

**TOWN OF HOPKINTON  
PLANNING BOARD**

**Wednesday, February 5, 2020  
7:00 p.m.  
Hopkinton Town Hall  
1 Town House Road, Hopkinton, RI 02833**

**CALL TO ORDER:**

Chairman Alfred DiOrio called the February 5, 2020 Hopkinton Planning Board meeting to order at 7:00 p.m.

**MEMBERS PRESENT:**

Chairman Alfred DiOrio, Carolyn Light, Emily Shumchenia (Planning Board Alternate), Ronald Prellwitz, and Keith Lindelow were present.

Also present were: John Pennypacker, Hopkinton Conservation Commission Liaison; Sharon Davis, Hopkinton Town Council Liaison; James Lamphere, Hopkinton Town Planner; Attorney Sean Clough in place of Kevin McAllister, Hopkinton Town Solicitor; and Talia Jalette, Hopkinton Senior Planning Clerk.

Vice Chair Amy Williams was absent.

**APPROVAL OF MINUTES:**

CAROLYN LIGHT RECOMMENDED A REVISION TO THE MINUTES, AS AMY WILLIAMS WAS NOT LISTED AS PRESENT IN THE DECEMBER 4, 2019 MINUTES. AL DIORIO REQUESTED THAT THE MINUTES BE AMENDED TO REFLECT THAT SHE WAS IN ATTENDANCE.

A MOTION WAS MADE BY KEITH LINDELOW AND SECONDED BY RON PRELLWITZ TO APPROVE THE MINUTES FROM THE DECEMBER 4, 2020 MEETING.

IN FAVOR: DIORIO, LIGHT, SHUMCHENIA, PRELLWITZ, LINDELOW  
ABSTAIN: NONE  
OPPOSED: NONE

SO VOTED.

**OLD BUSINESS:**

None.

## **NEW BUSINESS:**

### **Administrative Subdivision – Fenner Hill Golf, LLC Planned Unit Development District – AP 15, Lots 8 & 9, 1 Wheeler Lane & 33 Wheeler Lane, The Residences at Fenner Hill Condominium Association & Fenner Hill Country Club, LLC, applicants.**

Jeff Caffrey, an attorney with the firm of Resnick and Caffery, 300 Centerville Rd., Warwick, Rhode Island, appeared before the Board on behalf of the applicant, Fenner Hill Golf, LLC.

Mr. Caffrey: “As you indicated, this is an administrative subdivision for property between Fenner Hill Golf Course and the Residences at Fenner Hill. Quite simply, what we are looking to do is to restore 15 acres to the area of the golf course. That was the area that was originally designated for Phase II of the Residences at Fenner Hill, scheduled to have developed roughly about 40 units on that Phase. Basically, what we would like to do now would be to incorporate that into the golf course, so the golf course can have some unobstructed use of their area. Some of this involves the parking area, some of the practice area has been gradually encroaching upon the land of the condominium, so we would just like to restore that back to the golf course.

James Lamphere, Town Planner, stated that while his office was usually responsible for handling administrative subdivisions in-house, he wanted to bring this application before the Board as it dealt with a Planned Unit Development (PUD).

Mr. Lamphere: “Something of this nature, I would normally do myself in the office, but because this is part of a Planned Unit Development, for both Lots 8 and 9, and a Planned Unit Development is something that the Planning Board develops in conjunction with the Town Council – the Town Council actually changes the zone on this land to Planned Unit Development, and so because, of that nature, and the fact that 26 units would no longer be built, I just wanted the Planning Board to take a look at it and see if you are on board with something like that.

Al DiOrio inquired into whether the Board “was entitled to act on this without the benefit of Town Council input.” Attorney Sean Clough stated that the Board was within their rights to do so. Carolyn Light, who stated that she was unfamiliar with the project, asked Mr. Caffrey to delineate the remaining residential development phases. Mr. Caffrey explained that there are another 16 units sited for development in Phase I of the Residences at Fenner Hill. Had the applicant decided to proceed with Phase II, construction on the units would have taken place after the conclusion of construction for Phase I.

Ron Prellwitz asked Mr. Caffrey to provide more information about timeline for the construction of the remaining 16 units. He explained that four of the 16 units remaining in Phase I were currently under construction. Mr. Caffrey also stated that there were 16 other units, beyond the final 16 units in Phase I, sited for additional development, which the developer had allowed to expire, but may, or may not, seek to reinstate.

Emily Shumchenia asked Mr. Caffrey to elaborate on the scope of future operations that the applicant envisioned for the land in question. Mr. Caffrey responded that the applicant did not have any intention of developing the land, and the applicant had, in fact, entered into an agreement with the Unit Owners' Association that the "land would not be developed by us, the only caveat being that if we felt it necessary to expand upon any of the golf operations, that we would have the ability to do so." He suggested some potential uses for the property that would remain within the scope of its original use, like putting some practice areas down, or expanding the parking area for the golf course, "depending upon the needs of the golf course." Mr. Caffrey stated that, at this stage, there was nothing that was being proposed for the property.

Keith Lindelow asked Mr. Lamphere if the improvements that could be made in the future to the parcel would go before the Planning Department, or if their vote would "greenlighting him [the applicant] for anything he can do on that property". Mr. Lamphere explained that the applicant would have to seek building permits, but that the applicant would be able to do "anything in conjunction with the golf course operations", like the creation of accessory buildings.

John Pennypacker asked if the administrative subdivision requested by the applicant would change the uses accepted on the property, or if they were just changing the boundaries between the lots. Mr. Lamphere explained that the subdivision would just change the lot lines, not the uses applicable to the property.

