Town to be. She felt that it wasn't fair for the Council to be able to change their whole livelihood and they shouldn't allow re-zoning to occur; they can't now change the rules. Louann McCormack of Lisa Lane questioned if it would be the lesser of 3% or three acres and Council President Landolfi indicated that was correct. She indicated that she had thought she heard that this amount could potentially be waived based on how the Town Council felt about a specific project, and she felt that this was a slippery slope. Councilor Davis indicated that this was why they took that statement out of the ordinance. Council President Landolfi re-read the first alternate language prepared by Councilor Davis. Mr. Bibler indicated that the last sentence stated that the Planning Board reserves the right to change the percentage based upon the unique characteristics of the property. The Planning Board is the author of the Comprehensive Plan and their mission is about the accountability to the Comprehensive Plan; he felt this was great construction and believed it offered the Town Council the latitude to allow the Planning Board to make a recommendation to them, such as if there was a gravel pit and there should be greater coverage allowed. Councilor Thompson reiterated that the word "shall" should be changed to "will" and Councilor Capalbo agreed. Mr. Carapezza stated that he liked the wording in the July 2018 version of the ordinance, that Planning Board member Al DiOrio had come up with about 30% being allowed and the Planning Board would be allowed the ability to adjust for different circumstances. He felt that the Planning Board was going to look at the project proposed and the property and they were going to pick a percentage that would make sense. He did not want to see a 3% restraint. Mr. DiOrio wished to be clear on the sequence of

events: an applicant comes to the Town Council requesting a zone change, goes to the Planning Board for an advisory opinion and then goes back to the Town Council for action. Without any pre-application before the Planning Board, only after the rezone is granted, the Planning Board will not be able to offer the Town Council any guidance until after the Town Council decides whether or not they will rezone the property. He was very concerned about this and felt something was out of step. Councilor Thompson indicated that they should take out the language, “During the pre-application phase of Development Plan Review,…” Solicitor McAllister stated that Mr. DiOrio was correct about the meeting process. The whole process begins when someone files an application for a zone change. Pursuant to R.I.G.L. 45-24-51 and 45-24-52 it states that after the filing of that application, within 45 days after receipt, the Planning Board has a public hearing and makes a recommendation to the Town Council on whether or not they should approve the application. The next step in the process is for the Council to consider whether or not they should approve the zone change and whether or not it is consistent with the Comprehensive Plan. If the zone is changed to allow this then it will go back to the Planning Board for master plan approval and subdivision plan approval at which point the Planning Board gets to decide how this project is constructed. Councilor Davis’ language only will apply after the Council has agreed to change the zone. He feels the first alternate language is okay as long as the Council understands that it has to make a decision regarding the zone change first. Council President Landolfi stated that he would like to put language in there that made sense to the Planning Board and asked for suggestions. Mr. Bibler indicated that he liked the second version if they would add the lesser of 3% or three acres to it and stated that based on if there was an instance of special and unique characteristics of the property the Planning Board could give the Town Council the explicit latitude to consider the recommendation from the Planning Board based upon the special characteristics of the property. He stated that they cannot give the Planning Board any rights to dictate anything because they are not a legislative body, but they can give the Town Council the explicit latitude to consider the recommendation from the Planning Board. Council President Landolfi stated that he felt this is just Planning Board

procedure. Mr. Bibler stated that his view was that if the Planning Board was making a recommendation to the Council that they considered something a special circumstance, then that would work, but in the past this hasn't worked. Mr. DiOrio wished to just have the procedure correct and indicated that he personally liked the first paragraph, for this boxed the project in at a specific number. The Planning Board would have the ability to move the coverage amount up or down but it would be based on the applicant proving that they have a unique set of circumstances. Town Planner Lamphere stated that if it was the intent of the Council to leave in 3% or three acres in cases where property is rezoned, they should give the Planning Board some latitude to give the Council an opinion. Mr. Lamphere suggested that they write into the ordinance that all PSES applications will be first submitted to the Planning Board as a major land development project. The first step of that would be a pre-application meeting and the second step is master plan approval and the Planning Board can provide a conditional master plan approval with a recommended coverage rate for the particular project. Thereafter, the application would go to the Town Council to see if they will take the advice of the Planning Board. Development Plan Review is used on the small farm projects. Councilor Capalbo confirmed the language suggested by Town Planner Lamphere and indicated that they would not have to keep in any percentages; they would review the Planning Board's recommendation. Councilor Thompson believed this section was getting a little too complicated and she just wished the change of "shall" to "may". She believed it gave the Planning Board the right to adjust the coverage after the property was rezoned. Mr. Bibler stated that this would make the applicant feel that he could propose a large project. Mr. DiOrio still had a concern in that the application would be inconsistent with the comprehensive plan; how were they to assist the applicant to navigate the master plan process. He thought they should go with Councilor Thompson's suggestion. Town Planner Lamphere stated that if a project goes to the Planning Board and the Planning Board does not like it, then it should have gone to the Town Council first for rezone approval or rejection. If the project went first to the Planning Board then the Planning Board could decide if there were unique characteristics of the property to allow for a larger coverage.

Councilor Thompson explained that development plan review was complicated. Ms. McNamara asked about State and Department of Environmental Management approval of the wetlands and Councilor Thompson indicated that the Planning Board would require that if there was a zone change approved. Council President Landolfi re-read proposed No. 13 once again. Mr. Carapezza questioned if he had a large piece of property abutting commercial property, and he wanted to submit an application for 30 acres, would he go to the Town Council first and ask for a rezone of that property or would he go to the Planning Board first because the Planning Board has the discretion to increase the 3% which he felt was ridiculous. It was stated that he would go to the Planning Board first. He believed that developers did not want to spend money to go through the process if they were not going to be making enough money to make it worth their while. Jason Tefft of 33 Fenner Hill Road and Dye Hill Road indicated that everyone wants to know why solar is being presented in this town and it is because there are a lot of large pieces of land. The town should be proud that people have been able to hold onto their land. He wondered how many people opposing solar are large landowners. He believed these opponents were trying to take the property rights away from large landowners. He noted farming is not viable anymore. If they do not allow solar to come in, then he believes houses will. He suggested that all of the farmers putting solar on their properties were over the age of 60 and were of retirement age; they do not want to farm anymore for there is no money in farming. Mr. Tefft asked how many people attended the school budget hearing because the school budget is why the Town pays so much in taxes; however, barely anyone went to that meeting. He wished to know where the Town was going to get its revenue and he believed it would be from taxes.

A MOTION WAS MADE BY COUNCILOR CAPALBO AND SECONDED BY COUNCILOR DAVIS TO CLOSE THE HEARING AND SET JANUARY 22, 2019 AS THE DATE FOR A DECISION.

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

OPPOSED: None

SO VOTED

ADJOURNMENT

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

SO VOTED

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Breault

Deputy Town Clerk