

**TOWN OF HOPKINTON  
PLANNING BOARD**

**SPECIAL MEETING**

**Wednesday, June 16, 2021**

**6:00 p.m.**

**Hopkinton Town Hall  
1 Town House Road, Hopkinton, RI 02833**

**CALL TO ORDER:**

Chairman Al DiOrio called the Special Planning Board meeting of June 16, 2021 to order at 6:06 p.m.

**MEMBERS PRESENT:**

Planning Board Chair Al DiOrio, Town Planner Jim Lamphere, and Senior Planning Clerk Talia Jalette participated in the meeting from the Town Hall chambers. Planning Board Vice Chair Emily Shumchenia, as well as Planning Board members Keith Lindelow and Carolyn Light, and Planning Board alternate John Pennypacker joined the meeting via Zoom. Town Council Liaison Sharon Davis, Conservation Commission Liaison Deb O'Leary and Planning Board Solicitor Maggie Hogan also participated via Zoom. Planning Board Vice Chair Ron Prellwitz was absent.

**ROLL CALL:**

Mr. DiOrio asked the Board members to state if they were in attendance. All replied in the affirmative, excluding Mr. Prellwitz.

**PRE-ROLL:**

Mr. DiOrio asked the Board members to state if they would be in attendance at the Board's next meeting on July 7, 2021. Mr. DiOrio, Mr. Lindelow, Ms. Light, Ms. Shumchenia, and Mr. Pennypacker said that they would be in attendance. Ms. Shumchenia and Mr. Pennypacker's responses were delayed due to some technical glitches. Mr. Prellwitz did not respond as he was not in attendance.

**OLD BUSINESS:**

**Preliminary Plan – Public Informational Hearing – 4-Lot, 7 Unit Major Land Development Project – Fairview Estates – AP 18, Lot 7K, 66 Fairview Avenue. Shoreline Properties, Inc., applicant.**

Mr. DiOrio asked if the applicant or their representatives were present. Ms. Jalette replied in the affirmative. Jeff Caffrey, the attorney for the applicant, appeared before the Board.

He said that he believed that Joe Catelli was in attendance, as well as Patrick Freeman, of American Engineering. Ms. Jalette replied that she had asked Mr. Freeman to unmute, but that she was unsure if Mr. Catelli was in attendance. Mr. Caffrey said that he had spoken “to him a few moments ago”, and that Mr. Catelli was “going to attempt to join us, but he was running a little bit late.” Mr. Caffrey continued.

Mr. Caffrey: “Um, as, as I’m sure you recall, two weeks ago, when last we, we spoke, um, we had resolved what I believe to be the majority of the issues, um, and, to my recollection, the sole remaining issue was how we were going to address the, um, maintenance of the storm water facilities, and, um, I had submitted, uh, to Attorney Hogan a proposed draft of a maintenance agreement, um, that I received some feedback on today from, um, from Jim Lamphere, which I assume was circulated to all the other Planning Board members. Um, has everybody seen the proposed, um, maintenance agreement?”

Mr. DiOrio: “Uh, Al DiOrio – so, if I may, uh, the latest document that I printed out, unfortunately, has no date or annotation that allows me to identify which document we’re looking at, so I reviewed several – let’s just, for the record, try and be clear which document we all may be looking at, uh, but whichever handle you’d like to identify it.”

Mr. Caffrey: “Well, I – Jim, uh, Jim Lamphere had circulated a, uh, redlined copy of my original draft, um, which, um, is what I have in front of me, but, I, unfortunately, I don’t have – no way of comparing what I have to what the members of the Board have in front of them. Did everybody get, uh, Jim [Lamphere]’s circulation?”

Mr. DiOrio: “Al DiOrio – I do not have a redlined anything on the latest copy that I printed out.”

Mr. Caffrey: “So you would have the cleaned up version. Does the cleaned up version that you have have 11 paragraphs?”

Mr. DiOrio: “Well, that’s gonna be the identifier. Yes, it does.”

Mr. Caffrey: “Okay.”

Mr. DiOrio: “Do, do any of the preceding documents have 11 items?”

Mr. Caffrey: “The previous ones that I had had an improperly numbered Paragraph 9, and that was part of the redline comments from Jim [Lamphere], so I believe, if you’ve got the one with 11 e-, enumerated paragraphs, that should be what, uh, what Jim [Lamphere] circulated as a final draft.”

Mr. DiOrio: “Okay. So, can we agree that the document that has 11 items is the one that we should all be looking at?”

Mr. Caffrey: “That, uh, that’s fine with me. Yes.”

Mr. DiOrio: “So, I’m gonna reach out, uh, and I’m sorry – before you proceed, I’m gonna reach out to my Planning Board members – does everybody have a document with 11 items on it? Jim [Lamphere] is shaking his head.”

Mr. Lindelow said that he did not have the document. Mr. Lamphere responded.

Mr. Lamphere: “Yeah, Jim Lamphere, Town Planner. I, uh, basically communicated with, uh, uh, Maggie [Hogan], uh, our Solicitor, on this, and so, uh, I sent it out to, uh, uh, Mr. DiOrio this afternoon, Maggie [Hogan], and, uh, Attorney Caffrey, and I, uh, again, as correctly pointed out, I, uh, made the annotation here to change Number 9 to 11.

So, that is, that is the latest document. Um, I did receive a, a comment from Solicitor Hogan on it, that Item Number 11 is not acceptable, so that, that could be a good starting point there. And, I also want to make – a minor, a minor typo in, on, the first page, in the fifth ‘Whereas’. Um, it has ‘welfare of the residence’, and it’s spelled ‘d-e-n-c-e’, and I think they meant to said ‘residents’, ‘e-n-t-s’. So, that’s a minor, minor typo there.”

Mr. Caffrey: “Sure.”

Mr. Lamphere: “So, we can correct that, but -”

Mr. DiOrio: “So, so, Al DiOrio again. So, Jim [Lamphere] is it fair to say that, with the exception of this eleventh item, do my Planning Board colleagues have a document that is almost similar to the final version?”

Mr. Lamphere: “I -”

Mr. DiOrio: “Just so, just so we can all talk about the same thing.”

Mr. Lamphere: “Yes – Jim Lamphere, Town Planner. I believe, uh, that the Planning Board might not have – again, because my communications were basically between myself and the Solicitor, um, to work out the details of this, I did not include the whole Planning Board in this discussion.”

Mr. DiOrio: “Okay.”

Mr. Lamphere: “So, I’m not sure if the Planning Board has Number 4 and 5, which were added by Crossman Engineering, uh, stating that the grass should be mowed at least four times a year, and that septic systems are to be inspected annually. Those two are additions from, I believe, what the Planning Board has. Uh, the were suggested by Crossman [Engineering], like I said, and incorporated by Patrick Freeman into this document. And so, with the addition of those two items, then, that brought us up to a total of eleven, uh, eleven items.”

Mr. DiOrio: “Okay, so, Al DiOrio – I’m still wrestling a little bit. I’m, I’m reluctant to engage in a discussion about a document that no one has in front of them, so -”

Ms. Light: “Correct.”

Mr. DiOrio: “Do, do the Planning Board members have some versions?”

Ms. Light: “No.”

Mr. DiOrio: “Okay, so, then I would be suggesting we start at the beginning. Uh, let’s go through them, paragraph at a time. I know it’s gonna be laborious, but I don’t – this is an important document. I don’t see how we can legitimately discuss it if nobody knows what it says. So, can we do that?”

Ms. Light: “Do, do we have the opportunity to have that document e-mailed to us now?”

Mr. DiOrio: “Um, I’m gonna leave that to the techno wizards. That might be a little bit beyond our, uh, capabilities given the fact that we’re all actively engaged.”

Ms. Light: “Okay, then we should just move forward.”

Mr. DiOrio: “Okay.”

Mr. Pennypacker: “Um, this is John [Pennypacker], uh, just a question regarding this. Is the most recent version in the documents pro-, provided on the Town’s website, and if so, can you identify the name of the file?”

Mr. Lamphere: “Jim Lamphere, Town Planner. I don’t believe – because this document was a work-in-progress since the last meeting, and it really didn’t come together until the last minute, being, being this afternoon, actually, uh, no, I don’t believe it is on the website.”

Ms. Hogan: “So, Mr. Chairman, can, can you guys hear me tonight?”

Mr. DiOrio: “Yes, Maggie [Hogan]. Welcome.”

Ms. Hogan: “Oh, great, hi, thank you. So, I have it – it came in, it’s like, 2:47 this afternoon. I will forward it to everyone by e-mail, okay? Um, obviously, I can’t put it on the Town website, but I can certainly forward it to everybody by e-mail. Um, and just a little background – the, the gi-, the, the genesis of this document is, if you recall, at the last meeting, uh, we were directed, uh, to talk to – I, I was directed, as Solicitor, to talk with applicant’s counsel about how we could work out the concerns that the Commission – pardon me, the Board - had at the last meeting. Um, I did suggest that a, a form of the maintenance, of a maintenance agreement be submitted, um, and that the, you know, the current owner of the property actually enter into that agreement, um, and that the requirement for that agreement continuously would be also in, in the Board’s decision. Um, one thing I - and we can get to it, Number 11, on, on the document – I, I believe the intent is that the, uh, applicant would be able to, uh, eh, you know, discharge, if you will, the vender that’s selected for this process, and select a new vendor, and if that’s the intent of that paragraph then we can work out the details of it, but, but, otherwise, I can discuss those – the concerns – um, when we get there. But, so, let me send this to all of you now – Al [DiOrio] and Ron [Prellwitz] -”

Mr. DiOrio: “Yep, Maggie [Hogan], very – that’s very nice. I, I really appreciate that, and if Planning Board members could just alert me to when they receive this, we can engage in, I think, a more legitimate discussion. I apologize to the audience, uh, that you will not be privy to this document. It is a, it is between the Planning Board and the applicant, but, uh, nonetheless, we do normally try and post these things. It didn’t get done. I apologize.”

Ms. Hogan: “That’s – it’s unfortunate – it’s the nature of, uh, remote meetings, you know, where documents finalized on a day of a Hearing would normally be handed out at the hearing, but -”

Mr. DiOrio: “Yup.”

Ms. Hogan: “Here we are.”

Mr. DiOrio: “The evolutionary documents, yes, yes.”

Ms. Hogan then sent the document to the Board. Mr. Caffrey asked if what she was sending the Board was the eleven paragraph document. She replied that it was. She, in turn, confirmed that he had received it. He said that he had. She then stated that Steve Cabral, Daniel Cotta, Al DiOrio, and Talia Jalette should have all had the “same document”. The Board members then stated when they received the document. Ms. Hogan continued.

Ms. Hogan: “So, it’s not too onerous to read through it. It’s, you know, it’s only a couple of pages, um, and it is, it’s your – it’s the most crucial issues that you guys were concerned with at the last meeting. So. And, Al [DiOrio], when, when you get to it, I’m not sure that you really need to read the first page of all the ‘whereas’-es, you know – we all know what the ‘whereas’-es, you know, we’re trying to work out – it’s the ‘therefore, they agree as follows’, I think is the important part that you’d wanna discuss.”

Mr. DiOrio: “So, Maggie [Hogan], just give me a little guidance here. It sounds like most of the Planning Board members are in receipt, uh, acknowledging that the audience is not, uh -”

Ms. Hogan: “Yes.”

Mr. DiOrio: “Do you recommend that I read, uh, Items 1 through 11?”

Ms. Hogan: “Yes, and, and I would think that if the – any members of, as you read through them, if any member of the Commission – aw, gee, I’m sorry – Board, um, you know, has any concerns or questions that we address them paragraph by paragraph. That would seem to make the most sense.”

Mr. DiOrio: “Okay, Plan-, that’s very good. Planning Board members, you’re all on Board with that? So, as I go through the paragraphs, if you have comments -”

Ms. Light: “Yes.”

Mr. DiOrio: “Or concerns, let’s just stop me after Number 1, for example, and we’ll talk about it.”

Mr. Caffrey asked if it was “okay if the applicant raises any questions as we go through it as well.” Mr. DiOrio replied, “Absolutely.” He then began.

Mr. DiOrio: “The opening paragraph said, says, ‘Now, therefore, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows: Item Number 1: The on-site storm water management facilities shall be constructed by the Owner, its successors and assigns, in accordance with the plans and specifications identified in the Storm Water System Operation & Maintenance Plan, which is attached hereto as Exhibit A.’ Comments? Concerns? Thoughts?”

