

State of Rhode Island

County of Washington

In Hopkinton on the twenty-eighth day of December 2020 A.D., a Town Council Remote Workshop was held beginning at 7:00 P.M. in the Town Hall Meeting Room, 1 Town House Road, Hopkinton, RI 02833.

PRESENT: Stephen Moffitt, Jr., Scott Bill Hirst, Michael Geary were present in the Meeting Room; Sharon Davis, Robert Marvel, Solicitor Stephen Sypole, Acting Town Manager Brian Rosso and Town Clerk Elizabeth Cook-Martin participated remotely.

Also remotely attending: Attorney Peter Skwirz.

This matter was scheduled to continue discussion of the proposed amendments to the Zoning District Use Table to amend permitted uses for solar energy systems throughout the Town of Hopkinton and to possibly change and/or amend the review and approval procedures for all solar energy systems within the Town of Hopkinton, as submitted by Peter Skwirz, Esq. on behalf of his clients Tom & Cynthia Sculco, including, but not limited to, discussions regarding potential impacts to the Photovoltaic Solar Energy Systems (PSES) Ordinance and the Farm-Based Photovoltaic Solar Energy Systems (PSES) Ordinance. For further details on the proposed amendments submitted by Attorney Skwirz, please visit the Town's Website at www.hopkintonri.org.

Council President Moffitt asked Attorney Skwirz if he had any comments concerning the December 14, 2020 workshop. Attorney Skwirz felt that they had a very thorough discussion and noted that there was a request for them to submit a side-by-side table of what was new in the proposed ordinance and what would remain from the existing ordinance. He advised that Eric Bibler of the Hopkinton Citizens Alliance had drafted and submitted a table in this regard and felt that the Town's solicitor should now review the proposal and make any changes that the Town wished.

Council President Moffitt questioned the other councilmembers: “Do you feel as a Council that this proposed amendment is an opportunity for much needed improvements;” noting that he personally believed that.

Councilor Hirst indicated that he had a couple of concerns, one being any change to the Farm Viability Ordinance. He also wished people to have reasonable use of their property and wondered if this ordinance would constitute a “taking” which was the substantial deprivation of one’s right to free use and enjoyment of their property caused by government action.

Councilor Geary noted that in Hopkinton there are 1,856 acres of farms and 4,560 acres of forestry and of the 1,856 acres of farmland there are seven farms that have one acre of solar and one that has two acres of solar. He believed the proposed ordinance eliminated ground-mounted solar which would not be beneficial for the farmers.

Councilor Davis advised that she had gone through the comparison that was provided by Mr. Bibler and wished to confirm that on page 4, where it notes “minor systems” and “major systems” it indicates that any application that requires further relief from the Zoning Board or Town Council must follow the precedence of approval set forth in R.I.G.L. 45-23-61 and Hopkinton Town ordinances. She wished to clarify that this meant that the Planning Board would decide if the proposal would even get to the Town Council. It also noted that the Planning Board Chair had suggested that requiring compliance via the original approval process under the proposed ordinance may be too strict and she wished for Mr. DiOrio to expound further in that regard. Also on page 6 under 5.3.2(c) it notes that solar is not allowed on conservation easements or sold development rights land and she wished to have this explained in further detail. Regarding Section 5.3.3(b), accessory solar systems in residential zones shall be roof mounted only, she questioned whether someone could have pole mounted solar panels on their property; and, where it talks about solar canopy systems greater than 1,750 square feet, questioned how many parking lots in Hopkinton would qualify.

Councilor Hirst asked the Town Clerk whether she had received any input from the fire departments regarding this proposed ordinance. Ms. Cook-Martin noted

that she had sent the proposed ordinance to the fire departments on December 15, 2020 and had yet to hear anything back.

Councilor Davis questioned Section 5.3.4(b)(8) on page 9, where it indicated that the proposed ordinance specifies that decommissioning includes the cost of recycling but there is no credit for salvage and it states we should add a decommissioning estimate to be verified by an engineer designated by the Planning Board. Page 10, Section 5.3.5(a)(1) it talks about a lien against the underlying property to cover any shortfall in the reserve. Page 12, Section 5.3.6(a)(8) speaks of a tree permit being required for removal of trees on town right-of-ways and that the proposed ordinance does not set a standard for rezoned property; she questioned the Town Solicitor if the current ordinance did not set a standard for rezoned property. She went on with Section 5.3.6(a)(10) where it suggests that no building permit shall be issued until notice is given by the Town Planner to the Building and Zoning Official in writing that all applicable approvals have been received and all applicable requirements have been met. The current PSES requires National Grid to sign off on the project; however, there are some things that cannot be signed off on until the project is totally built. She felt this would be difficult to enforce and something that should be reviewed again. Next on page 13, (b)(2) location of major and minor solar energy systems on prime farmlands is prohibited. She wondered what the definition of prime farmland was. She also questioned page 14, Section (b)(8) which notes that any proposed access drives require the issuance of a physical alteration permit from the Town of Hopkinton or RIDOT, depending on the roadway. The Town Planner has indicated that we do not have that process so why was this included? Page 15 under (b)(13), upon approval, the Planning Board shall set a date for decommissioning which date may only be extended by further approval of the Planning Board. If the decommissioning is not completed within 180 days of termination or abandonment, the Town of Hopkinton shall have the authority, after further notice, to enter the property and decommission the solar system. She asked what happens if the Town attempts to decommission the property and the actual cost exceeds the decommissioning bond; how can landowners be made to make up the difference? She commented that Section 5.3.7(a) on page 15, under