MS. SHUMCHENIA MADE A MOTION TO APPROVE THE ADMINISTRATIVE SUBDIVISION AT FENNER HILL GOLF, LLC, PLANNED UNIT DEVELOPMENT DISTRICT, CONTINGENT ON THE FACT THAT EACH SUBDIVISION IS CONSISTENT WITH THE REQUIREMENTS OF THE HOPKINTON COMPREHENSIVE COMMUNITY PLAN, AND SHALL SATISFACTORALY ADDRESS THE ISSUES WHERE THERE MAY BE INCONSISTENCIES, THAT EACH LOT IN THE SUBDIVISION SHALL CONFORM TO THE STANDARDS AND PROVISIONS OF THE HOPKINTON ZONING ORDINANCE, THAT THERE WILL BE NO SIGNIFICANT, NEGATIVE ENVIRONMENTAL IMPACTS FOR THE PROPOSED DEVELOPMENT AS SHOWN ON THE FINAL PLAN, AND WITH ALL REQUIRED CONDITIONS OF APPROVAL, THAT THE SUBDIVISION AS PROPOSED WILL NOT RESULT IN THE CREATION OF INDIVIDUAL LOTS WITH SUCH PHYSICAL CONSTRAINTS TO DEVELOPMENT THAT BUILDING ON THOSE LOTS, ACCORDING TO PERTINENT REGULATIONS AND BUILDING STANDARDS, WOULD BE IMPRACTICABLE, THAT ALL PROPOSED LAND DEVELOPMENTS AND ALL SUBDIVISION LOTS SHALL HAVE ADEQUATE AND PERMANENT LEGAL ACCESS TO A PUBLIC STREET, THAT EACH SUBDIVISION SHALL PROVIDE FOR SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR TRAFFIC, FOR SURFACE WATER RUN-OFF CONTROL, FOR SUITABLE BUILDING SITES, AND FOR THE PRESERVATION OF NATURAL, HISTORICAL, OR CULTURAL FEATURES THAT CONTRIBUTE TO THE ATTRACTIVENESS OF THE COMMUNITY, AND, FINALLY, THAT THE DESIGN AND LOCATION OF STREETS, BUILDINGS, LOTS, AND UTILITIES,

DRAINAGE IMPROVEMENTS, AND OTHER IMPROVEMENTS IN EACH SUBDIVISION SHALL MINIMIZE FLOODING AND SOIL EROSION.  
MR. PRELLWITZ SECONDED THE MOTION.  
MR. DIORIO, MR. PRELLWITZ, MR. LINDELOW, MS. LIGHT, AND MS. SHUMCHENIA APPROVED.  
MOTION PASSED 5-0.

**Pre-Application – Major Land Development Project – Fairview Estates – AP 18, Lot 7K, 66 Fairview Avenue, Shoreline Properties, Inc., applicant.**

Mr. DiOrio began by explaining what a pre-application entails.

Mr. DiOrio: “We have several pre-applications before us this evening. This is the first of two. But before we get started on this particular application, I’d like to read to you the definition of a pre-application meeting so that there’s no confusion as we delve into both this application and, perhaps, more importantly, the second. So bear with me, please, while I read a paragraph. [Mr. DiOrio begins reading] The pre-application meeting is the initial stage of land development and subdivision review, in which proposals are discussed informally, and receive comments and direction from the municipal official. Pre-application meetings shall aim to encourage information sharing and discussion of project concepts among participants. Pre-application meetings should include a review of the physical character of the land and any environmental or physical constraints to development. The meeting should include a discussion, initiated by the Planning Board, regarding what form of land development may be appropriate to meet the goals and policies in the Comprehensive Plan with regards to preserving the character of the land, the natural environment, and the ability of the Town to provide essential services. Pre-application discussions are intended for the guidance of the applicant. It shall not be considered approval of the project, or any of its elements. No formal action need be taken by the Planning Board at the pre-application meeting.”

Patrick Freeman, of American Engineering, the principal engineer for the proposed project, appeared before the Board to represent the applicant, Shoreline Properties, Inc. Their application proposed a four lot, major subdivision on the easterly side of Fairview Avenue. There is an existing duplex on the property and an existing well. There are also wetlands on the lot, as well as a pond. Mr. Freeman stated that instead of using a conventional yield plan, they would be proposing a cluster development. He then explained the kinds of structures the applicant would like to construct on the new lots created by the project.

Mr. Freeman: “We are proposing a cluster development, which uses smaller lots, has more open space overall, and will, overall, have less impact on the site. It would also have two duplex units, one existing, one proposed, [and] two single family residentials. The single family residentials require a lot area of 40,000 sq. ft.; the duplexes are 70,000 sq. ft. We have minimized the lot areas to try to keep the disturbance from the front of the lot to the areas in the back. We have provided double the open space that’s required. With that in mind, we also are requesting to reduce the open space buffers on the southerly

portion of the lot, and the northerly portion of the lot so we can keep all of those lots towards the front. It's the reduction down to thirty-two hundred. We have the drainage conditions in the front, in the westerly portion of the lot, as well as the easterly portion of the lot, through the ridgeline, it's what's the drainage."

Mr. Prellwitz asked for greater clarification on what a cluster development entails, as he considered it to be a "gray area" in his mind. He was concerned about the legality of having a cluster development within the zone in question. Mr. Lamphere responded.

Mr. Lamphere: "The provisions for cluster subdivisions are a part of the zoning ordinance. It's a special type of development, that has smaller lot sizes. It's a trade-off between a shorter road, which is better for the Town, and less expensive for the developer to do. They get smaller lot sizes; open space is a part of it. In other words, a cluster subdivision doesn't – it has different standards than a conventional subdivision from our zoning ordinance, if it was done, you know, RFR-80-wise. So the lots do not have to be, they don't have to be 80,000 sq. ft. in a cluster. There's all special provisions for it all. And even though our ordinance now, our zoning ordinance might not, word for word, have the cluster in there, if you read the zoning ordinance carefully you'll see the cluster is part of it, residential compound is a part of the zoning ordinance, PUD [Planned Unit Development] is part of the zoning ordinance. All of these things that deal with land development projects are part of the zoning ordinance."

Carolyn Light asked whether a development of this nature would be required to have a Homeowners Association (HOA), and if so, which maintenance measures would they have to engage in. Mr. Lamphere responded.

Ms. Light: "Homeowners Association required with this of a development?"

Mr. Lamphere: "Yes."

Ms. Light: "And this development would be responsible for maintaining its roads, etcetera?"

Mr. Lamphere: "Well, let me qualify that for one second, not necessarily. If the cluster is to be owned by one entity, you probably don't need an HOA for that, but if it's going to be – and the open space, in that case, could be owned by that entity – it all depends how the ownership of the property is structured. But, quite often, you would have a developer, sell off the individual lots, the HOA would be formed, they would be responsible for the maintenance of the open space and use of the open space. So, it all depends what they have in mind."