Ms. Light said that she did not have Exhibit A. Ms. Hogan replied that she believed that that was “on the website.” She asked for confirmation from Mr. Lamphere. He said that he was “not certain about that”, but that he believed it was. Mr. Caffrey interjected that that was a document from the Department of Environmental Management. Ms. Hogan said that she thought that it “probably was from the prior meeting.” She continued.

Ms. Hogan: “We have seen it.”

Ms. Light: “Okay.”

Ms. Shumchenia: “Storm Water Management Plan is Item Number 4, uh, under ‘Old Business’ on the website.”

Ms. Hogan: “Thank you, Emily [Shumchenia].”

Mr. DiOrio continued to Item Number 2.

Mr. DiOrio: “‘Item Number 2: The Owner, its successors and assigns, including any Homeowner’s Association, hereby contract with Shalvey’ – I hope I have that right – ‘for the purpose of ensuring the maintenance of the storm water management facilities in accordance with the required Storm Water System Operation & Maintenance Plan.’ Let me just digress here for a moment – Shalvey was previously alluded to as Shalvey Brothers Landscaping, Inc., earlier in the document. You don’t have the benefit of that. Continuing. ‘This includes all catch basins, sediment forebays, sand filter, infiltration basin, infiltration practices, rain gardens, dry extended detention pond, maintenance access road, pipes, channels, or other conveyances built to convey storm water to the

facility as well as [all]<sup>1</sup> structures, improvements, and vegetation provided to control the quality’ – excuse me – ‘the quantity and quality of the storm water. Adequate maintenance is herein defined as good working conditions so that these facilities are performing their design functions. The Storm Water Best Management Practices Operation, Maintenance, and Management Checklists are to be used to establish what good working condition is acceptable to the Town of Hopkinton.’ Comments? Thoughts?”

When he did not hear from the rest of the Board, he moved to Item Number 3.

Mr. DiOrio: “On an annual or biannual basis, depending upon the system component, and after storms with greater than 2.7 inches of precipitation, Shalvey shall inspect the storm water management facility. The purpose of the inspection it to’ ensure – ‘assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, basin areas, access roads, etcetera.’ Defi-, definc-, ‘deficiencies shall be noted in the inspection report and immediately repaired. Any required maintenance as set forth in the Storm Water System Operation & Maintenance Plan shall be performed by Shalvey.’ Thoughts or comments?”

Mr. Lindelow and Ms. Light spoke at the same time. Mr. Lindelow went forth with his question.

Mr. Lindelow: “What do they do with the report once they’ve done it?”

Ms. Hogan: “I believe that needs to be submitted to the Town.”

Ms. Hogan then said that she thought that the answer was “somewhere in here”. Mr. DiOrio responded.

Mr. DiOrio: “I think that we should insert that into that paragraph somewhere.”

Ms. Hogan pointed out the last sentence in Item Number 6, and then corrected herself. Mr. DiOrio replied that they should “just put in here a sentence that says ‘Shalvey shall submit a copy of the inspection report to the Town.’” He continued.

Mr. DiOrio: “Actually, let’s say ‘to the Town Planning Department’, so it doesn’t get sent to the Finance Director. Good comment.”

He began to introduce Item Number 4 when Mr. Pennypacker interjected. Mr. Pennypacker noted that it read “‘on annual or biannual basis’”, and he wanted to know “‘who gets to decides if this is every year, or every other year.’” Mr. DiOrio replied.

Mr. DiOrio: “‘Depending upon the system component’ – Al DiOrio.”

Mr. Pennypacker: “Who gets to decide which system component is every other year versus every year – is that enumerated later? I’m just seeing this.”

Mr. DiOrio: “No, it’s a good question.”

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<sup>1</sup> Mr. DiOrio said “any” here, but the agreement reads “all”.

Ms. Hogan: “That’s – I believe that’s set forth in this, um, the Operation and Maintenance Plan, and then, uh, you would look to the best management practices checklists.”

Mr. Pennypacker: “Thank you.”

Mr. DiOrio then went on to Item Number 4.

Mr. DiOrio: ““Grass around the perimeter of each basin and sand filter system shall be mowed at least four (4) times per year. Catch basin cleaning and street sweeping shall be performed annually.’ Thoughts or comments?”

Mr. Lindelow weighed in. He asked if they should define when the mowing would take place.

Mr. Lindelow: “We don’t want four times in the month of June, and then not the rest of the year. I think we need to define – not more than once a quarter, or something like that, or – I don’t know how we define which four times per year they are.”

Ms. Hogan: “It’s a good point.”

Mr. DiOrio: “Do you have a recommendation?”

Mr. Lindelow: “I would say not more than once per quarter, maybe, I guess?”

Ms. Hogan: “Well, I don’t think you’re gonna be mowing in the winter, right, so -”

Mr. Lindelow: “True.”

Ms. Light: “Can you call it the ‘growing season’?”

Ms. Hogan: “Perfect.”

Ms. Light: “This is Carolyn [Light].”

Ms. Hogan: “Four times, four times per growing season?”

Mr. Lindelow: “April through October?”

Mr. DiOrio: “Al DiOrio. I heard the answer in there – four times per growing season.”

Ms. Light: “If you need to establish, um, the growing season, you can call it March to October.”

Ms. Hogan: “Yeah, I was just about to say – if, if you just, if you just want to specify – ‘shall be mowed in April, June, August and October.’ Done.”

Mr. Lindelow: “Works for me.”

Mr. DiOrio: “Go. Very good. Excellent comment. Thank you.”

When he did not hear any further comments from the Board, Mr. DiOrio moved on to Item Number 5.

Mr. DiOrio: ““Septic systems are to be inspected annually to ensure proper operation.””

Mr. Caffrey: “Al, Al [DiOrio] – I’ve got an issue with that. It, it’s Jeff Caffrey. Um, I’m, I’m not sure why septic system was, is part of the storm water facility maintenance agreement. That’s something that Steve [Cabral] added. I mean, uh, the septic systems are designed to be contained within, within each individual property owner’s lot -”

Ms. Hogan: “Yep.”

Mr. Caffrey: “So why that would become an obligation is, is, I think, outside the scope of the agreement.”

Mr. DiOrio: “Well, Al DiOrio – I have to profess that the same thought crossed my mind.”

Mr. Caffrey: “Yep.”

Mr. DiOrio: “So perhaps there’s an explanation in there somewhere that escapes me.”

Ms. Hogan asked if Mr. Cabral was on the line. Ms. Jalette replied that he was, and that she was elevating him to a role as a panelist. Mr. Cabral said that he did “agree with the comments.” He continued.

Mr. Cabral: “The only reason I inserted that is when I went through the, the maintenance agreement, all I did was make sure every item within the Storm Water O&M [Operation and Maintenance Plan] was included in the maintenance agreement, and the septic system annual inspection was actually included in their DEM [Department of Environmental Management] approved Storm Water O&M [Operation and Maintenance Plan].”

Mr. DiOrio: [laughed]

Ms. Hogan: “Would that be a, for a septic system that’s – serves like, a public component of this, as opposed to the private homeowner lots?”

Mr. Cabral: “You know what? I, I agree. I normally would not have added it.”

Ms. Hogan: “Yup.”

Mr. Cabral: “All I did was make sure what was in the approved document was included here. So, may-, maybe Patrick [Freeman] would be best to explain with, why that was included.”

Mr. Freeman: “So, typically, those, those, uh, conventional systems – I believe they’re inspected every - three times, every three years, I want to say?”

Ms. Hogan: “Right.”

Mr. Freeman: “Um, maybe a, a typo, or a copy from a-, another project that was, used advanced treatment systems, so I could -”

Ms. Hogan: “I betcha that’s what it is. Yup.”

Mr. Cabral: “Yeah, I – again, this is Steve Cabral – I have no objection to removing that. Ag-, again, I just wanted to make sure this was all-encompassing.”

Ms. Hogan: “I think that the, um – my recommendation would be to remove this from this particular agreement, and you could include, uh, ‘triennial’ expe-, ‘inspection of septic systems’ as one of the conditions of approval, over all, of the plan – and outside the scope of this particular maintenance agreement. That way, it’s a, it’s a requirement of the particular homeowner, and not the Homeowner Association.”

Mr. DiOrio: “Yep. Very good. Thank you. Steve [Cabral], I appreciate your, uh, comprehensive approach. Uh, I’m – Al DiOrio – I’m perfectly okay with removing this. With regards to the inspection every three years, uh, to the best of my knowledge, Hopkinton does not have such a program, uh, so, I, I’m, I’m reluctant to impose -”

Ms. Hogan: “Okay.”

Mr. DiOrio: “Such inspections on these homeowners when no one else in Town is doing that.”

Ms. Hogan: “Point well taken.”

Mr. DiOrio: “If I’m mistaken, and I’m, I’ve missed the beat, someone please correct me. I’m certainly not, uh, opposed to inspecting septic systems, but it doesn’t really make a lot of sense to have a couple of people in Town doing it and nobody else does.”



Mr. Cabral: “Okay. If I may – this is Steve Cabral – I, uh, what Al [DiOrio] described is certainly true, but one thing that many residents in Rhode Island don’t realize is that DEM [Department of Environmental Management] actually has a, a document that recommends routine septic inspections, and a homeowner with the septic system is obligated to perform the inspections. Unfortunately, there’s no publication, educational process to make the homeowners aware, so one benefit is that this would actually be informing the residents that there is a requirement, at the State level, but, no one’s aware of it.”

Here, Ms. Light and Mr. Caffrey spoke at the same time. Mr. Caffrey deferred to Ms. Light.

Ms. Light: “This is Carolyn [Light]. I think, I think maybe the Homeowner’s Association could, uh, cover that, in, in, um, their by-laws or whatever they’re gonna put together. It sounds like a good place for it.”

Mr. Caffrey: “I, I would have no objection including that in the Homeowner’s Association documents. We just don’t want to put a burden on any individual property owner – any different than that which is endured by the rest of the Town.”

Ms. O’Leary: “Yeah. Yeah. Right.”

Mr. Cabral: “Okay, oh – but one – again, Steve Cabral – one comment I want to make to the applicant is that the septic system inspection is part of the approved DEM [Department of Environmental Management] permit, so even though the Town Planning Board may not require it, they are obligated, based upon their DEM [Department of Environmental Management] permit.”

Ms. Hogan: “And Steve [Cabral], is that every three years?”

Mr. Cabral: “Uh, I believe that’s how it was written. Oh, no – actually, the way it was written and approved by DEM [Department of Environmental Management] is annually.”

Ms. Hogan: “Wow.”

Mr. DiOrio: “So, so – Al DiOrio – why don’t - we do a suggestion here. Let’s let the DEM [Department of Environmental Management] approval stand as is, and it’ll be up to somebody to read through the documents and flesh that out. I don’t see why it has to be in the maintenance agreement.”

Ms. O’Leary: “Okay.”

Mr. Caffrey: “Agreed.”

Ms. O’Leary: “Thank you, Al [DiOrio].”

Mr. DiOrio: “Can we all decide that we’re on board with that idea?”

Ms. Hogan: “Yes.”

Mr. DiOrio: “So, I’m not voiding the DEM [Department of Environmental Management] condition.”

Ms. Hogan: “Right.”

Mr. DiOrio: “Steve [Cabral] points out that that must be adhered to, but I don’t think the Planning Board needs to be involved.”

He then moved on to Item Number 6. Ms. Hogan interjected that it would “now be Item Number 5.” Mr. DiOrio thanked Ms. Hogan for her comment. He then continued.

Mr. DiOrio: “The owner, its successors and assigns, hereby grant permission to the Town of Hopkinton and to other relevant enforcement authorities, their authorized agents and employees, to enter upon the property and to inspect the storm water management facilities whenever the Town deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The Town shall provide the owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.”

Mr. DiOrio asked if there were any comments from the Board. When he did not hear from his fellow members, he moved on to the next item.

Mr. DiOrio: “Hearing none – Item Number 7 in the document, now renumbered to Item 6 – ‘In the event that the owner, and/or the Homeowners’ Association, their heirs, executors, successors and assigns, fail to maintain the storm water management facilities in good working condition acceptable to the Town, the Town may enter upon the property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs, including but not limited to reasonable attorney’s fees, to the owner, and/or the Homeowners’ Association, their heirs, executors, successors and assigns, jointly and/or severally. This provision shall not be construed to allow the Town to erect any structure of permanent nature on the land of the owner outside of the easement for the storm water management facilities. It is expressly understood and agreed that the Town is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligation on the Town.’ Thoughts? Comments?”

