

Memo

To: Hopkinton Planning Board
From: James M. Lamphere, Town Planner *JL*
Date: 10/28/2020
Re: Proposed Reforestation Agreement

Please find attached comments from Planning Board Chair Al DiOrio and Planning Board members Ron Prellwitz and Emily Shumchenia relating to the Proposed Reforestation Agreement proffered by Planning Board member Carolyn Light.

DO NOT MAKE CHANGES TO THIS FORM

FROM CHAIRMAN
AL DIORIO

FORESTATION AGREEMENT

THIS FORESTATION AGREEMENT is entered into this _____ day of

_____, 20____, by and between _____
APPLICANT and TOWN OF HOPKINTON, RI, a body corporate and politic of the State
of RHODE ISLAND.

WHEREAS, Applicant represents the real property with a street address of
_____, deed reference _____ (the "Property"), and

Applicant has filed or permitted to be filed an application for ~~subdivision or a site
development plan~~ with an application for a building or grading permit or a standard
grading plan, Permit No. _____; and WHEREAS, the Applicant is required by the
TOWN OF HOPKINTON to enter into a Forestation Agreement.

*we don't
have this
process*

*all
minor
major*

NOW, THEREFORE, in consideration of the mutual covenants and promises contained
in this Agreement, the parties agree as follows:

INSTALLATION AND INSPECTION

1. The Applicant or Purchaser has submitted and the PLANNING BOARD has
approved a forest conservation plan, buffer management plan, reforestation plan ("Plan") for
the Property, a copy of which is on file at the TOWN OF HOPKINTON Office of Planning.

2. The Applicant is required to complete reforestation, afforestation, or replanting
on the Property in accordance with the Plan.

3. The Applicant shall be responsible for the provision, installation, and maintenance
of all plant materials required by the Plan and shall be bound by the terms and conditions of the
approved Plan and all applicable law and regulations.

4. The total approved estimated cost of the installed plant materials is prepared by
\$ _____, and a copy of the approved cost estimate is attached as **Exhibit A**. *who?*

5. Within 30 days after installation of all plant materials, the Applicant shall notify
the TOWN OF HOPKINTON in writing by certified mail, return receipt, that installation has
been completed in accordance with the Plan and shall advise the TOWN OF HOPKINTON of
any variations from the Plan or differences between the Plan and the final installation. The
TOWN OF HOPKINTON will inspect the plant materials. Applicant hereby grants to the
TOWN OF HOPKINTON a right of entry onto the Property for the purpose of inspecting the
approved installation and verifying compliance with the approved Plan.

*great who?
file in*

6. The Applicant has paid to the TOWN OF HOPKINTON an inspection fee in the amount of \$ _____, which is 7% of the total approved estimated cost of the installed plant materials.

how determined

The inspection fee will not be decreased even if the actual cost claimed by the Applicant is less.

SECURITY

7. All security required by this Agreement shall be in the form of a _____ cash deposit (including a certified or cashier's check), _____ irrevocable letter of credit, or _____ performance and completion bond; from a surety acceptable to the TOWN OF HOPKINTON.

8. This Agreement is accompanied by performance and completion security if required by the Office of Planning. The amount of the security is \$ _____, which is equal to \$1.50 per square foot, otherwise, equal to the total approved estimated cost of the installed plant materials as set forth in paragraph 4.

how?

9. In addition to the security posted with this Agreement, the Applicant agrees to reimburse the TOWN OF HOPKINTON for any and all additional costs incurred to complete, restore, repair / replace any plantings required by the Plan that do not survive the first year, including all TOWN OF HOPKINTON administrative costs; independent contractor, consulting engineer, or other expert fees; attorneys' fees; and pre-judgment interest at the rate of 6% per year?. The Applicant further authorizes the TOWN OF HOPKINTON to recover these additional costs by collection.