Mr. Freeman stated that the applicant was planning to have a HOA, and that the developer was planning on maintaining the ponds. He also stated that they would be proposing a private road.

Mr. DiOrio expressed that he was concerned by the reduction in the 100-foot buffer. Mr. Freeman responded.

Mr. DiOrio: "So that [the reduction in the buffer] was my primary concern, specifically the reduction along the northerly boundary line between the proposed roadway and Lot 77."

Mr. Freeman: "Correct, so we -"

Mr. DiOrio: [interjects] "I'm uncomfortable with that."

Mr. Freeman: "Okay."

Mr. DiOrio: "So, unless you're going to propose a - I don't even know how you could do it - in, I believe, it's a nine-foot width, I was going to say, unless you're prepared to propose a dramatic replanting, or revegetation screening area, nine feet is inadequate. If I were the abutting property owner, I'd be hostile. So, in trying to look out for the best interests of that property owner, you gotta do better than nine feet. I appreciate that you have other constraints, but a reduction from 100 ft. to nine feet, I'm uncomfortable with it. My personal perspective. That is not having viewed the site. I don't know if there's, is that's a barren strip of property, or it's densely vegetated, but almost regardless, nine feet simply doesn't - doesn't do it for me."

Mr. Freeman: "Okay. That's actually - we followed the existing contour of the gravel driveway that was initially installed for the yield plan, so that's where the existing road goes. We proposed it there to follow that contour. It's already been graded, it's already been cleared. The dwelling on the abutting lot is very close to Fairway Avenue, there's a little bit more buffer there, and we definitely could plant that, have a landscape architect look at that, get one, and come up with a buffer plan that suits you."

Mr. DiOrio: "I follow your logical thinking, but simply because somebody cut a road in there all those years ago, it doesn't sway me."

Mr. Freeman: "Do you have a preference in the size of buffers, or something you would like to see there, that would make you feel more comfortable?"

Dr. DiOrio: "I do not. So, you're going to go back to my reading of the pre-application definition, right? This is my opportunity to share with you my thoughts. So, the whole concept here of a one-hundred-foot buffer was clearly to screen the proposed development from the abutting property owners. I'm going to put this onus back on you and say, 'You need to satisfy that objective.' So, if you can't give one-hundred-feet, which is understandable, you need to come up with an alternative that satisfies that objective. So, whether it's by screening, or an increased buffer area, I leave that up to you. I'm not going to give you a number. I'm not designing your project for you. You need to come back to us with something that satisfies that objective, in my mind. Al DiOrio's opinion."

Mr. Prellwitz noted that there was a "heavy black line" cutting through the back portion of the lot, and suggested that it may be an important indigenous site.

Mr. Prellwitz: "I've lived in this neighborhood for 68 years, and I started school in 1955, late 1955/1956. That was always called 'Goat Rocks', and it always was the local - accepted - rumor, or whatever you want to call it, that that was Indian religious ground, that they had ceremonies there or whatever. Whether or not it's a local - whatever you call it, just a rumor, legend - or if it's actually Native American spiritual property, is unclear to me. I took it upon myself, late Friday afternoon, to call Mr. Doug Harris. He's the local American - Native American - specialist, and he said he was going to look into

it, and get back. So, I don't see him here, so he may be still getting the information together, I don't know, because he wasn't clear himself. He knows it has been used by the Native Americans for as long as he can remember, but the actual status of it - you know, if I came to your house and sat on your front lawn every day, that doesn't make it my property to sit on, you know what I mean. That's unclear to me, the specific little area."

Mr. Prellwitz provided Mr. Freeman with Mr. Harris' contact information so the former may contact the latter for greater insight into the relevant indigenous history associated with the parcel in question. Ms. Shumchenia agreed with Mr. DiOrio in regards to his concerns about the proposed buffer reduction in the northern part of the plan. Ms. Light concurred. Mr. Lindelow was interested in learning about how the public, particularly any abutters in the audience, felt about the project.

Ms. Shumchenia: "I'll just say, I had the same concerns about the reduced buffer in the northern part. The southern part, it looks like you did, you know, do your best there, so I would also like to see an alternate plan for that northern buffer especially, but overall, I would say I'm really happy with the amount of open space preserved in this alternative plan. I'm really happy that you went with the alternative versus the conventional layout. I think, in this neighborhood especially, it's worth making that sacrifice for the smaller lot sizes, to keep the open space in the eastern part of the lot. I'm really happy to see that, thank you."

Mr. DiOrio proposed a no clear easement to increase the buffer along the southerly boundary line.

Mr. DiOrio: "What if we were to suggest to you to include a no clear easement, within the rear setback line - I'm referring now to along the southerly boundary line - which would actually increase your, let me call it 'buffer' to something in the order of 70 feet. How would your client feel about that? Maybe you can chat about that, and come back to us with something along those lines."

Mr. Freeman: "Okay."

Mr. DiOrio: "That might give us additional warm and fuzzy feelings, at least along that southerly line."

Mr. Pennypacker commented on how appropriate buffering, particularly in areas where commercially zoned parcels abut residentially zoned parcels, has become an important factor in project design. Harvey Buford of the Hopkinton Conservation Commission stated that he had reached out to Mr. Harris as well, in regards to another proposed project on the agenda, and that Mr. Harris had mentioned to him that although he was not able to attend the meeting, he was interested in conveying to those assembled there that he would like to discuss the land in question.

**Pre-application – Major Land Development Project – Stone Ridge at Hopkinton – AP 11, Lot 47A, Palmer Circle, RI-95, LLC, applicant.**

Walter Manning, one of the members of RI-95, LLC, spoke before the Board in regards to the project. RI-95, LLC owns 253 acres off of Palmer Circle, known as Lot 47A, which has been zoned Commercial Special.

Mr. Manning: “It is zoned special commercial, and as such, we propose to stay within the allowable uses, as a matter of right, which include, but are not limited to: solar and commercial development.”

Mr. Manning introduced other members of the team, beginning with Sergio Cherenzia, a licensed site engineer, as well as president and principal of Cherenzia and Associates of Pawcatuck, Connecticut, and Kevin Orchard, an expert on solar panels and their installation.