When he did not hear from his colleagues, Mr. DiOrio moved on to “Item Number 8 on the document, now renumbered to Number 7.”

Mr. DiOrio: “The owner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the storm water management facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.’ Comments? Thoughts?”

When Mr. DiOrio did not hear any comments or thoughts from the Board, he continued.

Mr. DiOrio: “Item Number 9 on the document, renumbered to Number 8 – ‘In the event the Town, pursuant to this agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Owner, its successors and assigns, shall reimburse the Town upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the Town hereunder. If payment is not made, the Town of Hopkinton shall have the right to place a lien on the declarant, its successors or assigns, including the Fairview Estates Homeowners’ Association, and any and all lots in the Subdivision, which lien shall be jointly and severally due to the Town.’ Comments or thoughts?”

When he did not hear from the Board, he moved on to the next item.

Mr. DiOrio: “Item Number 10 on the document, renumbered to Number 9. ‘This agreement imposes no liability of any kind whatsoever on the Town and the owner agrees to hold the Town harmless from any liability in the event the storm water management facilities fail to operate properly.’ Comments or thoughts?”

When he did not hear from the rest of the Board, Mr. DiOrio read “Item Number 11 on the document, renumbered to Number 10.”

Mr. DiOrio: “‘This agreement may be terminated by either party’ upon – ‘upon providing thirty days advanced notice to the other, at which point all obligations of the parties shall effectively cease.’”

Here, Mr. DiOrio and Ms. Hogan spoke at the same time. Mr. DiOrio said that he was “sure” that there would be “comments or thoughts” on this particular item. Ms. Hogan then spoke before the Board.

Ms. Hogan: “Yeah, Mr. Chairman – I, I - just have Mr. Caffrey confirm what the intent of that item was. It – I read it quickly at first, and I thought, ‘Yeah – no, that’s a non-starter’, and then I read it again and I thought, ‘I think this is intended to – if the particular vendor arrangement is not working out, it can be terminated, and the Homeowners’ Association can select a new vendor’, but I’d like Mr. Caffrey to tell us that’s what that – he’s intending that to mean.”

Mr. Caffrey: “Sure. Yeah. Exactly. We didn’t want to be locked into an open-ended contract with Shalvey, and I’m sure they probably don’t want to be locked into an open-ended contract with us, so we wanted a mechanism to be able to terminate the contract if either party was dissatisfied.”

Ms. Hogan: “So, Al [DiOrio] and members of the Board, my suggestion is that you could, in fact, then, leave this particular, um, paragraph in this agreement, but then, in the approval, include something along the lines of ‘the Homeowners’ Association shall, at all times, have an enforceable’, um, ‘signed copy of the storm water facility maintenance agreement.’”

Mr. DiOrio: “Yep – Al DiOrio. Uh, listen, I’m, I’m okay with those approaches. Uh, my only concern would be to add on to Maggie [Hogan]’s idea with some kind of language that, in the event that the owner discharges – I’ll use that term – this particular, uh, landscaping group, and contracts with another, the Town needs to have a copy of that new agreement, and needs to be advised that this actually happened – and it should probably be within a certain number of days of the, uh, release of one and the inclusion of the other, just so that the Town is in the loop, and then nothing is happening in the dark.”

Ms. Hogan: “So, I’ve got a proposal that the Town-, Homeowners’ Association shall be obligated to notify the Town within thirty days of any change to the vendor on the, uh, maintenance agreement, and to provide a copy thereof.”

Mr. DiOrio: “Outstanding.”

Here, Mr. Pennypacker and Ms. Light spoke at the same time. Ms. Light deferred to Mr. Pennypacker.

Mr. Pennypacker: “Just to further cement this – is there not an opportunity to reword that, because, just by virtue of saying ‘this agreement’, that by def-, anyone who reads this is gonna say this refers to the document, which has agreement in the title. Um, instead of saying ‘this agreement’, can it be changes to saying, you know, ‘the contract with the’, with Shalvey, or the maintenance provider, uh, ‘be terminated’, because that – I think that uses more plain language.”

Mr. Caffrey: “I, I’m comfortable with that, if that, if that works for you. ‘This undertaking’ or something of that nature?”

Ms. Shumchenia: “This is Emily [Shumchenia]. I thought the same thing, but then, when I saw the signature lines – and it’s really just an agreement between the landscape vendor and the owner, then I realized, you know, that’s what this agreement is between, and they’re talking about the Town and their actions towards the Town, so the Town’s not really agreeing to this. It’s just the two of them.”

Ms. Hogan: “Correct, and there’s an obligation – there’ll be an obligation in the order that, at all times, they have to have an effective vendor contract for storm water facility management – main, maintenance – pardon me.”

Mr. Pennypacker: “This is John [Pennypacker]. Thank you. That, that clears it up.”

Mr. DiOrio asked if the Board had “any other thoughts about this document.” Ms. Light said that her “only question mark on this is that Shalvey would have to agree to whatever fees may be, be determined”. She said that before she would “sign an agreement like that”, she “would want to talk about the money.” She continued.

Ms. Light: “So, how, how did we get to the point where Shalvey agreed to be named as a, a participant in this agreement?”

Mr. DiOrio: “Uh, Al DiOrio – uh, I, I would envision this kind of document showing up when folks record their Final Plans and legal documents. I don’t think the Town should be a party to the fees. That’s not really our business. We care about -”

Ms. Light: “Yeah.”

Mr. DiOrio: “The fact that the landscaping group is in agreement with the owner.”

Ms. Light: “Yeah, I, I personally don’t care about the fees or the cost of any of that other nonsense. I’m, I’m just, um, not on good footing with this being, uh, Shalvey Brothers Landscaping, being named in the final document. That could change at the end of the day. So, as a blueprint, if we just felt that Shalvey Brothers Landscaping because they, for all intents and purposes are, or might not be, um, you know, just, uh – that, that’s my point. I’ll, I’ll move on. Thank you.”

Mr. DiOrio: “I – Al DiOrio – I understand, but, quite candidly, if they came in at the Final with this document executed by another landscape company, do we really care? They’ve, they’ve already made a change, and they’ve abided by the conditions of the agreement, which is – here’s a copy, and we’re notifying you of a change. I don’t know – I would, I would be okay with that, myself. Any other thoughts?”

When he did not hear from any of the other Board members, Mr. DiOrio moved on.

Mr. DiOrio: “Hearing none, so – Al DiOrio – this, this was, as I recall, one of the last – perhaps the last – outstanding element in our discussions on this project. So, Planning

Board members, if there's anything else we need to talk about, we are at a Preliminary Plan – this would be the time to bring it up.”

Ms. Hogan: “Um, please recall, also, that, um, based upon our discussions a few weeks ago that this is also on the agenda later on for Final Plan approval.”

Mr. DiOrio: “Yes. Thank you. This is also a continuation of a Public Informational Hearing, so after we go through the incantations -”

Ms. Hogan: “Right.”

Mr. DiOrio: “Of the Planning Board members, the Planner, the Solicitor, we'll be reaching out to the public should there be any last minute comments on this application.”

Ms. Shumchenia spoke.

Ms. Shumchenia: “This is Emily [Shumchenia]. I'm just looking over the, um, draft motion that we've been provided by our Solicitor for this, and there's a, um, provision in there – I think it's labeled 'G', um, under the order – ‘the areas of no cut buffer that have been cleared’, yadda, yadda, yadda, question marks – it's kind of an incomplete sentence, and I think we talked about this during the last meeting, and I just want to put it out there and make sure everyone agrees before we kind of finish that sentence when we read this motion, eventually. We talked about, you know, that those areas within the no cut buffer that might have been cleared are already beginning to naturally revegetate. Um, I believe it was Mr. Freeman that showed us some pictures and images of the natural revegetation occurring, um, and some fairly, you know, four to five foot, maybe even six foot trees already in that area, so I had sort of made a note here just to say, to change that provision to say ‘in areas of the no cut buffer that have been cleared’ will – ‘they will be allowed to continue to naturally revegetate’, um, and so I just wanted that, in case anyone had any thoughts.”

Ms. Hogan: “That's why I left it in red – because I was not clear as to whether you had reached consensus on that.”

Mr. DiOrio: “Uh, Al DiOrio – that is my recollection. I'm perfectly okay with the way Emily [Shumchenia] has laid that out.”

Mr. Caffrey: “The applicant has no objection either.”

Mr. DiOrio then asked the Board if they had “anything else” that they wanted “to add on this.” When he did not hear from the Board, he turned to Mr. Lamphere, and asked if there was anything further from him. When he did not hear from Mr. Lamphere, he then turned to Ms. Hogan, and asked if there was “anything else to add”. She replied that she thought that they were “buttoned up.” He then asked for input from “our Conservation group.” Ms. O'Leary replied that they were “okay with the Plan so far.” Mr. DiOrio thanked Ms. O'Leary. He then asked if there was “anyone else in the audience” who wanted to “offer last minute comments on this Preliminary Plan”. Ms. Jalette asked those assembled to press \*9 if they wanted to speak before the Board. Ms. Jalette then indicated that there were not any members of the public who wanted to comment. Mr. DiOrio then explained to the Board that it put them “in a position where [he was] prepared to entertain a motion should someone feel so inclined.”

MS. SHUMCHENIA MADE A MOTION TO APPROVE SHORELINE PROPERTIES, INC.'S APPLICATION FOR A PRELIMINARY PLAN FOR A MAJOR CLUSTER SUBDIVISION, LOCATED AT 66 FAIRVIEW AVENUE, AP 18, LOT 7K FOR A TOTAL OF FOUR LOTS WITH SEVEN RESIDENTIAL DWELLING UNITS, BASED ON THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. SHORELINE PROPERTIES, INC. IS THE APPLICANT AND OWNER OF THE SUBJECT PROPERTY BY DEED RECORDED IN BOOK 575, PAGE 462.
2. ON JANUARY 6<sup>TH</sup>, 2021, THE HOPKINTON PLANNING BOARD GRANTED A WAIVER OF SECTION 9.2.2 OF THE LAND DEVELOPMENT AND SUBDIVISION REGULATIONS AND GRANTED MASTER PLAN APPROVAL, WITH CONDITIONS. SAID MASTER PLAN APPROVAL WAS RECORDED ON JANUARY 20, 2021 IN THE HOPKINTON LAND EVIDENCE RECORDS AT BOOK 589, PAGE 4.
3. THE FINDINGS OF FACT OF THE MASTER PLAN APPROVAL ARE INCORPORATED HEREIN BY REFERENCE.
4. ON MARCH 15, 2021, THE RI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT'S OFFICE OF WATER RESOURCES ISSUED AN INSIGNIFICANT ALTERATION PERMIT, NO. 21-0015, AND RIPDES PERMIT NO. RIR102150. SAID PERMIT WAS RECORDED ON MARCH 22, 2021 IN THE HOPKINTON LAND EVIDENCE RECORDS AT BOOK 591, PAGES 469-471.
5. THE SUBJECT PROPERTY CONTAINS A GROSS TOTAL OF 13.23 ACRES, WITH 2.23 ACRES CATEGORIZED AS LANDS UNSUITABLE FOR DEVELOPMENT, OR LUD.
6. THE PROPOSED PLAN IS A CLUSTER SUBDIVISION OF FOUR RESIDENTIAL LOTS AND ONE OPEN SPACE LOT. THE PLAN PROPOSES ONE SINGLE FAMILY DWELLING AND THREE DUPLEX LOTS FOR A TOTAL DENSITY OF SEVEN LOTS, INCLUDING THE ONE REQUIRED INCLUSIONARY DWELLING UNIT.
7. ALL INCLUSIONARY DWELLING UNITS ARE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE HOPKINTON INCLUSIONARY ZONING ORDINANCE AS ADOPTED SEPTEMBER 20, 2010, INCORPORATED HEREIN BY REFERENCE.
8. THE SUBJECT PROPERTY CONTAINS A UNIQUE CULTURAL AND NATURAL RESOURCE KNOWN AS WITCH ROCK WHICH SHALL BE PROTECTED BY A CONVEYANCE TO THE HOPKINTON LAND TRUST.

