

State of Rhode Island

County of Washington

In Hopkinton on the eleventh day of January 2021 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, Town Clerk Elizabeth Cook-Martin participated remotely.

Also remotely attending: Attorney Andrew Teitz, James Lamphere.

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 explained that he would like this workshop to be a Town Council discussion on the proposed ordinance and he would reserve public comment for the public hearing.

James Lamphere, the Town Planner, noted that last Friday he had presented the Town Council with a proposed set of amendments to the ordinance which was drafted by himself; Building & Zoning Official, Anthony Santilli; and, the Deputy Building & Zoning Official, Sherri Desjardins. He noted that during the course of his involvement with the Town and the solar issue, he had not seen residential solar or farm solar as being the source of the consternation from the public. He felt that the public's primary concern was the unanticipated zone changes from

Residential to Commercial in order to allow solar arrays. They proposed to keep residential and farm solar the same process as it was in the past and all other commercial systems would be reviewed as major land development projects by the Planning Board which gives these projects the highest degree of scrutiny that the Planning Board can give a project. They also proposed in the use table to keep it in commercial districts as it currently exists. Mr. Lamphere noted that he had received some revisions from Councilor Marvel which he liked and noted he had put them together as a starting point. It was determined that all Councilmembers had not received Councilor Marvel's email.

It was concluded that Mr. Lamphere would go line by line through staff's amendments. He read the first definition: "Accessory solar energy system. A solar energy system that is incidental and subordinate to the principal use of the parcel." He questioned if there could be more than one principal use on a parcel and wished for the Solicitor's input. He noted that Attorney Skwirz seemed to feel, based upon what he produced, that you can. Ms. Desjardins, the Deputy Zoning Officer, noted that the Town has never accepted more than one principal use on a parcel; there is a principal use and then anything else is an accessory. Councilor Marvel wished to make farm-based solar a separate use. Solicitor Sypole noted that he would look into answering Mr. Lamphere's question and wished to check the state law and town ordinances to assure that there were no differences between them. Mr. Lamphere then skipped to page 3, the proposed Use Table and noted that #306 would be changed to "principal" solar energy system and under Commercial the "P" would be changed to "N." There was discussion about the aquifer protection permit and whether it should be required and if a permit was required it would need to go before the Zoning Board. Mr. Lamphere questioned Margaret Hogan, Planning Board Solicitor, if there could be more than one principal use on a parcel. Ms. Hogan noted that generally speaking there is one principal use and the other uses are accessory, unless there is a mixed use zone which Hopkinton does not currently have. Council President Moffitt asked Mr. Lamphere for the definition of "Aquifer Primary". Mr. Lamphere explained that there is a wellhead and aquifer protection map which is part of the zoning ordinance and the entire town is shaded either one color or another. A

good deal of the town is primary which consists of areas that were mapped by DEM as aquifer recharge areas which are very critical; however, the bulk of the town is secondary. Council President Moffitt suggested that if the proposal was in a critical area or a primary aquifer it should not be allowed, which was agreed to by Councilor Davis. Councilor Marvel suggested for clarification purposes, there be a change in the column headings to “Aquifer Overlay Primary” and “Aquifer Overlay Secondary.” Councilor Marvel also asked Mr. Lamphere if there were instances of a manufacturing zone being over a primary aquifer and Mr. Lamphere indicated yes and felt that there should not be a blanket statement in the ordinance suggesting that if something is in a primary aquifer protection zone it cannot be done because he has not seen any evidence suggesting that solar arrays are harmful to the aquifer. He also noted that they can make whatever changes they wished to this proposal for it was a working document which will be used for the public hearing. Councilor Marvel suggested that there be an “A” in the aquifer primary column which would require more scrutiny and Councilor Davis agreed. There was discussion on item 307, Accessory Solar Energy System, which Mr. Lamphere had left with “P”s in all columns. It was noted that if the Council required a special use permit for these, it would be costly and they would need to go before the Zoning Board. Councilor Marvel agreed that accessory solar could be allowed in all zones; however, they should be very precise on their definition of accessory solar versus principal solar energy systems. Councilor Geary did not believe the Town Council should be telling residents what they can and can’t have concerning solar as an accessory use. Mr. Lamphere continued with item 308, Contaminated Site Solar Energy System and noted that staff recommended requiring a special use permit in RFR-80, RES-1 and Neighborhood Business zones because there may be some contaminated sites on residential property. He questioned whether the Council would like to address the applicants or did they wish to change it to “N”, indicating that nothing is allowed on those sites. Council President Moffitt wished to put an “N” in each of those columns. Councilor Geary questioned Mr. Lamphere about DEM’s regulations concerning contaminated sites and Mr. Lamphere noted that a contaminated site had to be made known to DEM and he felt that they took care