Mr. Cherenzia began by explaining the history of the parcel that RI-95, LLC has an interest in developing. In 1993, the parcel was permitted as Brae Burn Country Club, which consisted of an 18-hole golf course, a clubhouse, amongst other uses. The parcel as it stands is an undeveloped, wooded lot, with an overgrown, gravel area around a small pond on the eastern portion of the lot. There is an irrigation reservoir for the pond which was constructed for the previous projected use. The grades on-site slope west, north, and east from a high point in the center of the lot, and range from two to 20%. It is abutted by undeveloped lots to the north, west, and south, and residential lots to the east and southeast, and farmland to the northeast.

Palmer Circle would provide access to the parcel in question. There are a wide variety of soils on the property, and as the project progresses, those soils would be better identified for their most appropriate uses, i.e. the placement of on-site wastewater treatment systems. Canonchet Brook lies along the northeast property line. It is likely that all construction would be outside of any flood hazard areas. A portion of the southeastern part of the property is within the Groundwater and Wellhead Primary Protection Zone, as delineated by the Town, and an area in the eastern portion of the property is within the Community and Non-Community Wellhead Protection Area, as defined by the Rhode Island Department of Environmental Management. Storm water on the site would be discharged towards Canonchet Brook and its tributaries to the east, as well as Tomaquag Brook and its tributaries to the west. There is a cemetery on the property, the Worden Lot – Hopkinton #43, which the applicant will be conscious of and accommodate. There are stone walls on the property.

The proposed project includes five commercial buildings and a solar facility. Each of the commercial areas will have their own parking, utilities, wells, on-site wastewater treatment systems and storm water management areas. The solar facility will have access drives and storm water management areas. The applicant received a zoning certificate from the Hopkinton Building and Zoning official, Sherri Desjardins, which delineates the uses the property can sustain.

Mr. Cherenzia: “We have a zoning certificate that has identified that we can, we have the ability to, construct any of the following: self-storage, general warehousing,

hotel/motels, assisted housing and nursing homes, medical, or other commercial or office use. These uses are either by-right for the zone, or will require a special use permit. So, albeit that the solar does not require special use permits, some of these uses may.”

The proposed solar array would occupy approximately 59% of the roughly 252 acres of property, which Mr. Cherenzia stated is “under the 75% coverage for the zone”. The applicant does not plan to incorporate any open space into the project, and the project is entirely commercial in nature.

Mr. Lindelow asked whether this project would exceed the 3% coverage rule within the Photovoltaic Solar Energy Systems (PSES) ordinance, but Mr. DiOrio stated that the rule did not apply to commercial properties. Ms. Light asked the applicant to expand upon the uses that they envisioned for the parcel. Mr. Manning stated that while there were some uses that they were considering, they were still in the initial stages of the project, and that the applicant was interested in feedback from residents on what they would like to see included in the project.

Ms. Light: “My question is, there’s an array of uses for these buildings you want to put up. Do you have it narrowed down? Because it’s all over the place. You’re going to put five 30,000 sq. ft. floor space buildings up for what? That’s, you know, general, you know.”

Mr. Manning: “We haven’t defined specifically because we’re at the point in this pre-application that we, we’re looking for guidance as well from people in the town. We’ve heard anything from, ‘They want a supermarket in that area’ or they want a CVS or a gas station. We just proposed medical, maybe, facilities – anything that’s allowable right now. And then, of course it comes down to what sort of resources we can put in, that’s viable. We’re not going to put up a lot of money –“

Ms. Light: “Sure.”

Mr. Manning: “If we can’t get any return on it, so it’s kind of a balancing act right now, but we just wanted to get this application in front of you so we can get some feedback this early in the game, we know there’s more to the process than this. So your answer is no, we don’t have specific-“

Ms. Light: “So you don’t have anything?”

Mr. Manning: “Well, we’re thinking medical, but-“

Ms. Light: “Yeah, I thought the self-storage, the medical, maybe the senior, blah blah blah. Gas stations might blow me away, you know, a supermarket, that’s, that’s interesting.”

Mr. Manning: “Yeah, we want to be thinking about something that would make it there anyway. We’re on the medical side right now.”

Ms. Light: “It’s just so, it’s just such a big proposal, that I was hoping that there would be, you’d be tooled down, but I understand and appreciate where you’re at.”

Mr. DiOrio stated that he was not convinced that solar was an acceptable use. Mr. Prellwitz stated that according to Ms. Desjardins, solar was a legal use under the current zoning for the parcel.

Mr. DiOrio: "I'd like to suggest that we take a step back. There's been a representation that this is an allowed use. I'm not prepared to accept that. I think we need to go further back. I may be one of the last people standing when this actually took place, and when approval was granted [for the Brae Burn project] and clearly, at that time, the vocabulary that we're using today was not even contemplated. So, to automatically jump to the fact that solar is allowed here is not really acceptable to me. I'm not prepared to accept that just yet. As I look through some of the earlier documentation, I don't see that the bill of goods that was sold to the Town Council for the rezone reflected anything resembling your application. So, again, you heard me outline the concept of the pre-application discussion. My thoughts are, we need to go back to what the Town Council and the Planning Board approved back when this was rezoned. Does not include solar. So, we need to start the conversation at that point, not the fact that you're allowed to do this by-right. That's my two cents."

Mr. Prellwitz: "I spoke with the zoning official, again, with this, and the other project, at length, and she looked up a lot of things, and according to her interpretation, this is legal under commercial. That's pretty much the Reader's Digest version. She quoted this page, that page, this and that. Under commercial, it doesn't specifically say 'solar', under the regulations of the Zoning Ordinance, it's legal in a commercial zone, and it meets the other stipulations. That's, like I said, according to the Zoning Official, as of Friday afternoon."

Mr. DiOrio: "Got it."

Ms. Shumchenia asked applicant to explain the lack of open space included in their proposed plan when the parcel comes with a condition that 40% of the total area, exclusive of certain features of the parcel, is to be set aside for open space. Mr. DiOrio gave further insight into the history of the parcel in question. He stated that he was of the opinion that the applicant's proposal did not align with the language associated with the zoning of the parcel.