CONCLUSIONS OF LAW:

1. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE COMPREHENSIVE COMMUNITY PLAN AND/OR HAS SATISFACTORILY ADDRESSED THE ISSUES WHERE THERE MAY BE INCONSISTENCIES.
2. THE PROPOSED DEVELOPMENT COMPLIES WITH THE HOPKINTON ZONING ORDINANCE, INCLUDING THE INCLUSIONARY ZONING ORDINANCE WHICH REQUIRES ONE INCLUSIONARY RESIDENTIAL DWELLING UNIT.
3. THERE WILL BE NO SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACTS FROM THE PROPOSED DEVELOPMENT AS SHOWN ON THE FINAL PLAN, WITH ALL REQUIRED CONDITIONS OF APPROVAL.
4. 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]<sup>2</sup> BECAUSE LANDS UNSUITABLE FOR DEVELOPMENT ARE EXCLUDED FROM DEVELOPMENT.
5. ALL PROPOSED LAND DEVELOPMENTS AND ALL SUBDIVISION LOTS SHALL HAVE ADEQUATE AND PERMANENT PHYSICAL ACCESS TO A PUBLIC STREET.
6. THE PROPOSED DEVELOPMENT PROVIDES FOR SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR TRAFFIC, FOR SURFACE WATER RUNOFF CONTROL, FOR SUITABLE BUILDING SITES, AND FOR PRESERVATION OF NATURAL, HISTORICAL, AND CULTURAL FEATURES THAT CONTRIBUTES TO THE ATTRACTIVENESS OF THE COMMUNITY, WITH REQUIRED CONDITIONS OF APPROVAL.
7. THE DESIGN AND LOCATION OF STREETS, BUILDING LOTS, UTILITIES, DRAINAGE IMPROVEMENTS AND OTHER IMPROVEMENTS IN THE PROPOSED DEVELOPMENT MINIMIZES FLOODING AND SOIL EROSION, WITH REQUIRED CONDITIONS OF APPROVAL.

ORDER:

THE PROPOSED PRELIMINARY PLAN FOR FAIRVIEW ESTATES IS APPROVED, TOGETHER WITH THE FOLLOWING CONDITIONS OF APPROVAL:

- A) THE REQUIREMENTS SET FORTH IN THE RIDEM'S INSIGNIFICANT ALTERATION PERMIT, NO. 21-0015 AND RIPDES PERMIT NO. RIR102150 ARE INCORPORATED HEREIN.

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<sup>2</sup> Ms. Shumchenia said "impractical" but the Conclusions of Law read "impracticable."

- B) THE OWNERSHIP NOTES FOR PARCEL 5, TO BE DEEDED TO THE HOPKINTON LAND TRUST, AS SET FORTH ON PAGE 3 OF THE PLANS DATED MAY 17, 2021 ARE INCORPORATED BY REFERENCE HEREIN.
- C) THE APPLICANT SHALL GRANT AN EASEMENT TO THE TOWN OF HOPKINTON OVER THE OPEN SPACE WITHIN THE DEVELOPMENT AND SHALL EXECUTE AND RECORD THE DOCUMENT ENTITLED “OPEN SPACE EASEMENT AND MAINTENANCE COVENANTS”, THE TERMS OF WHICH ARE INCORPORATED BY REFERENCE HEREIN.
- D) THE APPLICANT SHALL CREATE A RECORD A DECLARATION OF HOMEOWNERS’ ASSOCIATION, AND SHALL ENSURE THAT IT IS FUNDED ADEQUATELY.
- E) THE APPLICANT SHALL EXECUTE THE “STORM WATER FACILITY MAINTENANCE AGREEMENT” ATTACHED HERETO AND MADE A PART HEREOF.
- F) ALL ROOFTOPS AND DRIVEWAYS THAT DRAIN TOWARDS FAIRVIEW AVENUE SHALL DISCHARGE INTO ON-SITE DRYWELLS.
- G) AREAS OF THE NO CUT BUFFER THAT HAVE BEEN CLEARED WILL BE ALLOWED TO CONTINUE TO NATURALLY REVEGETATE.
- H) THE TOWN OF HOPKINTON WILL NOT ASSUME ANY RESPONSIBILITY FOR THE MAINTENANCE OR PERFORMANCE OF THE PRIVATE ROAD OR THE STORM WATER MANAGEMENT SYSTEM.
- I) THE HOA [HOMEOWNERS’ ASSOCIATION] SHALL BE OBLIGATED TO NOTIFY THE TOWN WITHIN THIRTY DAYS OF ANY CHANGE IN VENDOR IN THE STORM WATER FACILITY MAINTENANCE AGREEMENT, AND PROVIDE THE TOWN WITH A COPY OF THE ACTIVE AND ENFORCEABLE AGREEMENT.
- J) THE APPROVED LANDSCAPE PLAN SHALL BE THAT PREPARED BY MUOIO DESIGN GROUP DATED APRIL 1, 2020. ANY DEVIATION FROM THE APPROVED PLAN SHALL REQUIRE ADVANCE APPROVAL FROM THE HOPKINTON PLANNING BOARD.
- K) THE BEST MANAGEMENT PRACTICES SET FORTH IN THE STORM WATER MANAGEMENT PLAN PREPARED BY AMERICAN ENGINEERING, INC., AND DATED MAY 17, 2021 SHALL BE FOLLOWED.
- L) THE DEED FOR EACH LOT SHALL MAKE SPECIFIC REFERENCE TO THE REQUIRED NO CUT BUFFER ON THAT LOT.



Mr. DiOrio: “Well done, well-crafted, well delivered.”

THE MOTION WAS SECONDED BY MR. LINDELOW.

Mr. DiOrio asked if there was “any further discussion on the motion.” Ms. Light weighed in.

Ms. Light: “This is Carolyn [Light]. Uh, we had discussed, uh, this annual inspection report being submitted to the Town. Should that be required in this document?”

Mr. DiOrio: “Did that re- - Al DiOrio – did that revision get embedded into the updated agreement?”

Ms. Hogan: “That’s what I’m looking for.”

Mr. Caffrey: “It, it was my understanding, I think we were gonna insert that into Section 3 of the, um, of the maintenance agreement.”

Mr. DiOrio: “That was -”

Ms. Hogan: “Yes. That’s correct – submit, ‘submit to the Town Planner’s office.’”

Mr. DiOrio: “Carolyn [Light], I think it’s been covered. Al DiOrio.”

Ms. Light: “I, I think it’s covered between the owner and the landscape company, but is it covered with the owner and the Town?”

Ms. Hogan: “If you’d like to include that as an additional, um, condition, it certainly doesn’t hurt.”

Ms. Light: “I, I think it’s consistent with the rest of the language in this, um, in this motion. So, yeah, I would like that in-, included in here.”

Ms. Hogan: “So, Emily [Shumchenia], would you agree to amend your motion, and Keith [Lindelow] to second an amended motion to accommodate Caroline’s request - Carolyn [Light]’s request?”

MS. SHUMCHENIA AMENDED HER MOTION TO INCLUDE A CONDITION:

M) THAT AN ANNUAL INSPECTION REPORT ASSOCIATED WITH THE STORM WATER FACILITY MAINTENANCE AGREEMENT IS PROVIDED TO THE TOWN PLANNER ON A YEARLY BASIS.

Mr. DiOrio: “Very good. Thank you.”

MR. LINDELOW SECONDED THE AMENDED MOTION.

Mr. DiOrio said that they had “an amended motion and amended second”, and asked if there was “any additional discussion on the motions.” When he did not hear from the Board, he called for a vote.

IN FAVOR: DIORIO, LINDELOW, LIGHT, SHUMCHENIA, PENNYPACKER

ABSTAIN: NONE

OPPOSED: NONE

5-0, THE MOTION PASSED.

**NEW BUSINESS:**

**Final Plan – 4-Lot, 7 Unit Major Land Development Project – Fairview Estates – AP 18, Lot 7K, 66 Fairview Ave. Shoreline Properties, Inc., applicant.**

Mr. DiOrio began by stating that he knew that the applicant and their representatives were in attendance. Mr. Caffrey introduced himself again. He then continued.

Mr. Caffrey: “In light of the fact that we just, uh, received Preliminary approval, and I believe all conditions of Preliminary approval have been satisfied. I see no reason to do a formal presentation for Final, and content to let the Board make its decision.”

Mr. DiOrio thanked Mr. Caffrey. Ms. Hogan interjected.

Ms. Hogan: “Following up on that, um, I would also suggest to the Board that, when you get to making a motion, that you can incorporate by reference the motion that you’ve previously made from Preliminary, and substituting ‘Final’ for ‘Preliminary’.”

Mr. DiOrio thanked Ms. Hogan, and then asked the Planning Board members if they had “any thoughts or comments”. When he did not hear from the Board, he asked Mr. Lamphere if he had anything to add. Mr. Lamphere then spoke before the Board.

Mr. Lamphere: “Yes, Mr. Chairman. Jim Lamphere, Town Planner. Um, the applicants submitted two plan sets for the Final. One was an 11-page construction set, and the other one was a 4-page Final Plan set. The first four pages of both are identical, um, but, I, I would suggest that all, all pages of those be combined into one plan set, which would be recorded, and relabeled as Final Plan set. So, I would expect it to be, consist of, a total of twelve pages, because the 11-page plan set did not include the landscape plan, whereas the Final Plan set did. So, I would say – have all of those pages incorporated into one document, and then, I can ask the Planning Board Chairman to come in and sign that recording set, if approved by the Board, to me.”

Mr. DiOrio thanked Mr. Lamphere and said that he concurred with his recommendation.

Mr. DiOrio: “I’m at a loss as to why we had two separate documents. Let’s get ‘em all into one package, so we’re acting on one set of plans.”

Mr. DiOrio then asked Ms. Hogan if she had “anything else on [her] end.” She replied that she did not. Mr. DiOrio then asked to hear from the Conservation Commission. Ms. O’Leary replied that they were “fine on that”. He then asked if there was “anyone in the audience” who wanted to be heard in relation to that application. Ms. Jalette directed callers to press \*9 if they wanted to comment. When they did not hear from the public, Mr. DiOrio said that he was “prepared to entertain a motion”.

**MS. SHUMCHENIA MADE A MOTION TO APPROVE SHORELINE PROPERTIES, INC.’S APPLICATION FOR FINAL PLAN FOR A MAJOR CLUSTER**

SUBDIVISION LOCATED AT 66 FAIRVIEW AVENUE, AP 18, LOT 7K, FOR A TOTAL OF FOUR LOTS WITH SEVEN RESIDENTIAL DWELLING UNITS. FOR THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONDITIONS, MS. SHUMCHENIA REFERENCED THE BOARD'S PREVIOUS MOTION FOR PRELIMINARY PLAN APPROVAL BY REFERENCE, AND ADOPTED ALL THE SAME FINDINGS OF FACT, CONCLUSIONS OF LAW, CONDITIONS OF APPROVAL.

MR. LINDELOW SECONDED THE MOTION.

There was not any discussion on the motion.

IN FAVOR: DIORIO, LINDELOW, LIGHT, SHUMCHENIA, PENNYPACKER

ABSTAIN: NONE

OPPOSED: NONE

5-0, THE MOTION PASSED.

Mr. DiOrio thanked the Board and the applicant. They thanked him in return.

**Master Plan – Public Informational Meeting - Major Land Development Project – Wood River Health Services Addition – AP 14, Lot 47A, 823 Main Street. Wood River Health Services, Inc., applicant.**

Kelly Fracassa, the attorney for the applicant, appeared before the Board, as did Edward Smith. Mr. Fracassa explained that they would “have a few others” appearing before the Board as well. He then began the presentation.

Mr. Fracassa: “Uh, the presentation tonight, I believe, is going to be relatively, uh, brief – mostly because it’s pretty straightforward. Uh, we’re talking about a, uh, building which is nearly 5,000 square feet. It’s a two-story building, uh, necessary for administration, paint-, patient space, clinical areas, offices, and meeting rooms at the Wood River Health Services, um, up on Main Street. We’re also going to, uh, redesign the parking, add some parking to accommodate this new building, uh, also pedestrian access ways – make it ADA [Americans with Disabilities Act] compliant. There is going to be a new septic system, uh, well, not so much a new septic system, but an additional septic system, which will service the new addition, and, uh, the application for that is currently pending before DEM [Department of Environmental Management]. Uh, there are some wetlands, uh, in the area, but not anywhere near where the construction is. Uh, the buffer zones of that just barely encroach over the boundary, uh, several hundred feet from the, uh, um, proposed construction, so, uh, there’s no real issue with regard to that. Um, we have, uh, David Christie here, who is the project architect, and he can give a, uh, a brief explanation as to, uh, what’s this, uh, what this is about, uh, the need for it, and also just a quick overview of, of the building at this time. David [Christie], if you’re all set?”