the present ordinance provides the Town Council with authority to spot zone RFR80 property for solar which she felt was illegal. Councilor Davis wished the new solicitor to provide guidance on whether the Planning Board should be reviewing these matters before the Town Council got involved. She noted that she wished to receive the true interpretation of the statutes and ordinances and to know the proper procedure. On Page 16 where it speaks of contaminated solar sites, she asked if they could identify all potential contaminated sites and consider listing them in the ordinance as exceptions.

Councilor Marvel felt that the Council should not lose site of the fact that this ordinance proposal is intended to properly associate large or medium scale solar projects as allowed in a manufacturing zone by right and it allows the Town Council to be a lot more appropriate in the way it handles these projects in terms of process and procedure.

Eric Bibler of Woodville Road felt that the main intent of the ordinance was to clearly delineate commercial manufacturing uses from accessory uses. He believed the main question for the Council was whether they wanted to invest the time to move forward with this proposal which attempts to identify the shortcomings of the previous ordinance and tries to rectify them. If they liked the frame work they could go through and change it however they wished. He also noted that there were definitions in the proposed ordinance for prime farmland and property liens regarding inadequate decommissioning reserves.

Joseph Moreau of Old Depot Road suggested that they put the Summary of Relevant Changes and Provisions on the Town's website for everyone to review.

Clifford Heil of 211 Chase Hill Road felt that this was a valuable exercise looking to revise the existing solar ordinance. He believed the prior ordinance had a lot of grey areas which anyone could exploit and advised that they should be very careful with the definitions that they used and should follow the State definitions.

Gina Fuller, District Manager for the Southern Rhode Island Conservation District, which is a quasi-public agency established by the RI General Assembly in 1944 to assist the landowners and municipalities to manage their soil and water resources explained that they were established alongside the Federal Government Soil Conservation Service following the dust bowl. She indicated that she worked

very closely with the USDA NRCS and she wished to make comments on behalf of the farmers in Hopkinton. Based on her review of the proposed changes, she felt this proposal would negatively impact farmers. She did not see any mention about the State's Farm, Forest and Open Space Act; and, based on her review of the town's Farm Viability Ordinance, the threshold for the dollar amount that farmers need to be able to demonstrate of \$2,500 as established in the State's Farm, Forest and Open Space Act and the minimum acreage to be qualified by the State of Rhode Island as a farm is five acres. She felt that the work that went into the town's Farm Viability Ordinance should be commended and requested that there be another workshop focused just on farmland solar.

Councilor Marvel asked where a solar installation is installed on a farm to help the farmer retain viability, is the solar installation providing energy to the farm primarily and then if there is any overage it gets sold back to the grid or is there instances where the farmer is basically renting out part of his land to a solar installation just as an alternate source of income. Ms. Fuller indicated there were both and the State has put a new regulation in place that limits the amount of acreage that a farm can convert from farm to solar.

Councilor Davis asked Ms. Fuller to provide a map of where the prime farmlands were located and also asked for the average income that farmers in Rhode Island were earning. Ms. Fuller indicated the average income of farmers was less than \$25,000 per year.

Louanne McCormick from Lisa Lane was happy that this new ordinance was being proposed. She noted that there was quite a difference between farmers renting their land to a solar developer versus putting in solar to keep their energy costs down. She felt they should treat those two issues differently.

Harvey Buford of the Conservation Commission believed the best way to preserve prime agricultural soils in Hopkinton was to preserve farms. He felt that after the solar project goes away, it was still farmland. If you put a house on that property, it would never be farmland again. He also believed that these solar projects should be at locations that worked and not necessarily in a specific zone.

Councilor Hirst noted that Lynn Rubin Geary of Simplicity Farm had submitted a letter on behalf of farmers.

Don Coleman of 946 Main Street commented that solar for farmers was a source of income needed in order for them to continue farming.