Ms. Shumchenia: "I have a question regarding the original zoning amendment related to the reclassification as commercial special. It's my understanding that commercial special means that the Town Council put certain limitations or restrictions or conditions on the zone change, and that's what the 'special' denotes. And those conditions, limitations, and restrictions are carried through with the property as they remain that commercial special zone. In that document, which is available – Al's got it right here – but it actually – thank you – it actually describes that 'at least 40% of the total area of the planned development, exclusive of wetlands, ponds, marshes, protected natural areas, but inclusive of golf courses and similar outdoor recreation areas shall be set aside as open space.' A minute ago, you said that 'no open space is proposed in this plan', so I'm just curious if you can rectify those two things for me."

Mr. Cherenzia: "I don't think I can at this time. So, you're saying that because it is a commercial special – No, we had not contemplated any open space. No. Now, does that stipulation stay for say, golf courses? Could you read it again to me?"

Ms. Shumchenia: "Yeah, it says 'at least 40% of the total area of the planned development, exclusive of wetlands, ponds, marshes, protected natural areas, but

inclusive of golf courses and similar outdoor recreation areas, shall be set aside as open space.”

Mr. Cherenzia: “Yeah, I – we’d need a determination on that. I can’t answer that right now.”

Ms. Shumchenia: “Okay. So that’s available. I asked Jim, the planner, to e-mail it to me beforehand, knowing that there was a zoning amendment took place to even designate this property as commercial special.”

Mr. Cherenzia: “And that said planned unit development?”

Ms. Shumchenia: “Yes.”

Mr. Cherenzia: “What is that?”

Mr. DiOrio: “Listen, you realize that this was pitched as a hotel, a conference center, a golf course, swimming areas, country club, water distribution and waste treatment, right?”

Mr. Cherenzia: “Mm-hmm.”

Mr. DiOrio: “That’s the way this was pitched to the Town Council and the Planning Board way back when.

Mr. Cherenzia: “Okay.”

Mr. DiOrio: “That’s, that’s what the rezone was predicated upon.”

Mr. Cherenzia: “Understood.”

Mr. DiOrio: “Now you’re coming in with a completely-“

Mr. Cherenzia: “Something different.”

Mr. DiOrio: “- different proposal -”

Mr. Cherenzia: “Okay.”

Mr. DiOrio: “- and hinging it upon this approval.”

Mr. Cherenzia: “Okay.”

Mr. DiOrio: “I see those two things as incongruous. So, that’s why you’re starting up here with the discussion – I don’t mean to be combative, of course – you’re starting up here-“

Mr. Cherenzia: “No, no, I’m just trying to understand, that’s all.”

Mr. DiOrio: “- I’m starting down here, where the approval was actually issued. So, in order to gain my support, and Emily might be on the same page, you need to get back to that –“

Mr. Cherenzia: “Back to this?”

Mr. DiOrio: “- central issue, of how this proposal satisfies this language, because this is what the Town Council approved – that way.

Mr. Cherenzia: “Okay.”

Mr. DiOrio: “Okay. So, if you’re not familiar with how it got from here, you need to go back and take a look.”

Mr. Cherenzia: “There was some discussions on it reverting, back to a commercial state, but we went through this thoroughly, with planning staff, but it sounds like we should revisit it and get a determination, because, I- we did receive a zoning certificate to say that solar was approvable, but if we need to be in more in line, we’ll have to look into it.”

Mr. DiOrio: “So, I don’t mean to take exception with our Zoning Official, the pre-application format is an opportunity for the Planning Board to tell you how we feel about your project. I am telling you how I feel about your project.”

Mr. Cherenzia: “Very much appreciated.”

Mr. DiOrio: “The other members will do the same. This is not to necessarily contradict, or maybe it does contradict, but, you know, the Zoning Official can do whatever opinion she feels like. That doesn’t mean it gains my support.”

Mr. Cherenzia: “Understood.”

Mr. Prellwitz stated that, based on conversations he had had with Ms. Desjardins, as well as the research that he had conducted, he believed that the parcel can be used for a solar installation.

Mr. Prellwitz: “The document that I have – this is going to make a lot of friends with our Chairman, I’m sure – it’s dated February 1, 2011, and it reverts back to the January 2, 1990 ruling of the Town Council, and it says ‘At your request, I researched the special zoning conditions imposed January 2, 1990 by the Town Council for the above referenced lot. I concluded that Plat 11, Lot 47D may be used in the following manner, as permitted, in the manner with which descriptions identified in July 1990 amendment, a copy of which is attached, as permitted by right, zoning code, Chapter 134, adopted December 1994, is a commercial zone.’ And it goes on, but when I spoke with our current official, she said under the current commercial zone restrictions, what you have proposed is legal. So there’s, you know, there, again, I don’t want to tell you your business, this is the research I found, as of Friday.”

Mr. DiOrio stated that he was not convinced.

Mr. DiOrio: “So, to clarify my concern, if the rezone was issued based on a current set of commercial uses back in whatever the date was, the presumption appears to be that whatever is allowed in commercial today should, therefore, be allowed. I’m not prepared to accept that, because solar was not even – a variety of commercial uses – was not even in the vocabulary when the commercial rezone was implemented. So, this quantum leap from whatever’s good today must have been somehow considered, back in 1990 – whatever it was – I don’t get that. I don’t see how it can be true.

Mr. Prellwitz returned to the document he had found that stated that the parcel in question has been zoned as a commercial property, but Mr. DiOrio stated that “they can make whatever presumption they want, it simply doesn’t gain my support.” Ms. Shumchenia gave a hypothetical example about the prudence of using the parcel in question for a “Tesla rocket launch pad” 20 years down the road. Mr. Prellwitz stated that that was a question for a future Planning Board. Mr. Lindelow asked if the applicant would still build the commercial buildings if they were not able to construct a solar array on the parcel. He also questioned the applicant and their solar expert, Kevin Orchard, to find out if the applicant had conducted any discussions with National Grid in regards to connecting the proposed array to the grid.

Mr. Lindelow: “Fast forward to today, that the solar and the commercial buildings, they don’t make sense together. In other words, if you got approval just for the commercial buildings, but not the solar, would you still build the commercial buildings?”