Mr. Christie then appeared before the Board.

Mr. Christie: “So, I believe you guys have the, the plans before you. Um, y’all see that it, it’s a two-story, uh, building that’s being proposed, uh, with, uh, a partial basement. The basement really accommodates mechanical and, and storage space, and the first floor – excuse me – the first floor of the building, um, accommodates, uh, clinical expansion, as well as some common areas for, for staff, such as, as conference rooms, break rooms, uh, et cetera, um, and then the second floor of the addition accommodates, uh, administrative offices, um, as well as, a, a, a conference and meeting room. Um, from, on, an exterior design perspective, uh, we sought to come up with a, an exterior design that, that was fitting with, with the existing building, as well as the, the rural character of the site, and, and, you’ll, you’ll see that kind of at opposite corners of the building. There are two elements, formed by a gable roof that, that kind of maintains a, a building height that’s less than, uh, the 40-foot Zoning height limit, um, so we meet the Zoning height limit, so, the footprint is all kind of outside of the, the setback requirements. Um, and then the, the materials, uh, consist of, of horizontal siding, as well as some vertical kind of board and batten type siding that, that’s similar in character to the, the existing mater-, materials on the, the adjacent building. Um, and, and, and Mike Wilkinson from Wood Engineering, uh, will be able to go over some of the, the site requirements in a little bit more depth.”

Mike Wilkinson then spoke before the Board.

Mr. Wilkinson: “This is Mike Wilkinson from, from Wood Engineering, um, and I can speak a little bit more to the, uh, existing and proposed, um, site conditions. Um, so, the site address is 823 Main Street, um, AP 14, Lot 47A. It’s a 39.9-acre parcel, um, but the work area is about 40,000 square feet, and located in the southwest portion of the lot. Uh, there’s about 1,000, uh, feet of frontage on Main Street, which is also, uh, Rhode Island Route 3. Um, the site is zoned residential special, and it abuts - the area of development abuts the residential special and commercial special zoning districts to the west, and the manufacturing district across the street. Um, under existing conditions, there’s three interconnected buildings, constructed in 1980, with approximately 17,600 square feet. Um, there’s 81 parking spaces, uh, five of which are ADA [Americans with Disabilities Act]. Um, current access is from two-way access from Main Street. Uh, this access drive is also a right of way access easement for shared access from Main Street to, um, Plot 47A, B, and C. B and C are located to the north. Um, the setbacks – the front yard setback is about 96.5 feet under existing conditions. Side setback is 75 feet, and the rear yard setback is 148 feet. Um, the current facility is serviced an OWTS [On-site Wastewater Treatment System] septic system, um, that was constructed in about 1982, and is located, uh, upgrading from the northwest of the existing building. Um, water service to the site is from an on-site drilled well, which is located within the northern parking area. Um, storm water, under existing conditions, flows south and southeast to a swale that’s, that abuts, and is parallel to, Main Street, and which flows southwest. Um, then, wetlands on the property were flagged by NRS [Natural Resource Services]. Um, they’re a well-respected firm in Rhode Island, and they found that wetlands were, uh, over 50 feet away from the existing access drive to the east. Under proposed development, um, we’re proposing a[n] approximately 10,518 gross square foot, two-story addition, with a partial basement. Um, a portion of the southern existing building section is to be demolished. Uh, that accounts for about 1,700 square feet, so the net total

building area is about 26,400 square feet, and, as far as parking requirements, uh, we're required to have one space per 250 square feet of floor area, which equates to 106 spaces, and we are proposing 117, between the existing spaces and the additional proposed spaces. Uh, for the ADA [Americans with Disabilities Act] requirements, um, for facilities with 101 to 150 spaces, five ADA [Americans with Disabilities Act] spaces are required, one of which is to be a van space. We have seven spaces provided, um, with two van spaces. Um, proposed setbacks are the same for the side and rear yards. Uh, the front yard setback is 85.1 feet. Uh, for vehicular access, there is no change to the existing access drive, uh, which serves Parcels 47A, B, and C. Um, we are including a, uh, emergency vehicle turnaround at the lower left, or southwest portion of the site, um, to accommodate, um, a fire truck up to 40 feet length, and this was okayed by the, uh, Hopkinton Fire Marshal. Uh, we're widening the, uh, access near the northwest corner of the existing building, to allow safe passage of two-way traffic, and including a dumpster area and four additional parking spaces. Uh, the main entrance to the building addition is on the western face, um, which has walkways connected to the extended parking area, all of which are ADA [Americans with Disabilities Act] compliant. Um, for utilities, we have a proposed OWTS [Onsite Wastewater Treatment System] system to serve the addition only, separate from the existing system, serving the existing building. Um, it will be located east of the building addition, and will conform to all the applicable setbacks and design parameters outlined in the DEM [Department of Environmental Management], uh, OWTS [Onsite Wastewater Treatment System] regulations. Our storm water system also conforms to, uh, DEM [Department of Environmental Management] storm water management standards, although a DEM [Department of Environmental Management] permit is not required for this project, because our development area, um, is less than an acre, and natural flow of storm water does not go to the eastern wetlands. Um, as previously mentioned, it flows south to the swale along Route 3, um, and also, we are not impacting, impacting the wetlands to the east of the site. Uh, the storm water system consists of a StormTech subsurface infiltration chamber system, which captures, captures and treats runoff from the new impervious areas. Uh, the overflow from the system, um, again, flows towards the Route 3 and, uh, peak rates and volumes for runoff are met for all storms up to and including the 100 new year, 100-year event. Um, our storm water calculations were reviewed by the DOT [Department of Transportation], um, who has determined that a physical alteration permit is not required for our project. Um, water service will be served via the existing well on site, with, supplemented with storage tanks that are located inside of the building addition. Uh, for electric, there will be a new utility pole and transformer to support the addition. Um, there will be pad-mounted propane storage, um, tanks, on the exterior of the addition, and for site lighting, we have site lighting fixtures located within the existing parking area to the north and west, as well as the expanded parking area to the south of the, uh, building addition, and our lighting fixtures will conform with the Dark Sky Lighting Ordinance within the [Land Development and] Subdivision Regulations. Um, and just to summarize the State permits that, uh, that could be applicable, but some aren't, is the, uh, we don't have our DOT [Department of Transportation] permit required, based on their analysis, um, and we don't require a DEM [Department of Environmental Management] preliminary term, preliminary determination application, based on our site size and, uh, no impact to wetlands, so our own state permit is, uh, our OWTS [Onsite Wastewater Treatment

System] permit. And with that, um, I will pass it off to the landscape architect for the project, John Luca, to talk about the landscape design for the project.”

Mr. Luca appeared before the Board.

Mr. Luca: “Hi – my name is John Luca, um, I’m with Traverse Landscape Architects. Um, so, on the projects, most of the landscape, um, is around the addition, um, and the parking lot. Um, to the south, uh, there’s, uh, buffer planting, uh, where there will be, uh, some tree removal, uh, for the parking lot, um, and then, around the main entrance, uh, of the addition, uh, there’ll be some, uh, new plantings for aesthetics, um, and then, on the east side, um, where there’s currently, uh, outdoor patio space. Um, the, uh, the landscape’ll, will be slightly enhanced in that area as well. Um, the landscape design also keeps in mind, uh, a lot of the existing vegetation, um, which we’ll be keeping as much as, as we can, uh, with that focus.”

Mr. DiOrio thanked Mr. Luca, and asked Mr. Fracassa if there was anything else he wanted to add. Mr. Fracassa replied.

Mr. Fracassa: “Yeah – just one thing I forgot to mention in the beginning, uh, this is a, uh, pre-existing, nonconforming use, because the property exists in a residential special zone, and, uh, in order to, um, add onto this nonconforming use, we also have to go to the Zoning Board to, uh, to get a Special Use Permit. Um, by then, we’ll have our, um, OWTS [Onsite Wastewater Treatment System] approval from DEM [Department of Environmental Management], and I don’t think there’s any doubt we’ll be able to satisfy the Special Use Permit standards. As to the six standards which we need to satisfy under - I think it’s 45-23, uh, 60, um – I don’t think that there’s any problems with any of these. Uh, this is a preexisting, nonconforming use. It’s been there for over 20 years. Uh, provides a, uh, a vital service to the community. Uh, as far as no significance, negative – no significant negative environmental impact – I don’t think it’s going to have any impacts whatsoever, as, uh, as Mike [Wilkinson] explained. Uh, as far as adequate and permanent physical access to a public street – we’ve already got one. Uh, the proposed development provides safe circulation of, for pedestrians and vehicles – that’s been satisfied. It’s more than sufficient parking, and, um, its placement on the site is, uh, is uh, certainly adequate for the building, and pretty much serves the building. Um, as far as, uh, controlling surface runoff, flooding, soil erosion, uh, things of that matter, um, I think Mike [Wilkinson]’s presentation, and certainly the submissions which, um, he provided to the Board demonstrate that, uh, that’s not going to be a problem. So, I think we ticked off all of the standards, uh, that we have to. Uh, we request the Board to, uh, approve the Master Plan, and also to, uh, submit a, uh, positive recommendation, uh, to the Zoning Board for approval of the, uh, forthcoming Special Use Permit.”

Mr. DiOrio thanked Mr. Fracassa. He then said that they would start with comments from Planning Board members. When he did not hear from the rest of his colleagues, Mr. DiOrio said that “perhaps there are none.” Mr. Lindelow replied that he was “good with everything” proposed by the applicant. Mr. DiOrio then said that he had one comment for the applicant.

Mr. DiOrio: “Uh, in your package, you’ve submitted a copy of a preliminary survey, dated 3-17-21. As you proceed into your next, uh, phase of review, I’m going to ask that you include an updated survey sheet, signed by the surveyor, and include it as part of your plan set, are required by the Board of Registration.”

Mr. Fracassa: “Will do.”

Ms. Jalette alerted Mr. DiOrio to the fact that Ms. O’Leary had a comment.

Ms. O’Leary: “Yes. Uh, my question is regarding the capacity of the well. I know you’re putting in a separate septic for the new edition, which is a very good idea, but, do you know if that well can handle the additional staff needs in the, uh, Health Center? Or will you need a second well.”

Mr. Wilkinson: “Um, there was a, uh, some plumbing calculations done. I don’t have them in front of me, but the well is going to be supplemented with, um, water storage tanks that are to be located within the building addition, and that will satisfy the water needs for the addition.”

Ms. O’Leary: “Okay. Thank you.”

Mr. DiOrio thanked Ms. O’Leary, and then asked if Mr. Lamphere had anything to add. He did not. He then asked Ms. Hogan if she had anything to add. She said that she did not have anything other than the proposed motion. He then said it was “time to go to the audience.” Ms. Jalette directed callers to press \*9. She then communicated that there were not any members of the public wishing to comment. Those assembled then heard a dog barking, so Ms. Jalette joked that while there were not any members of the public wishing to comment, there was a dog. Mr. DiOrio laughed, and then replied that that meant he was “prepared to entertain a motion”.

**MR. LINDELOW MOVED TO GRANT CONDITIONAL APPROVAL FOR THE PROPOSED BUILDING ADDITION TO WOOD RIVER HEALTH SERVICES AND TO ISSUE A FAVORABLE ADVISORY OPINION TO THE ZONING BOARD OF REVIEW FOR THE ISSUANCE OF A SPECIAL USE PERMIT TO EXPAND A NONCONFORMING USE.**

**FINDINGS OF FACT:**

1. WOOD RIVER HEALTH SERVICES (HEREINAFTER) OWNS AND OCCUPIES A BUILDING CONSTRUCTED IN 1980, LOCATED AT 823 MAIN STREET; ALSO KNOWN AS ASSESSOR’S PLAT 14, LOT 47A. THE 39.9 ACRE SITE IS LOCATED WITHIN THE RS (RESIDENTIAL SPECIAL) DISTRICT AND HAS 1,028 FEET OF FRONTAGE ON MAIN STREET.
2. WRHS PROPOSES TO CONSTRUCT A 5,008 SQUARE FOOT FIRST FLOOR ADDITION TO PROVIDE A CONFERENCE ROOM, BREAK ROOM, CLINICAL SPACES, A PHARMACY AND STORAGE. A SECOND STORY OF 4,388 SQUARE FEET IS PROPOSED FOR OFFICES AND CONFERENCE SPACES. A NEW BASEMENT IS PROPOSED AT 1,122 SQUARE FEET.