of the more egregious cases first. Councilor Davis wished to have an exception for town-owned landfills noting the Stubtown Road dump; however, she did not want it allowed on any other contaminated site. Councilor Hirst disagreed noting that a special use permit is not a given and a bigger question is what can be done with the contaminated property; he felt there should be one standard to follow. It was decided to put an “S” under the Manufacturing column and an “A” in Aquifer Primary and Aquifer Secondary. The definitions were then reviewed and the following changes were made: Contaminated site solar energy system. It was determined that any contaminated site be reviewed as a Major Land Development Project, regardless of the size of the project. In Ground-mounted solar energy system, the word “supported” would be changed to “*attached*”. Commercial solar energy system will be changed to “*Principal solar energy system*” and the definition will read: “A solar energy system whose main purpose is to generate energy for sale back into the energy grid system, rather than being consumed on the site.” Regarding Roof-mounted solar energy system, Councilor Marvel suggested changing “roof-mounted” to building-mounted because in some of the research that he had conducted, it showed solar panels mounted to walls. Council President Moffitt indicated that he preferred roof-mounted, which was agreed to by the other Councilors. It was decided to strike the definition of solar canopy. The definition of Solar energy system was, “The equipment and requisite hardware that provide...” It was determined that they would add “*and structures*” after hardware. It went on to state: “...or electricity produced for a nonrenewable resource.” The word “for” was changed to “*from*”. In the last sentence commas will be added after the word “system” and after “parcel”. After the Use Table there was a footnote which would be changed to read: “*A special use permit granted for a solar energy system may not be granted in conjunction with a dimensional variance.*” In the body of the ordinance everywhere it notes “Commercial Solar Energy System” this will be changed to “*Principal Solar Energy System*”. On page 4, Section 5.3.1(A) in the last sentence an “s” will be added to the word “installation.” Section 5.3.2(B) concerning farms shall be removed and the Farm Viability Ordinance will be handled separately from this ordinance. The next paragraph, (C) shall be changed to (B) and the reference to

farms stricken. Councilor Davis asked the Solicitors if the town ordinance takes precedence over R.I.G.L. § 45-23-61. Solicitor Hogan indicated that as a general rule, local ordinances and regulations do not trump state statutes. Solicitor Sypole noted that § 45-23-61 is written with “shall” language so there was no choice. Councilor Davis asked for an explanation of a conditional approval. The Solicitors explained the statute definition and it was noted that the statute definition should be added into this paragraph verbatim. On page 5, (D) will be changed to (C) and (E) will be changed to (D). Solicitor Hogan noted that there is a statute that indicates that certain development rights that have been funded, requires permission of the Attorney General’s Office to remove any of those lands from a conservation status. Section 5.3.3, “Accessory solar energy systems and solar canopies.” It was noted that they will strike out “and solar canopies” and Mr. Lamphere read the entirety of that section. Councilor Marvel asked Mr. Lamphere to explain why he did not include several items that were in the proposal by Attorney Skwirz. Mr. Lamphere indicated that it was done in conjunction with the conversation with the Building and Zoning Department who noted that a lot of the language which was removed was because it was already in the building code. Councilor Davis wished to add a (d), which was a statement in the proposed ordinance and in the current ordinance: “*On flat roofs accessory solar energy systems shall be set back from the edge and/or behind architectural features to be minimally visible.*” Councilor Marvel suggested in section (b) taking out the words “On flat roofs”. Mr. Lamphere read Section 5.3.4. At the end of section A(1), Councilor Marvel noted that he wished to add language proposed by Elaine Caldarone after the word “uses” so that it would now read, “...land uses *and to the geological, hydrological, ecological, cultural and scenic values of the Wood Pawcatuck Watershed...*” Council President Moffitt wished to add language to Section A after “...all applications shall *at the first stage* include, in addition...” Section B(1) shall be changed to, “A landscape plan prepared by “a” landscape architect...” Councilor Marvel wished a new B(4) be added to read: “*Identification of any designation wild and scenic river or tributary within a quarter mile of any point on the perimeter of the site.*” Section B(6) regarding lighting would be removed as it is mentioned later in the

ordinance. The new #8 shall be changed to, “...certified Professional Engineer, *currently licensed and authorized to practice...*” Regarding #12, the letter from National Grid confirming feasibility, Solicitor Sypole stated that he was not sure if National Grid would issue such a letter and he did not want to impose a requirement on an applicant that was impossible to be complied with. Solicitor Hogan noted that she would look into this and get back to the Council. Regarding Section 5.3.5, Conditions, A(1), Councilor Marvel wished to end (1) after 20% contingency; add in a (2) with the next sentence; and, a (3) where it states “*To the extent that the financial...*” There was discussion on adding a (4) regarding decommissioning funds and Solicitor Hogan asked Mr. Lamphere to clarify if the initial obligation for decommissioning was on the landowner and then if there is insufficient funds the town would step in. Mr. Lamphere explained that the thought was for the developer to use their own funds to decommission the project and once it is completed to the satisfaction of the town, they would release the funds that they are holding in escrow and give it back to the developer. Solicitor Hogan felt that this intent should be made much clearer. Councilor Davis noted that she had thought that the developer used the money that the town was holding to decommission the project. Mr. Lamphere advised that the town has executed Escrow Agreements with developers on a project by project basis and he would review those documents and determine the best way to proceed with this language. Councilor Marvel noted that Elaine Caldarone wished to add to the end of Section 5.3.6, A(3), “*or of any viewshed including any wild and scenic river or tributary. No portion of the facility shall intrude on any area within one-quarter mile of a river, tributary or any integral body of water.*” Mr. Lamphere indicated that he was fine with the first part; however, was unsure about the last sentence for it seemed like a big distance. Councilor Davis and Council President Moffitt wished to include Ms. Caldarone’s suggested additions. Regarding Section A(8), Ms. Caldarone wished to add a sentence to the end which states: “*There shall be no clearance of vegetation within 400 feet distance of a wild and scenic river or tributary.*”

Attorney Teitz was present in place of Attorney Skwirz and believed that it would be important to have all copies of the ordinance on the town's website so people could follow along.

Council President Moffitt noted that on January 19, 2021 they will open the public hearing, continue it and then continue with this workshop. Attorney Teitz agreed that the applicant would allow a thirty day continuance and noted that he would email the Town Clerk in that regard.

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

SO VOTED

The Workshop was closed at 10:16 PM.

Elizabeth J. Cook-Martin

Town Clerk

Marita D. Murray

Deputy Town Clerk