10. The TOWN OF HOPKINTON shall retain the security required by this Agreement for a period of two years after installation and acceptance of the plant materials. After the expiration of at least one growing season, the TOWN OF HOPKINTON may reduce by no more than 50% the amount of the security required by this Agreement if the Applicant has performed at least 50% of the obligations under this Agreement and the TOWN OF HOPKINTON determines that a partial release will not impair implementation of the Agreement. To request a reduction, the Applicant shall file an application with the TOWN OF HOPKINTON; provide justification and any required documentation, including new or additional security if the TOWN OF HOPKINTON so requires; and agree that all other terms and conditions of this Agreement shall remain in full force and effect.

is this available?

11. If the Applicant fails to request in writing a return of the security within 180 days after the expiration of the two-year period that the security is held under this Agreement,

why?

the security shall be forfeited by operation of law to the TOWN OF HOPKINTON's Forest Conservation Fund as determined by the Planning Officer.

REMEDIES

12. If the Applicant fails to install the required plantings or fails to take appropriate and effective corrective action after written notice by the TOWN OF HOPKINTON or otherwise fails to perform this Agreement in any manner whatsoever, the TOWN OF HOPKINTON may declare the Applicant in default and may complete, restore, or repair the plantings required by the Plan, either through its own forces or through a contractor. In addition, the TOWN OF HOPKINTON may take all action and pursue all available remedies, whether legal or equitable, provided for by applicable law, including forfeiture of any security and the recovery of any costs incurred by the TOWN OF HOPKINTON.

13. No remedy available to the TOWN OF HOPKINTON is exclusive, all remedies shall be cumulative, and the exercise of one remedy by the TOWN OF HOPKINTON shall not preclude the exercise of other remedies at the same time or at different times.

MISCELLANEOUS PROVISIONS

14. The parties agree that the obligations of this Agreement will run with the land and bind the current Applicant of the property only and that upon conveyance of the Property the obligations of this Agreement shall be assumed by the Grantee and the Applicant shall be released without further obligation hereunder. ?

15. The Applicant hereby waives all right of appeal on any issue relating to the requirement for the provision, installation, and maintenance of all plant materials required by the Plan and this Agreement.

16. This document and its attachments contain the complete and final Agreement between the parties and representations, whether written or oral, not contained in this Agreement shall not be part of this Agreement.

17. The laws of the State of Rhode Island shall govern this Agreement.

18. This Agreement shall inure to the benefit of and be binding on the parties and their heirs, personal representatives, legal representatives, successors, and assigns.

19. The parties agree that this Agreement constitutes a contract under seal and that they intend the statute of limitations period as set forth in Rhode Island Courts and Judicial Proceedings Code to apply to this Agreement.

20. If a court of competent jurisdiction determines that any provision of this

Agreement is invalid, illegal, or incapable of being enforced, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect and the rights and obligations of the parties shall be given effect to the fullest extent possible notwithstanding the determination of invalidity, illegality, or unenforceability.

APPLICANT:

Date

_____ (SEAL)

Print Name

APPLICANT:

Date

_____ (SEAL)

Print Name

APPLICANT:

Date

_____ (SEAL)

Print Name

TOWN OF HOPKINTON, RHODE ISLAND

DO NOT MAKE CHANGES TO THIS FORM

BY: _____ (SEAL)
PLANNING OFFICER FOR TOWN OF
HOPKINTON

REVIEWED FOR FORM AND
LEGAL SUFFICIENCY:

DRAFT

COMMENTS FROM EMILY SHUMCHENIA

The purpose of the draft Forestation Agreement appears to be to create additional measures, beyond those currently within Development Plan Review or Major Land Development Review processes, to hold developers accountable for implementing and maintaining activities related to trees, plantings, forests, and other vegetation. This agreement would perhaps ask the applicant to do more than simply provide a Landscaping Plan as is currently the case for existing processes and perhaps think more broadly about the development's impact on trees/forests more broadly. I would like to hear from Carolyn and other planning board members about the overall purpose of this new tool and how it could be used.