3. WRHS ALSO PROPOSES TO EXPAND PARKING, ADD LANDSCAPING, AND STORM WATER MANAGEMENT.
4. THE PROPOSED BUILDING ADDITION WILL NOT BE CONNECTED TO THE EXISTING OWTS AND WILL BE SERVICED BY A NEW OWTS.
5. A PARTIAL BOUNDARY SURVEY AND TOPOGRAPHIC SURVEY, DATED MARCH 17, 2021, WAS PREPARED BY BRADFORD J. TRAVERS, P.L.S. OF WATERMAN ENGINEERING.
6. WETLAND FLAGGING WAS DONE BY NATURAL RESOURCE SERVICES, INC. AND A REPORT WAS ISSUED ON JANUARY 21, 2021. THERE WILL BE NO IMPACT TO WETLANDS.
7. WOOD ENVIRONMENTAL & INFRASTRUCTURE SOLUTIONS, INC. PREPARED AND SUBMITTED A COMPREHENSIVE REPORT DATED MAY 14, 2021 WHICH ADDRESSED EXISTING SITE CONDITIONS AND ZONING ANALYSIS, PROPOSED SITE IMPROVEMENTS AND STORM WATER MANAGEMENT. THE REPORT'S FINDINGS CONCERNING STORM WATER MANAGEMENT, TRAFFIC, ARCHEOLOGICAL AND HISTORIC AREAS, WETLANDS AND TRAFFIC ARE INCORPORATED HEREIN.
8. C.N. BEAULIEU-SHEA, REGISTERED PROFESSIONAL CIVIL ENGINEER PREPARED THE SITE PLAN DATED MAY 14, 2021.
9. ARCHITECTURAL RENDERINGS AND FLOOR PLANS, DATED APRIL 16, 2021, WERE PREPARED BY VISION THREE ARCHITECTS.

CONCLUSIONS OF LAW:

1. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE COMPREHENSIVE COMMUNITY PLAN AND/OR HAS SATISFACTORILY ADDRESSED THE ISSUES WHERE THERE MAY BE INCONSISTENCIES.
2. THE PROPOSED DEVELOPMENT COMPLIES WITH THE HOPKINTON ZONING ORDINANCE.
3. THERE WILL BE NO SIGNIFICANT NEGATIVE ENVIRONMENTAL IMPACTS FROM THE PROPOSED DEVELOPMENT AS SHOWN ON THE PLAN, WITH ALL REQUIRED CONDITIONS FOR APPROVAL.
4. THE PROPOSED ADDITION SHALL HAVE ADEQUATE AND PERMANENT LEGAL ACCESS TO A PUBLIC STREET.



5. THE PROPOSED DEVELOPMENT PROVIDES FOR SAFE CIRCULATION OF PEDESTRIAN AND VEHICULAR TRAFFIC, FOR SURFACE WATER RUNOFF CONTROL, FOR SUITABLE BUILDING SITES, AND FOR PRESERVATION OF NATURAL, HISTORICAL, AND CULTURAL FEATURES THAT CONTRIBUTES TO THE ATTRACTIVENESS OF THE COMMUNITY, WITH REQUIRED CONDITIONS OF APPROVAL.
6. THE DESIGN AND LOCATION OF STREETS, BUILDING LOTS, UTILITIES, DRAINAGE IMPROVEMENTS AND OTHER IMPROVEMENTS IN THE PROPOSED DEVELOPMENT MINIMIZES FLOODING AND SOIL EROSION, WITH REQUIRED CONDITIONS OF APPROVAL.

ORDER:

1. THE PROPOSED PLAN IS CONDITIONALLY APPROVED AND HEREBY REFERRED TO THE ZONING BOARD WITH A POSITIVE RECOMMENDATION FOR THE ISSUANCE OF A SPECIAL USE PERMIT TO EXPAND A NONCONFORMING USE.

THE MOTION WAS SECONDED BY MS. SHUMCHENIA.

There was not any discussion of the motion.

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

5-0, THE MOTION PASSED.

Mr. Fracassa thanked the Board.

**Pre-Application – 5-Lot Minor Cluster Subdivision – Fairview Residential Cluster - AP 28, Lots 113 and 113B, 0 and 46 Fairview Avenue. Brushneck Cove Investments, LLC., and S&L Family Properties, LLC., applicants.**

Mr. DiOrio asked if the applicant was in attendance. Ms. Jalette replied in the affirmative. David Johnston, an attorney, appeared before the Board, as did Jamie Sardelli, the land surveyor. Mr. DiOrio asked them to proceed.

Mr. Johnston: “So, we are requesting a, uh, residential cluster subdivision, under Section 9.2 of the, um, Subdivision land – excuse me – Land Development [and Subdivision] Regulations. Uh, I believe this property borders the, the property that was just heard, uh, on the first hearing this morning for, for – by way of reference, um, although I’m not 100% - properties – that would, uh, sure – but I believe it was a Shoreline Properties, um, property. This particular parcel, uh, two parcels – excuse me – contain 494,469 square feet of land. Um, they are, uh, uh, single family residence at 46 Fairview Ave, um, as

well as a substandard lot of record, which contains the vast majority of the acreage at 9.75 acres. Um, that is Lot, uh, Plat 28, Lot 113 – 0, 0 Fairview Avenue. Uh, that lot is substandard in that it has only about 32 feet of, uh, existing frontage. Um, we were proposing to combine these, uh, two parcels for the cluster subdivision. Um, the density calculation of the combined total area, um, yields 5.41 units – that’s the total square footage minus the LUD [Land Unsuitable for Development], divided by 80,000, per Section 9.2. Um, so, this Pre-App[lication], Pre-Application hearing – a few points I’d like to discuss, and, and bring to the Board’s attention, and, and get, um, feedback, and some direction from the Board, um, so I’ll, I’ll just hit a couple of points that I find relevant, uh, and then, uh, Mr. Sardelli can kind of fill in with any technical, uh, information, and we can take it from there. Um, the wetlands were flagged, uh, and they exist in the northeast corner of the property. Uh, we will be outside of the perimeter wetland, as well as the, uh, 100-foot riverbank, um, wetland, with all, uh, construction. Um, there is a small encroachment onto Lot 114. Um, their garage encroaches 36 square feet. That was included in the land unus-, unsuitable for development, um, uh, calculation. We did, we did grant an easement, uh, to - Mr. Pelletier’s the current owner. He only just recently purchased Lot 114, and we granted an easement over that small encroachment. Um, the proposal – and we’ve discussed this, uh, quite a bit with Mr. Pelletier, the owner of 114, uh, is to move the driveway, roughly, the driveway, right of way area, roughly, 40 feet off of his, um, property line, and roughly 60 feet to the actual drive, the physical drive, so we have the right of way then, at 50 feet, and then a narrower 20-foot driveway, so, we’ll be roughly 60 feet, um, from him, so that’s going to, uh, solve for that encroachment, give him, uh, more space, and he has reviewed these plans, and, uh, we’ve discussed them at length, um, a number of times. He’s also asked that we grant a, a, an easement, uh, for him to be able to get a vehicle to the back of his property, so that would be in, behind, his garage, uh, along that existing, uh, gravel driveway, which we’re happy to do. In our preliminaries, um, on, uh, Preliminary application, we would include that into our LUD [Land Unsuitable for Development] area, as well as show proposed, um, easement area. Um, so, that’s the Lot 114 issue. Additionally, uh, concerning Lot 114, and then further, uh, south, 113A – we’d like to grant permanent easements to the owners of those land, of those parcels, um, largely – because, for many years now, they’ve, uh, uh, accessed trails that exist on the, um, DOT [Department of Transportation] land, the State land to, uh, in the rear of this parcel. Um, so, our proposal’s to grant a pedestrian easement up the, uh, right of way, so they can access those trails, continue to access those trails in the rear of, the rear of the area, there’s a, a pond, if I – forget the name of the pond, I apologize, uh, in the back that they, they use. They also walk their dogs back there. So, that would be part of, um, part of our application as well. Um, lastly, the buffer – there is a 100-foot buffer under Section 9.2. Um, we have the 100-foot property line buffer added, overlaid onto this map, uh – excuse me – Sheet 2, on the proposed conditions, um, so you can see where that lays relative to, um, where our proposals are. Um, the vast majority of the site – we’re able to, uh, maintain that 100-foot property line buffer. There are certain areas that we’re going to, uh, need to reduce that 100-foot buffer, but we believe, um, it is consistent with the, the requirements of the [Land Development and] Subdivision [Regulations] – and those would be along the, uh, driveway, as well as, uh, the existing dwelling at, uh, 46 Fairview Avenue. Um, we’d also certainly be open to, uh, no cut buffers, uh, at 46 Fairview

Avenue, as well as other relevant portions, um, of, of this site, you know, as deemed appropriate by, by the Board. Um, I believe that's all I have for initial comments and things that I wanted to, to discuss and, and point out to the Board, um, so, I'd like, at this point, if there's any feedback from the Board or any thoughts, I'd be happy to discuss."

Mr. DiOrio responded.

Mr. DiOrio: "Uh, yep. Thank you for that. Um, yep – Al DiOrio. So, listen – let me just jump right into the – what I see is a critical element of your design – the 100-foot buffer. My understanding – and I'll, I'll certainly defer to, uh, Mr. Lamphere here – my understanding is that the buffer does not include lots. So, there's a buffer, and the lots reside outside of the buffer. Now, the Board has some latitude with regards to how they want to enforce that buffer, but, my concern here is, well – I have to be candid – uh, this doesn't adhere to the spirit of the Cluster Ordinance, and, while I'm sure something can be worked out, should my colleagues on the Board concur, uh, what I don't want to do is set up a set of circumstances where this becomes the new interpretation of our Cluster Ordinance. And so, I'm gonna ask Maggie [Hogan] to weigh in on this, this, this concern of mine. Uh, you know, we have a set of regulations, this is – if you want to play by the Cluster rules, this is what you have to do. Uh, essentially, it, it focuses on the precedent issue. I do not want to set up a set of circumstances here where the next person, next applicant comes in and does exactly the same thing, because that is not what we intended when we put together the Cluster Ordinance. I was around when that happened, so I kind of have some insight as to the origin of the Ordinance. So, that is my primary concern. Uh, I'll leave it to my other Planning Board members and Maggie [Hogan] to comment on my perspective."

Ms. Hogan: "Uh, Mr. Chairman, um, I, I absolutely understand wha-, your comments, and, um, I would say that when an applicant is unable to meet the requirements of the Ordinance, it's their obligation to request a waiver, and, uh, follow the requirements, and meet the burden of proof set forth in the [Land Development and] Subdivision Regulations for a waiver. I'm not sure whether that's been requested yet. I haven't seen anything in the paperwork about that, um, so that would be my only comment at the present time."

Mr. DiOrio thanked Ms. Hogan, and replied that he "certainly appreciate[d] that the waiver would be appropriate." He continued.

Mr. DiOrio: "I, I think counsel has suggested that, somehow, this application is completely in conformance with the buffer requirements, so, again, there might be a misunderstanding here, and it could be on, on my side of the argument, but, uh, if you'd like to request a waiver going forward, uh, I, I gotta believe the Planning Board members would be inclined to consider it, but, you know, there will be stipulations that go along with that waiver, and let's just return to the previous application where, in fact, the 100-foot buffer could not be maintained, but there were generous offerings by that applicant with regards to vegetation, no, no, no, uh, cut buffer zones, uh, to get us back to the intention of the Ordinance. So, that's my thought."

Mr. Johnston: “May I just ask a point of clarification? ‘Cause I think I, uh – two things. 1) I, I didn’t intend to incline that we were, or, or imply that we were in full conformance. Um, I do realize that we need a reduction in that buffer, um, and I guess two points of clarification – I just, I’m reading, on, in [Section] 9.2, I, I, didn’t interpret, I guess, um, that the lot lines themselves need to be within that 100-foot buffer. So, that 100-foot buffer then would be the entirety of the open space? Entirely open space?”