Mr. Cherenzia: “My understanding of the project is that they would have to go together, and the solar is the primary –“

Mr. Lindelow: “And have you had any discussions with National Grid about connectivity?”

Mr. Cherenzia: “We’re in that process.”

Mr. Orchard: “We’ve already reached out to National Grid, we’ve put the application on file. We’re in preliminary meetings with them.”

Mr. Lindelow suggested that the applicant be wary of the costs associated with implementing a solar array, particularly in regards to ongoing discussions about decommissioning fees and reforestation plans that have impacted other projects. Mr. Cherenzia asked if reforestation is required by the PSES ordinance. Mr. DiOrio responded that it is not, but decommissioning costs are. Ms. Light stated that maintaining forest land is important to the community, and that the developer should be sensitive to the needs of the people who live in the area. Mr. Cherenzia responded.

Ms. Light: “On the forestation part of that, what this community appreciates, community – I’m not speaking for myself – is preservation of forest land. And we’ve got some spaces here where they’re just your standard 25 ft. setback. At the end of the day, if there was gonna be an argument, we’ve seen in the past that these solar developments don’t really look good with the 25 ft. setback, regardless of what’s behind it, whether it’s a wooded field, or someday, somebody’ll put a house there. So, I would encourage you to maximize the technology in the solar part, if we’re gonna go in that direction, but be sensitive to what you’re taking away. The cost for that has to be included, you know it’s a negative impact. It might not be because the site is nothing now – trees and sand – at the end of the day, when you put your building up or you put your solar panels up, there’s still going to be a kind of a negative impact, and there are other people that can go into that, but be sensitive to the community, because that’s what a lot of people are going to be looking for. It’s a huge solar farm – does it need to be that big? Is there better technology by the time you guys get around to doing that, that’s going to allow you to generate that kind of electric, with better technology and reduce the footprint?”

Mr. Cherenzia: “I can tell you, we went to the maximum on this.”

Ms. Light: “You sure did!”

Mr. Cherenzia: “It’s much better to come in with what you can do, per the regulations, in my experience, and then work back to your restrictions from there. And we will take consideration into buffers and having more space not taken up by it. We will take considerations.”

Ms. Light: “I think a really big challenge for you guys will be the water run-off, and how you’re going to mitigate that.”

Mr. Cherenzia: “Just for the record, I’ve done probably four or five solar projects to date – it’s relatively new – but, you know, we’ve permitted multiple projects through Rhode Island DEM, and we typically have a pre-application meeting to make sure that we understand what requires are going to be for a site, and challenge, specific challenges we’ll have on it before we start going to design. So, I think we might do that before Master Plan, to identify that, because it is such a large site – how you break it up, where the water’s going to different areas. But, generally, going from a wooded to a grass site –

and I do not consider, just want to make it clear – they do not consider the panels themselves to be as an impervious surface. What you're really going from is a wooded surface to a grass surface, or a vegetated surface. It does not alleviate the requirement to handle the quantity of water and the peak discharges that come off that site. We still have to mitigate all of that. But from a water quality standpoint, it's 100% higher – it's a big grass field."

Ms. Light stated that there had been positive and negative experiences in town in regards to solar, and that every developer is different, but that "trust is a big deal". She stated that she is pro-commercial development and "a champion of alternate energies", but she wants to be sensitive to the needs of the community, not just the abutters.

Ms. Shumchenia stated that the State has mapped areas of "core forest", areas that are "over 500 acres of contiguous forest", which are important as "very few of them are left." She stated that the parcel in question is "on one of those cores, and it's over 1,000 acres", which makes it "really unique in the State landscape and our forest resources." She stated that many of the aforementioned "cores" are in the western part of the State, including Hopkinton. She requested that the applicant "maintain that core" to the best of their ability for future generations.

Mr. Lamphere suggested that the Planning Board could seek a legal opinion from their solicitor if they were concerned about what the property could, definitively, be used for, as well as the validity of the zoning certificates. Mr. DiOrio stated that he was still not convinced.

Mr. Lamphere: "Well, from what I hear from the Planning Board and others, that you're not confident in that status of this property in respect to zoning. So, if, in the interest of facilitating this issue, the Planning Board could ask your solicitor to review the zoning certificates that have been done on this project to date, along with letters that were written by prior, previous Zoning Officials and also the legal opinions on which they wrote those letters, and review the whole thing. Let's get to the core of this, and get somebody to determine what can be done on that property and what can't, because otherwise we're going to go in circles. And, I don't know, in order to facilitate that, I think something should come from the Planning Board because our solicitors don't engage developers directly. They don't work for developers, they don't work with them, they work for the Town. So, I'd like to get this issue settled right here, before we go any further with anything, okay, let's find out – are the decisions that have been made, the opinions that have been rendered valid, or are they not valid."

Mr. DiOrio: "Well, it's an interesting question. And I certainly don't want my, my personal opinion to drive the bus. I mean, Ron points out, quite correctly, that the Town has an opinion from its Zoning Official. One might say, 'Well, what more do you need?' It's just that Al DiOrio is not convinced, and I don't want to call her out, but I simply believe it's incorrect. Now, that doesn't mean that we need to tear the lid off the can, spend hours delving into it simply because I'm not comfortable with it. If the other members are good with it, I stand alone. That's okay."

Ms. Light was concerned that the Planning Board would receive some backlash if they failed to seek a legal opinion, and preferred asking the solicitor to investigate and clarify the issue. Ms. Shumchenia was also interested in gaining further insight. Mr. Lamphere again encouraged communicating with the Town's solicitor, whose opinion would serve to assist the Planning Board in making their determinations.

Ms. Shumchenia: "Yeah, specifically in the context of all the different zone change amendments that have occurred recently, a zone change amendment like this one, is it the opinion of the Town that this is invalid because it's a different project now, proposed on the same piece of land? I think we need to know that, at least conceptually, in addition to specifically for this project."

Mr. DiOrio: "So it sounds like the answer is yes?"