Elaine Caldarone, Hopkinton representative for the Wood Pawcatuck Wild and Scenic Rivers Stewardship Council, stated that they had submitted a letter to the Council regarding the siting of alternative energy systems and also specific suggestions from the Stewardship Council for the current proposed solar ordinance amendment. She noted that there is no reference in the current ordinance or the new proposed ordinance to protecting the wild and scenic tributaries and she hoped that they would incorporate protections for these waterbodies.

Carol Desrosiers asked Ms. Fuller to define the definition of a farm. She noted that six solar projects in town were on property assessed as farms and one was in forestry. She wished to know if there was a distinction between farms versus forestry. Ms. Fuller indicated that according to DEM and the Farm, Forest and Open Space Act, farms have to have at least five acres, excluding your house site; you need to be able to demonstrate the ability to make at least \$2,500 in farm income; you need a written conservation plan which is applied for through the Conservation District; and, you have to have approval by the Tax Assessor.

Forestland requires a minimum of 15 acres; you have to apply through the DEM Forestry Department in order to obtain that; you need a written forest stewardship plan; and, approval from the Tax Assessor. Ms. Fuller indicated that the State classifies farms and forests differently. Ms. Desrosiers noted that large landowners get a tax break but she has to pay full price for her home and land.

Clifford Heil of Chase Hill Road noted that in the Rhode Island Right to Farm Act there was a definition of agricultural activities which specifies what is actually considered agricultural activity. He did not believe farmland should be valued higher than our forests.

Councilor Hirst asked the solicitor about the timeline for dealing with this ordinance to fill the legal requirements with the only exception being if the Sculcos agreed to an extension. Attorney Skwirz noted that they had already agreed to an extension of the advertising date and indicated that the prior Council had set the date of January 19, 2021. He indicated that they would agree to any

extension that was necessary. Councilor Hirst asked about the powers of the Planning Board versus the powers of the Town Council. He also noted that DEM does not make a ruling on every proposal before it is accepted. Attorney Skwirz indicated that they wanted to tie a contaminated site to something that was easily identifiable so they put in the definition about having the RIDEM letter of responsibility to invoke the contaminated site solar provision but that wouldn't necessarily put a stop to any other solar project just because it did not meet the contaminated site definition. It would have to be within the manufacturing zone, passed its master plan approval before the Planning Board, and be within the manufacturing zone already or get a zone change after master plan approval and then the contaminated site would be given a little more leeway with regard to dimensional requirements, but it was important to have the designation beforehand. Regarding the review process, the State law sets that precedence of approval, but he felt that it is a better and more orderly process for reviewing these projects for two reasons: (1) if a project is going to require a zone change this will have them proceed through the master plan first through the Planning Board and the Council will get a much more detailed proposal to review by the time they have to vote on a zone change; and (2) State law designates the Planning Board as the body who is responsible for the comprehensive plan and making land use decisions on an individual basis.

Lynn Rubin Geary of 16 Tomaquag Road noted that she had to go through the State guidelines to become an approved farm and noted that there was extensive work put into the Farm Viability Ordinance.

Town Clerk Cook-Martin stated that Attorney Skwirz had indicated that the Sculcos had waived the requirements for proceeding with the amendment of the zoning ordinances; however, she had no written waiver in the file and subsequently the ad had gone to the newspaper and is now being published for a hearing on Tuesday, January 19, 2021.

Frank Landolfi of 3 Elizabeth Court disagreed with Attorney Skwirz' comments concerning some of the procedure with the Planning Board and Town Council, as to where it goes first and what each body does, that it is dictated by State law. He also questioned why Mr. Bibler had prepared the side-by-side comparison

between the current ordinance and the new proposed ordinance. He suggested that the Council require a subject-matter expert, such as the Town Solicitor, Town Planner or Attorney Skwirz, to offer the side-by-side comparison.

Sherri Aharonian of Dye Hill Road hoped that this ordinance became a product of the experiences over the last two years. This ordinance should contain clear language regarding construction hours and something regarding cutting buffers.

Councilor Hirst wished to have some input from the Town Planner.