Mr. DiOrio: “Subject to, uh, Jim [Lamphere]’s confirming that my perspective is correct.”

Mr. Lamphere: “Yes. Jim Lamphere, Town Planner. The, uh, buffer, um, is intended to be 100 feet from the outer perimeter of the subject parcel -”

Mr. Johnston: “Okay.”

Mr. Lamphere: “And the development, the development’s supposed to be outside of that buffer.”

Mr. Johnston: “Okay, so when, when we designed this – I don’t think we, what – I, I looked at the definition of buffer, which would, would be, uh, open space, no cut space. I didn’t realize that the, uh, and I, and I thought we would satisfy – there’s certain areas – lot, uh, take Lot E, uh, as a good example, where the 100-foot buffer cuts into where we have proposed Lot E. Um, my intention was to resolve that with a, a no cut buffer, um, to the, to a reasonable degree. Obviously, we may, we may have to reduce the buffer somewhat there, but to add a no cut buffer, but I didn’t realize the 100-foot buffer - and I, I think we can achieve this, in looking at this plan, I think it’s achievable. It’s gonna have to be reworked, uh, as far as engineering, but I didn’t realize that the no, the 100-foot buffer could – no area in that 100-foot buffer could count towards the 40,000 minimum lot size in a residential cluster. That wasn’t – that wasn’t my understanding of the Regulations as I read through them, but I think that’s, um, I think that sounds like that was the spirit of, or the intent of the, uh, Ordinance, according to what I’m hearing now. Does that sound correct?”

Mr. Lamphere: “Yeah, Jim Lamphere, Town Planner. The, the purpose of a hundred-foot perimeter buffer is to mitigate the impact of the subdivision on neighboring property owners. To get, to give them a measure of distance from the next house. So, it’s basically for the benefit of abutting properties.”

Here, Mr. Johnston and Mr. Sardelli spoke at the same time. Mr. Johnston deferred to Mr. Sardelli.

Mr. Sardelli: “Um, I’d just also like to point out that we, um – so, in that, the areas that we are kind of, um, asking for a little relief here, uh, you know, we are, uh, moving the existing right of way over, um, to the west, uh, to try to minimize the impact on, um, Lot 114. That is within the 100-foot buffer. I’m not sure if you’re including right of ways in that as well. Um, the lot, uh, this was to keep some level of geometry here. Um, if we need to put some no cut vegetation buffer zones in the back of the property - we have no intentions of – I, I don’t believe, um, clearing these areas anyways, so if we need to give some sort of a, you know, no cut zone in that area, in the back of, say, Lot B, um, not an issue. Uh, the, uh, area along, in the pro-, proposed 50-foot right of way, as you move back into the property towards the cul-de-sac, that area’s already, uh, an existing field, so it’s already cleared. Uh, the lots are kind of trying to maintain and hold, um, some area

into that wood line, um, beyond that, uh, which is all outside of that hundred-foot, except for where, uh, Mr. Johnston's saying, up in Lot E. Uh, again, we'll try to minimize that with some sort of vegetated buffer, um, and, you know, that we'll try to access somewhere – we're not creating more clearing, uh, but I, I really do feel like we are trying to, uh, represent the cluster, you know, um, subdivision here, uh, with respect to, uh, you know, open space, you know, we're, we're more than 50% open space here, and really trying to keep these houses in, you know, you know, in a way that uh, I, I feel, it minimizes the impact on the landscape itself.”

Here, Mr. Sardelli continued to speak, but it became unintelligible. Mr. DiOrio thanked him, then continued. He said that, “speaking for [himself]”, he would “be prepared to look at” no cut buffers if the applicant had “exhausted all [of their] other avenues.”

Mr. DiOrio: “I don't believe you've done that on Lot B, and, let's, let's face it, you and I are both very clear on this. You're gonna put a 'no cut buffer' on the plan. No one's gonna read it. This property's gonna be conveyed to the subsequent owner. They're gonna go in and they're gonna put -”

Mr. Sardelli: “They're gonna do what they want.”

Mr. DiOrio: “43,000 square feet of lawn in.”

Mr. Sardelli: “Sure.”

Mr. DiOrio: “So, that does not make me feel warm and fuzzy.”

Mr. Johnston: “If, if I could just – in other jurisdictions, and certainly with DEM [Department of Environmental Management] on, on, uh, limits of disturbance, on DEM [Department of Environmental Management], um, we've many times installed permanent, permanent bounds, um, which are typically, uh, pokes with, uh, um, a marking on 'em, a tag on them. DEM [Department of Environmental Management] has a very specific tag that they, uh, limit of disturbance, uh -”

Mr. DiOrio: “Yes, yes. Al Diorio – look at – I'm very fam-, I'm very familiar with this process, and when we talk about – let's draw two, two analogies here. Lot E. I hear what you're saying, and, personally, I, I would be prepared to accept your alternative.

However, Lot B – come on! A third of that lot is within the 100-foot buffer zone. That – I don't care what kind of posts you put up.”

Mr. Johnston: “I understand.”

Mr. DiOrio: “From a practical perspective, that is not gonna work. So, all I'm suggesting is – it's a Pre-Application meeting. It is my obligation as a Planning Board member to tell you what I think. You're hear-, you're hearing it.”

Mr. Johnston replied that that was “fair enough”. He continued.

Mr. Johnston: “Based on that, that comment – and I apologize if I'm jumping, stepping over any other Board members – I know, uh, folks want to speak – what I'm hear-, the geometry of these lots have to change, and I think that's largely my fault, from a misreading or misunderstanding of the Ordinance. I, I was unaware that those lot lines were not allowed to encroach into that, into that buffer area, so, that changes, I think, how we approach, uh, the, the layout itself, um, but I, I think, in looking at this, and I hope in looking at this, that we can still achieve with minimal, um, reductions in that 100-foot

buffer, um, uh, a substantially similar plan to what's here. Also, if you could give us one point of clarity – a waiver, is a waiver – I, I read Sec-, Section 7, that the, as a – the waiver, wo-, would it be required to reduce that 100-foot buffer, but a formal waiver request would be required for any reduction in that 100-foot buffer? I just want clarity there, so, for my application.”

Mr. Lamphere replied.

Mr. Lamphere: “Um, I, I would, uh - now, I know, I know, uh, our Solicitor is new to our Regulations, and maybe she hasn't read all of them, but the way we've interpreted this in the past – and if you read that paragraph, I think, um, Mr. Johnston is correct – that even though a 100-foot buffer is required, if you read the entirety of that paragraph, you'll see that the Board has the flexibility to, on the fly, adjust it, without, without the, uh, submission of a formal waiver, okay? And, and, again, just think of what a formal waiver would do. Is that going to kick this up to a Major Subdivision now? So, um, I, I would say that – I mean, the way the Board has, has done this in the past, and with other subdivisions, many other subdivisions, is that they used their best judgment, and they, uh, made, made accommodations and adjustments to the open space buffer. So.”

Mr. DiOrio: “So, I hope that answers your question as to the waiver. I think the answer is no.”

Mr. Johnston replied that he could “follow up” before submitting “the formal application”, and that it sounded as though they would potentially come before the Board for “one more Pre-Application, um, to, to rework these geom-, this geometry a bit, um, prior to, uh, coming in for, for Preliminary”, if that course of action was “okay with the Board.” He then said that he would “like to hear any other comments that – or feedback” from the Board. Mr. DiOrio thanked him, and asked the Board for their “thoughts and comments.”

Ms. Shumchenia spoke first. She explained that she “had similar thoughts about the hundred-foot buffer”, and that she “appreciate[d] where this plan is coming from, and the intent to incorporate the open space, and the in-, intent, you know, include no cut buffers and things like that, and create a geometry that takes advantage of those things.” She continued.

Ms. Shumchenia: “I think it – you're right, it simply could be coming before us with a different Preliminary Plan, you know, st-, start with outlining what those hundred-foot buffers are, and just realign the geometry of the lots to fit within that. I mean, the, the road, the proposed road and everything is within that 100-foot buffer as well. Whether or not you need to, you know, actually request a waiver to alter the 100-foot buffer – I think we would wanna see good documentation, justification for why the buffer can't be attained in certain places, um, and an explanation of, you know, potential alternatives that you explored and exhausted before, um, coming to the conclusion that you couldn't meet a 100-foot buffer in a particular location. Um, the other thing I just wanted to highlight was in the – I'm gotta orient myself to the directionality of the plan here – it looks like in the eastern part of the parcel, where there's a wetland area, and the plan denotes, um, the

50-foot perimeter, and the 100-foot riverbank, uh, boundary, it would really be my preference to, you know, exclude that 100-foot riverbank, uh, boundary from any particular parcel, um, kind of to the same, the same, uh, intent that, that Al [DiOrio] was just talking about, with, you know, cutting within a proposed open space area. You know, our Town has adopted a Wild and Scenic Rivers Stewardship Plan that seeks to minimize impact, further impacts within a hundred feet of any of the rivers, um, in our watersheds, and so, leaving it up to homeowner to not disturb that area, I think might not be a thing that the Board wants to really rely on, and, uh, we look to, uh, you folks to sort of preclude that as an option, and exclude that 100-foot river, riverbank wetland area from any buildable area.”

Mr. DiOrio thanked Ms. Shumchenia, and said that that was “a great suggestion.” He then asked if there were any other Planning Board members who wanted to comment. When he did not hear from the rest of the Board, he asked Ms. O’Leary if the Conservation Commission had any comments. Ms. O’Leary replied that she had been “thinking the same thing that Emily [Shumchenia] just commented on”, so she would “leave it at that.” Mr. DiOrio then asked Mr. Lamphere if there was anything that he wanted to add. Mr. Lamphere replied.

Mr. Lamphere: “Um, I’d like to take another read of the, uh, State law that was just passed, that, uh, that, um, prohibits, uh, Towns from including the wetland buffer in the minimum lot size, and see if that – make sure that that applies to clusters.”

Mr. Johnston: “Sorry, Jim [Lamphere] – I broke up. What was the last sentence there? I, uh -”

Mr. Lamphere: “I, I know, I know that State, within the last couple of years, um, made a, um, modification in the, um, requirements for density to, to achieve density, and it says that wetland buffers, um, would, would not be included in arriving at density, and also, they wouldn’t be, um – you cannot exclude them from the – they may be included in the minimum lot size that’s ultimately decided upon, so, I, I just want to take another read at that, just to make 100% sure, but we went through that with the Fairview Subdivision. Um, I went back and forth with Mr. Freeman on that one, and so, uh, we like, we just want to make sure that we can ex-, exclude the buffer from the lot. For example, even in this Town here, you can have wetlands as part of a lot.”

Mr. DiOrio: “Sure.”

Mr. Lamphere: “So why not a buffer? I mean, that’s even less than the wetland. So, and, and again, with the, with the changes made to State law, I don’t know that we can actually do that one, so, so, I’d like to take another look at that.”

Mr. DiOrio replied that he understood, and said that he would “distinction between a mandate and Emily [Shumchenia]’s request for an applicant to consider a perspective.”

Mr. Lamphere replied that the applicant could do it “voluntarily”. Mr. DiOrio continued by stating that he thought that Ms. Shumchenia had made a request, not a mandate. Mr. Lamphere replied.

Mr. Lamphere: “The applicant can voluntarily submit to anything that the Board wants, but, uh, I know the last application we had discussion about it, so I thought it was

amenable that - while I have the floor, I just like to, you know, harp on this perimeter buffer thing again, and, like Emily [Shumchenia] said, the cul-de-sac is basically touching the property line of 113A. Uh, very, very little room to navigate around that, um, and also, the 100-foot buffer impinges upon Lot B in two locations, not just next to 113C, but also, also the road, and, uh, and whatnot, and, uh, also, as mentioned, Lot E, same thing, and I agree with the Chairman, is that in, in practice, things like this would never be enforced, and, and it's impractical - I don't know why you'd want to create a, a Lot B where you would tell the property owner that basically, you know, you can't clear it and have your kids go out and play ball. You gotta, you gotta admit that these, these are cluster lots to begin with. They're, they're not 80,000 square foot lots to begin with. They're small lots, clusters. So, to even further restrict the usage of that is, is, you know, in my mind, foolhardy. You also have a, a, a drainage basin that's located in the, in the open space, and, not that it can't be done, but, if you read the, uh, [Land Development and] Subdivision Regulations, it says that at the Preliminary Plan submission, a detailed use, land use, for the open space shall be submitted, so, I heard Mr. Johnston say that he feels as though another Pre-Application meeting is needed. I think, I think we've gotten the message from the Board tonight that the Board is very, very concerned about the open space buffer, and they want the applicant to do everything possible to maximize that buffer. So, uh, given the fact that tonight's Pre-Application meeting - there was no notice requirement, as there is for Preliminary - I would say that my, my suggestion would be, or thought is, take what you've learned tonight from the Planning Board, go right to Preliminary, and address these things where the neighbors will be notified, there'll be a, you know, public, uh, comment period, on this, and then, let's hear what the neighbors have to say, 'cause that's gonna play, weigh heavily on what the Planning Board thinks. And so, at, at the Preliminary stage, you might come in with a Preliminary Plan, but there's nothing saying that that can't be amended to the next meeting. So, I don't know how much time we want to waste on Pre-App[lication]s before we really get to Preliminary, because we can change it there as well. So, those are my thoughts."