Mr. Lamphere: "Yeah, I mean, if I was the applicant, I wouldn't know what to do from this point forward. How much money am I going to put into something if it turns out that I can't do the project? So, I think, I think really what the Planning Board should ask our solicitor to do is review the documents that have been prepared by Town staff in the past, review them, check them for validity, and measure them against our current solicitor's opinion, that's all. I mean, beyond that, what do we have to go on? Otherwise, we're going to wind up in court, somebody's liable to challenge this, the whole thing winds up in court, and then we fight it there. So, I don't know. I'm trying to, I'm trying to facilitate something here."

All Planning Board members in attendance came to the consensus that contacting the Town's solicitor for a definitive legal opinion would be beneficial. Mr. Andrew Teitz, an attorney representing one of the abutters, asked to submit something in writing to the Town solicitor as a point of order, to provide a counterpoint to the past opinions of Town officials and Town solicitors. Mr. DiOrio stated that as it was a pre-application hearing, and he is not a judge presiding over a courtroom, he saw no reason to prevent Mr. Teitz from doing so.

Mr. Pennypacker stated that he also had concerns about open space and decommissioning fees. He said that he felt "Hopkinton has been treated unfairly in the past" in regards to decommissioning fees, and he would like to see quotes from the applicant's engineers "to get a real sense of the cost of decommissioning." He mentioned the existence of the Narragansett Trail, an Appalachian Mountain Club trail, which bisects the property but has been "out of use since 1995". He also stated that there is a stone landscape on Coon Hill, which is "of interest".

During the period for public comment in regards to this project, Sharon Davis asked where the applicant was in the pre-approval interconnection process with National Grid. Ms. Davis also asked for clarification on the acreage of the proposed solar array. Mr. Orchard stated that they were through the pre-application stage with National Grid, and had moved on to the initial application.

Mr. Orchard: “As far as the National Grid Process, we are through the pre-application stage, and we’re on to the initial application. We’ve already had the preliminary meeting with the National Grid team.

Mr. Orchard explained that there were “sequential studies” conducted by National Grid, and once those were completed to National Grid’s satisfaction, construction could move forward. He estimated that they hoped to complete the application process within 12-15 months.

Barbara Capalbo asked if there was a sunset clause on a PUD if “no work had been done”. She also wanted to know the parcel had been zoned as before it was designated a commercial special zone. Mr. Lamphere stated that this parcel was never a PUD, and explained which zones were in effect prior to the commercial special designation.

Mr. Lamphere: “I don’t think this was ever a PUD, number one.”

Ms. Capalbo: “It was never a PUD?”

Mr. Lamphere: “I don’t believe so.”

Ms. Capalbo: “So, it came in as commercial special? What was still, then, underneath?”

Mr. Lamphere: “The underlying zone under it was light- it was two zones, light industrial, and RFR.”

Ms. Capalbo: “Oh, so, RFR-80 and light industrial. And it was not a PUD -“

Mr. Lamphere: “Mm-hmm.”

Ms. Capalbo: “- this commercial special doesn’t have -“

Mr. Lamphere: “Right.”

Ms. Capalbo: “A sunset.”

Mr. Lamphere: “Well, a PUD does have a sunset. This wasn’t done as a PUD -“

Ms. Capalbo: “Exactly.”

Mr. Lamphere: “- Because we didn’t have a PUD ordinance in effect at the time.”

Ms. Capalbo: “Right, so just commercial special?”

Mr. Lamphere: “This was rezoned commercial special.”

Ms. Capalbo: “Does it have a sunset?”

Mr. Lamphere: “I would say no.”

A young woman named Liliana explained that she was concerned about the impact that solar development would have on animal life in the area, though she does support solar panels generally. Peter Condopaz, a former Hopkinton Planning Board member from 1982-1992 and resident of Woodville Road, spoke about the history of planning in Town, particularly in relation to the parcel in question. He referred to the proposal as “spot zoning”, and encouraged residents to really consider how the Town moves forward in regards to implementing the Comprehensive Plan.

Mike Warner, a Hopkinton representative to the Wood-Pawcatuck Wild and Scenic Rivers Council asked the Planning Board to work to protect the waterways within the watershed, including the Canonchet and Tomaquag Brooks.

Kerri Robinson, a member of the Narragansett Chapter of the Rhode Island Appalachian Mountain Club, Chairperson for their Chapter's Trail Committee, and Manager for the Narragansett Trail Restoration Project spoke before the Board. She was accompanied by Corey Mont, a member of the Connecticut Appalachian Mountain Club Chapter and Secretary for the Narragansett Trail Restoration Project. According to Robinson, a segment of the Narragansett Trail, which is 44 miles long and 87 years old, and extends from Worden Pond in South Kingstown to Lantern Hill, owned by the Mashantucket Pequot Tribal Nation in Connecticut, crosses the parcel in question. She referred to this segment as "a significant section of this historic trail", which was part of their "ongoing, 3-year trail restoration project in celebration of our Chapter's 100<sup>th</sup> anniversary in 2021." Ms. Robinson stated that this portion of the trail "highlights pre-contact, First Peoples, historic and cultural artifacts and structures." Robinson offered to site the trail through the Appalachian Mountain Club so the route may accurately be displayed on any future plan submissions.

Paul Boisvert of Woodlawn Circle wanted to know "how many more solar farms we have to have", and referenced existing projects in the area near his home. He was also concerned about the amount of traffic that would be created on Palmer Circle if this project were to come to fruition. He stated that, in his opinion, this project may not be the best use of the land. He hopes that a traffic mitigation plan will be created if the project is to move forward.

Harvey Buford stated that there is a well-defined trail on site, and that he is confident that there are sites of indigenous importance on the parcel, including "beautiful stone structures." He also noted the existence of stone walls on the property. He estimated that the internal mileage of the stone walls on the property equals three miles. He had contacted Mr. Harris personally, but he encouraged the applicant to "identify what is out there."

Mr. Teitz spoke before the Board again. He represents Dr. Thomas and Cynthia Sculco, abutters to the proposed project. Mr. Teitz said that the Sculcos bought the land many years ago, and entered it into Farm, Forest, and Open Space program. The Sculcos have an approved Farm Forest Management Plan. Mr. Teitz states that it is "crystal clear" to him that "while it may not have been called a PUD, it was the effect of a PUD when it was adopted in 1990." Mr. Teitz believes that the site is limited to the uses prescribed to it, which would exclude solar. He also states that zoning certificates are not binding documents.