Deborah O'Leary of 44 Pleasant View Drive believed that something this important should not be decided while people were limited with their interactions with one another due to Covid and she asked Attorney Skwirz if this ordinance was enacted, would it stop any of the big solar projects that were already approved. Councilor Hirst responded to Ms. O'Leary's question stating that it was his belief that this new ordinance, if adopted, would not apply to any approved project; he also agreed with her that especially the elderly residents would prefer to attend these discussions in person. Council President Moffitt felt that they could not wait because developers were not waiting. He indicated that anyone could email or call any of the Councilors to discuss this matter. Councilor Geary noted that they were having these discussions in the middle of a holiday and many people were not paying attention to politics; and because this is such a big change, he wished to receive some input from the Solicitor, Alfred DiOrio, the Planning Department and the Building and Zoning Department. Councilor Hirst agreed with Councilor Geary and wished more input from those departments as well as the fire departments. Council President Moffitt felt they needed to hold another workshop and request those individuals to attend. He questioned Attorney Skwirz about the timeline since this matter had already been advertised for January 19, 2021. Attorney Skwirz suggested that since this has been advertised for a hearing they should move forward toward that hearing and they could assign homework for the Town staff; the solicitor should review the proposal and make it something that they are comfortable with; the Planner will have to review it and make sure he is comfortable with it; as well as Building and Zoning. At the January 19th hearing they could continue the matter if they needed more time and he would not object.

Lynn Rubin Geary asked how many people were logged into the workshop and Council President Moffitt noted at most was 27 attendees. She noted that this was such a very important issue and a shame that this technology did not seem to reach as many people as the in-person meetings had.

Councilor Geary questioned the Town Clerk as to how many people could attend a meeting in person which she believed to be ten.

Emily Shumchenia of Chase Hill Road noted that the developers were not waiting. Councilor Marvel felt that they need to move ahead with this proposal and if they need more time they could possibly enact a temporary moratorium to buy a little time.

Eric Bibler felt that all the discussions were good and they should obtain the Town Planner's opinion. He noted that Mr. DiOrio, Chair of the Planning Board had sent in some suggestions and he felt that the Town Solicitor should take a closer look. He wished to know if the Council wished to commit themselves to this project and if so he recommended that they organize their efforts in that direction.

Sherri Aharonian of Dye Hill Road suggested that they review and discuss the other portions of the ordinance first and leave the Farm Viability portion for last to give other people more time to get familiar with the zoom technology to be able to weigh in.

Council President Moffitt indicated that he would like to hold another workshop and invite the Town Planner, Building and Zoning and other interested parties. He noted that he was committed with the framework of the proposed ordinance and asked the other Councilors of their opinion. Councilor Marvel agreed and felt it was worthwhile to go through the proposal line by line. He also agreed that they should leave the Farm Viability aspect until last. Councilor Davis noted that it would take more than one three-hour meeting to go through the ordinance; but it was an opportunity to improve the solar ordinance and she did wish to move forward. Councilor Geary concurred but noted that the Farm Viability Act should be taken out. He did wish to receive comments from the solicitor, Planning Board, Zoning Board, Building and Zoning, and other interested parties. Council President Moffitt felt that these people should know that they were holding these

workshops and they could speak at any time. Councilor Hirst felt that it was very important if they wanted someone's opinion to ask for their official position or their recommendation as a body.

Jim Lamphere, Town Planner stated that he had listened to the meeting and he felt that the Council was going in the right direction but felt that there was an awful lot of detail that needed to be explored. He did feel, in looking at the proposed District Use Table, that virtually every single solar project is going to have to go to the Zoning Board for a special use permit, even residential projects. He asked the Council if that was something that they felt necessary to put the Zoning Board through. He felt that this proposal really needed to be gone through line by line and looked at in more detail. Council President Moffitt asked the Council if they wished to hold another workshop. Councilor Hirst wished to decide at their next regularly scheduled meeting whether they would hold another workshop before the January 19, 2021 hearing so that they could get in touch with stakeholders to see when they would be available to participate. Councilor Geary concurred with that sentiment. Councilor Davis felt that waiting until Monday to make that decision did not make sense and they should just tell the stakeholders to make themselves available on a certain date, whether it be January 11, 2021 or January 19, 2021. The Town Clerk noted that if they decided to hold another workshop she could prepare a memo to all interested parties and provide them with advance warning, attach all the necessary documentation and ask for their input. She could not guarantee that everyone can attend, but hopefully they would have time to prepare comments. Council President Moffitt wished to hold another workshop on January 11, 2021 at 7:00 p.m. Councilor Marvel suggested that they all take the latest copy of the draft and go through it line by line writing potential changes that they would like to see so that on the 11th they should be able to start going through the proposal line by line and making some modifications. Then on January 19th when it is provided to the public for comment, it will be a more revised version. Council President Moffitt asked the Councilors to prepare their comments or concerns for the January 11, 2021 workshop and to get the word out about the workshop.

A MOTION WAS MADE BY COUNCILOR GEARY AND SECONDED BY
COUNCILOR DAVIS TO ADJOURN THE WORKSHOP MEETING.

SO VOTED

The Workshop was closed at 9:43 PM.

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Murray

Deputy Town Clerk