A really nice purpose statement can be found in East Providence's amendment to an existing ordinance about Tree Preservation. Note – several elements of that ordinance aren't pertinent to Hopkinton, since EP is dealing more with urban trees, but it's a nice example nonetheless.

My main question is whether or not a new agreement/plans/ordinance is needed in our town's case. The RI Land Development and Subdivision Review Act (which is implemented by the Planning Board's Subdivision and Land Development review processes) can be used to require protection of existing tree resources and to specify requirements for replacement or new tree resources in connection with new development. Some of the general purposes of these review processes are to promote "the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development"

Also, does Hopkinton have a tree warden that we could consult? "R.I. General Laws § 2-14-1 et seq., requires municipalities to appoint a tree warden and charges the appointed official with responsibility for the "care and control" of trees and shrubs within public land and rights-of-way controlled by the municipality, and of portions of private trees that extend into or over public roads or grounds. Tree wardens must be licensed arborists, are authorized to prune or remove hazardous trees at public expense, cooperate with the R.I.DEM in the suppression of pests and diseases, and propose regulations governing the care and preservation of suitable trees. Several municipalities have adopted tree ordinances that further detail the responsibilities of the local tree warden."

Detailed comments:

The draft agreement calls for the development of documents/filings by the applicant. My comments/questions on the obligations of the applicant include:

- A forest conservation plan, buffer management plan, reforestation plan (paragraph 1) – it is unclear if the agreement requires the development of all of these plans, or only those pertinent to the project (need more precise language to determine which are required and who makes the determination)
 - Required elements of these plans should be clearly laid out

- Plans should include protection of existing forest/trees during construction activities
- I'd like to see "buffers" refer not only to the space between new development and residential zones or conserved land but also the space between new development and valuable natural assets such as wetlands, streams, rivers, lakes, ponds, core forests (areas of contiguous forest >500 acres), and cultural assets such as parks, preserves, trails, prehistorical and historical structures, landmarks, tribal resources, etc.
- There is a difference between encouraging or requiring forest preservation and protection and incentivizing it. The Planning Board needs the tools to incentivize forest preservation and protection. Currently, there are no incentives for developers to retain existing forest/vegetation on the site, except if required by current ordinances or negotiated by the Planning Board. As an example, the Revity project on Frontier Road will be allowed to clear ~10 acres of existing forest in the northern part of the property to add more panels to the large array that will cover already cleared land. The Planning Board did not have the tools available to discourage or prevent this needless clearing.
- Pay a security in an amount equal to \$1.50 per sq foot or the total approved estimated cost of the plant materials (paragraph 8) - need more precise language here to distinguish when either method to calculate the security is used

The draft agreement also calls for and additional oversight by the town planning department. My comments/questions on those items mainly pertain to the funds made available to the town via this agreement – would they be sufficient for the following?

- Review of the forest conservation plan, buffer management plan, reforestation plan (paragraph 1)
- Inspection of all plant materials and reconciliation with the approved plan once applicant provides notice (paragraph 5)
- Management of the security, requests by the applicant to reduce it, and release of the security after obligations are met (paragraph 10)
- Hiring and management of any contractors and consultants required to assist
- Establishment of a town Forest Conservation Fund? (paragraph 11)
- Record-keeping to ensure that any plans associated with this agreement run with the property (paragraph 14)

Need to define terms:

- Reforestation
- Afforestation
- Replanting

Good afternoon

Upon reading the draft I think, and this is just my opinion, that it is well written and contains a great deal of forethought.

That being said I have several minor thoughts.

Should the full name of our state be in the title section, supposing it is still the name in November?

#6 7% may in some cases be a little high. Perhaps a little flexibility, it is after all an inspection,

#8 When added to #6 it seems excessive. (\$196,020 for three acres)

#12. A time limit should be added.

Hypothetical situation: the removal of the equipment and grading of the site concludes in mid November. It's reasonable to expect planting to begin in the spring. That's approximately seven months.

I'm not saying we don't hold their feet to the fire on these issues. Let's just think things through.

As I said, this is just my opinion. All in all Carolyn did a great job.

Ron