Loren Spears, Executive Director of the Tomaquag Museum, and Wanda Hopkins, who are both Narragansett, spoke before the Board about the indigenous sites on the parcel.

Ms. Spears: "We wanted to speak to that fact that we've been partnering with Tomaquag Museum – for full disclosure, she [Hopkins] used to be a Board member there, used to be an employee there as well, and we've partnered with the Hopkinton Historical Society and the Land Trust over quite a few years on the ceremonial and historic landscapes here in Hopkinton. And so, one, we thank you and applaud you for caring about that, and so I

would like to just reinforce the fact that we'd really like this project to really look at, and carefully mark them. Also, we're really concerned about the Narragansett Trail. That is a historic trail that's millions of years old. That should really be considered in the project as well."

Ms. Hopkins: "Just that, listening to some of the ideas and plans that have come up tonight, my children and I, we, we love this area. I take them to show them the historical sites, and my concern is that they won't be here for my great-grandchildren. So, when all of this planning is going on, and building is going on, if you could just keep that in mind, that there are people here who have been here, and those places are really sacred and special to us."

Ms. Spears: "For full disclosure, I live currently now in Charlestown, but I grew up and lived in Hopkinton, so this landscape is a landscape that is near and dear to us in general, as Narragansett people, and in South County. It's really important, so we're here to support keeping South County rural and keeping the landscape intact, and remembering the cultural and ceremonial spaces. Thank you."

Dan Jensen, of Prospect Square, directed his comments to the developers of this project. He said that he does a lot of recreation in Town, which has been impacted by solar projects throughout the area. Mr. Jensen bow hunts and also hunts small game in Hopkinton.

Edward Lowe, of Brook Drive, was critical of Town government and Town officials. Mr. DiOrio encouraged Mr. Lowe to speak before the Town Council, not the Planning Board, about the issues that concern him.

A resident from Rockville asked "who is sending these developers to Hopkinton, where are they coming from?" He wanted to know why Hopkinton "is getting picked on."

Mr. Orchard provided a closing statement to the Board, and explained what solar arrays and the panels themselves are composed of.

Mr. Orchard: "First of all, I think I'd just like to applaud the community for being so engaged in the process. I mean, I think that's just proof that the process is working, and that's why we're here. I mean, this is a pre-application. We're receptive to these comments. I mean, I want to stand up here and just assure you this is not falling on deaf ears. Everything that we're doing here is very thoughtful, and very considered, and so we're taking comments, and we're listening to them. I just wanted to make that point clear. There were a couple things, first and foremost, and unfortunately the gentleman who brought it up, I don't see if he's still here, but he mentioned 'toxic materials' on the site. There's gonna be none. There's no toxic materials in the construction of the solar project. I can kind of just explain, quickly, what it is composed of, though you probably already know, being that you've already had multiple projects come through. You're talking about steel foundations, steel racking, right. The panels themselves consist of aluminum, copper, silicon, and glass. The wires are regular electrical wires. They go into transformers and inverters, which is all utility grade equipment. It's all proven technology. It's been around. You can currently find them in use, on the street, in the

substations, and within those there are no toxic materials. The transformers have transformer fluid in them, which is either an FR3 fluid, which is a vegetable based fluid, or it's a mineral oil, which is an insulating oil. But, again, I just want to stress the point that there's no toxins or hazardous materials that are being brought on-site."

Mr. Orchard later discussed the environmental impact of the proposed plan, specifically the solar array.

Mr. Orchard: "The other point, you know, we got a lot of comments, and I'd like to applaud the young lady for her speech and her open minded and critical thinking about this project and she touched on an area that means a lot to me, with regards to the animals and the habitat. We're not – where the solar project is proposed, we're not going over any map or known areas of critical habitat. We're staying completely out of all the areas of wetlands. We've observed those, we've done the wetland delineation, so we're not destroying any of those critical areas of habitat, and we did look for it, I mean, we are cognizant of it. I just wanted to make that point. And, two, that we're not preventing movement across the site. Animals will be able to get from one side to the other. We're not preventing them from moving across. And, again, like I said, we're not aware of any areas of habitat on the array area itself, so net-net, we're not, in our view, creating any sort of material impact to any habitats on-site."

He also answered the question of what solar developers are "doing here" in Hopkinton.

Mr. Orchard: "And then, I don't know if you want me to address the general question of why we are here. You know, I think it's a good point to consider. We're proposing, again, there's - I'm speaking just to the solar, there's obviously additional components to this but, it seems like a lot of the attention is focused on the solar tonight. It's a solar project. It's designed to remove our dependence on fossil fuels, and putting carbon into the atmosphere, and so part of the reason why we're here is because Rhode Island has taken a charge on this transition. They viewed it as important, and even a couple of weeks ago, the State has announced initiatives to move to 100% renewable. And so, in understanding where you're coming from as far as the land use perspective, I just want to put back out there that the reason why we're here, and the reason why there's developers in this State, is because there is an issue of climate change going on, and putting pollutants in the air and relying on fossil fuels for power generation, and this is the response to that, and this is something that's coming from a state-level, where there are state-level programs that incentivize us to be here."

## **SOLICITOR'S REPORT**

The solicitor did not have a report.

## **PLANNER'S REPORT**

The Planner did not have a report.

## **CORRESPONDENCE AND UPDATES**

Mr. Lamphere stated that the Statewide Planning Program approved the Comprehensive Plan amendment which prohibits wind turbines in Town. This prohibition excludes residential wind turbines, which are allowed.

## **PUBLIC FORUM**

Ms. Davis stated that in regards to solar projects, “Hopkinton doesn’t need another one”, a sentiment that she communicated to the applicant. Mr. Buford said that the Town has approved over 400% of their renewable energy needs.

## **ADJOURNMENT**

A MOTION WAS MADE BY KEITH LINDELOW AND SECONDED BY ALFRED DIORIO TO ADJOURN.

IN FAVOR: DIORIO, LIGHT, SHUMCHENIA, PRELLWITZ, LINDELOW  
ABSTAIN: NONE  
OPPOSED: NONE

THE MEETING WAS ADJOURNED AT 9:05 P.M.