Mr. DiOrio replied that that was "good thinking", and added "just one other thought."

Mr. DiOrio: "Jim [Lamphere] put his finger on it, and I was remiss in not exploring it. Uh, the idea of the right of way at the cul-de-sac, and its proximity what I'm gonna call the southeasterly boundary line. I can't tell from the mapping that I'm looking at - I've got a reduced copy in front of me - uh, it doesn't appear that the right of way actually touches that boundary. Of course, we would not want that to happen, right? 'Cause that opens up a Pandora's Box in the future of the abutting property owner having access to a right of way that we did not intend to be traveled. So, if, in your future iterations you could pull that right of way away from that boundary a suitable amount, so there's absolutely no mistaking that it does not touch the boundary, that would be appreciated."

Mr. Sardelli replied, "Absolutely." Mr. Johnston asked for "one point of clarity."

Mr. Johnston: "Mr. Trenholm, Kevin Trenholm, who owns the, the, that southerly partial, parcel, Lot 113A, um, we did discuss quite a bit. He, uh, likes the idea of being able to access - I, I agree. It should probably, it should not touch that boundary, uh, but I just



want to be clear that we are, at least, um, going to be granting 114 and 113A, um, pedestrian, uh, easements through that, through that right of way so that they can continue to use, um, the land, the open space land -"

Mr. DiOrio: "Yep – Al, Al DiOrio – pedestrian access does not concern me. I applaud your efforts to, uh, keep people walking out there, but, you bring that cul-de-sac to the boundary line, and it opens up a whole different, uh, perspective that I'm not, I don't think you want to go there."

Mr. Johnston: "Sure, yeah, yeah, I understood. I just wanted to be clear when I, when I discussed that easement, it was, is for pedestrian access, not for vehicular access, not for future development, um, potentials, things of that nature."

Mr. DiOrio: "Yep. Very good. Thank you."

Mr. Sardelli added that the cul-de-sac was "a few feet off of the boundary line as is", and that he "believe[d the applicant's] intention, uh, going forwards is to move it further away and potentially shift it down a little bit to reduce our, uh, our drainage burden."

Mr. Sardelli: "So, it is going to be coming further away from that property line. It's not – there's no intent to touch it at all."

Mr. DiOrio thanked Mr. Sardelli, and said that those were "good objectives." He then asked if there was anything Ms. Hogan wanted to add. She replied that she did not, and that the Board had "done a great job of covering the issues." Ms. Jalette then told Mr. DiOrio that Mr. Pennypacker wanted to comment.

Mr. Pennypacker: "I, um – after hearing, uh, Jim [Lamphere] talk a bit, and I was reminded of his comment in the memo. I am interested in sort of what those plans are for the open space beyond being a, you know, a, a place for the, the two neighbors to walk, um, you know, also noting that this was, this is adjacent, or real close to the, the property we heard earlier this evening, so if – in the future iteration, or, a better sense of what that open space will be and what it will mean, uh, I would appreciate that information."

Mr. DiOrio thanked Mr. Pennypacker, and said that he was "pretty sure that at the Preliminary submission", as Mr. Lamphere had noted, "there has to be a fairly comprehensive, uh, open space management, address of same kind of document". Mr. Lamphere directed "the applicant's attention to Page 114" within the Land Development and Subdivision Regulations, which "specifically talks about that." He continued.

Mr. Lamphere: "It says at the time of Preliminary review by the Planning Board, a more detailed open space use plan shall be submitted for review and approval, which may be combined with any required grading plans, landscaping plans, soil erosion plans, or drainage plans required for Preliminary approval. The Planning Board shall require final construction plans to show proposed open space uses and alterations required as a condition of Final approval. I'd also like to mention, too, that, when you come back with Preliminary, it looks like, uh, there's some engineering work that needs to be done here with, uh, drainage and whatnot, and so, um, I, I think all of those issues should be brought forth at that time."

Mr. Johnston brought up “two points”.

Mr. Johnston: “So, the open space plan – we, we intend on gauging uh, um, and we’ve discussed it, uh, with Hali Beckman, a land-, a landscape architect, um, regarding the open space plan as far as what, what the ground cover is, what it makes up, uh, as well as getting a more detailed, um, uh, location of the existing walking trails that, that dot through that property, so that, that will be included, and J-, uh, your second point, um Jim [Lamphere], regarding the engineering – at the Preliminary Plan, um – and, uh, I apologize – this different, sometimes by jurisdiction – are, are we required to have the full engineering created as far as proposed drainage, um, uh, engineering specs for ISTS [Individual Sewage Treatment System] approved at DEM [Department of Environmental Management], um, etcetera, or is that something, um, we do once we have – I’d be, I’d be hesitant to, to go through the full, um, full engineering schematics – I mean, it’s quite a bit of work, it’s a lot of test holes, it’s a lot of, uh, uh, uh, data to be crunched by the experts. I don’t want to put test holes in places and then come back, uh, and they’re all in the wrong places because things are, things are being moved. That’s, um, so that’s a concern, and I just want, um, at Preliminary, would it be appropriate to, um, have, you know, the proposed – and we do have some pits, test holes done on site, but certainly not enough to design, uh, to DEM [Department of Environmental Management] standards, uh, the, the drainage basin, as well as the four septic systems, um, that need to be installed, so, I just want to be clear if that’s what we need for Preliminary, uh, versus, um, uh, more or less the same plan with different geometry?”

Mr. Lamphere replied that this was a “Minor Subdivision”, and that “the Preliminary checklist for a Minor Subdivision requires either approved septic designs for all lots or subdivision suitability.” He continued.

Mr. Lamphere: “So, I would, I would suggest that maybe subdivision suitability might be more appropriate for you, but what I was referring to as well, and not just septic systems – um, with the drainage detention pond that you have in the open space, which is close to Mr. Trenhol-, holm’s property, um, I haven’t seen any engineering work yet, so, how can you size a detention pond? Do – I think we want that detention pond to, to function properly. I don’t think we want storm water runoff going on Mr. Trenholm’s property. I think we might have another discussion if we, if that occurred. So, again, you’re an attorney, Jamie Sardelli is a land surveyor. I think we need engineering input here, especially when you have a road being constructed. Albeit, it’s not a Town road – it’s still a road that, uh – we just went through a private road with a, with a Major Subdivision, so, I would, I would say there’s engineering issues here that need to be, uh, scoped out, and, um, now, again, I hear what you’re saying as well – is that the geometry of these lots could change. The length of the road is gonna change, possibly, you said. Um, you know, I would say engineer these things that the worst case, uh, possible solution. If you’re gonna shorten them up or lessen things, then, then the ponds can be smaller, but, and, and we can’t really anticipate, at this point, how the Planning Board might want to change this, this plan, so, I would say proceed with caution, but, but give us the material that we require with our checklist. Pretty tough to approve a plan without any engineering work done here.”

Mr. DiOrio replied that he understood, and thanked Mr. Lamphere for his comments. He said that the “fully appreciate[d]” that the applicant’s “engineering work” would have to “be done for the Preliminary submission”, and continued.

Mr. DiOrio: “But, come on – what? We’re going to put a road in. The – if the road might be a little bit longer, it might be a little bit shorter, but the engineering work, to size that basin? It’s going to have to be done – you can do it now, or you can do it later. So, my suggestion would be: do it now. If there have to be some minor changes because the road gets a little bit narrower, a little bit longer, a little bit shorter – these are minor revisions to your substantial calculations. And, with regards to the subdivision suitability, that is your only option. You can’t really come back with individual permits here. You’re not, you’re not on a Town road. So, subdivision suitability it is.”

Mr. Lamphere said that he wanted to add “one thing.” He said that he did not want to “discourage” Mr. Johnston from returning to the Board with another Pre-Application, but that the Board had “a lot of applications”, but that they did not “have a lot of space on agendas these days.” He said that the was “trying to minimize that for [Mr. Johnston] if [he] could”, but if Mr. Johnston thought another Pre-Application meeting would be “worth [their] effort”, then he was “fine with that”. Mr. Johnston replied that he appreciated that, and that he “just was, uh, trying to get clarity”. He said that he had gone with the Pre-Application route “really for this” kind of insight from the Board, “because [he] wanted to know what the Board” wanted. He said that he had read the regulations “differently that [he] should have”, and that while he had initially wanted to return with another Pre-Application, he thought that he had “a pretty good understanding of, of what’s required to make this, uh, work.” He said that he did not have “any objections doing the Preliminary engineering “, but that his only concern had been that they would be working on test holes “that, that ultimately are, are moved, based on, on feedback from the Board.”

Mr. Johnston: “It just gets to be a long and, uh, an expensive, uh, proposition to do the same engineering over and over again.”

He said that that was “all” he was “trying to avoid”. He said he thought that the basin would be “going to go roughly where it is, you know, plus, minus a few feet here and there” as the lots were moved around, but he thought that he, Mr. Sardelli, and the engineers would be able to “get that figured out based on this feedback, um, reasonably easily.” He said that if there were “any major concerns” that arose during their “reworking of these plans”, they could have another Pre-Application meeting, but he felt that they could “conform to what [the Board was] requesting”. He said that he appreciated “going straight to Preliminary”, and “handling it there”, as well as being able to get “into the Public Hearing realm of things”. Mr. DiOrio replied that he had “one additional thought”.

Mr. DiOrio: “So, I, I appreciate that this is a decision that you might want to give some, some thought to, and reconsider, but, an idea: if you decide that a Pre-Application, second Pre-Application is in your best interests, a thought would be – do your notice.

Now, I know you don't have to do a notice for Pre-Application, but Jim [Lamphere] has already alerted you to the fact that the input of the abutting property owners is likely to weigh heavily on any subsequent Planning Board activity. So, do the notice and let's get their input. It's not, it's not required, but it – there's nothing, I don't think there's anything preventing you from doing that. Just a thought.”

Mr. Johnston thanked Mr. DiOrio, and said that that was “a good idea.” Ms. Shumchenia then said that she had a “kind of related thought on that.” She continued.

Ms. Shumchenia: “Um, we mentioned it a couple times. We heard an application for the neighboring property earlier today. Um, they have also, uh, in their plan – a significant portion designated as open space, and I believe it was conveyed to the Land Trust. I would be shocked if you – this applicant – didn't hear from the Land Trust about the use of the open space for this parcel, because it likely would be contiguous, um, and so, just throwing that out there – maybe there is someone from the Land Trust that's waiting to talk, actually, um, in public comment. And then the other thing that occurred to me is that I believe next month we'll be hearing an application for a development to the northeast of this parcel, also abutting this parcel, the Skunk Hill Solar project, um, so I would – you know, I think it's not the applicant's burden by any means to consider those things, but I just want to raise it for fellow Board members, like, we have the opportunity to think about this in a zoomed out view, a little bit. Um, and, you know, obviously, we can't bring other application's considerations into this application, but this is a little like mini planning exercise, maybe, of thinking about, you know, what's going on in an area.”

Mr. Johnston replied that he believed that there was a subdivision with open space that separated their parcels from the Skunk Hill Solar site<sup>3</sup>. He also said that if there was a member of the Land Trust in attendance, having their contact information “would be good, because that would be a good discussion to have prior to [their] next submission.” He said that the applicant would “certainly be happy to speak with them as far as, um, what they're doing with the abutting parcels, and what they want to do.” Mr. DiOrio thanked Mr. Johnston. Ms. Light then said that she had a comment.

Ms. Light: “Um, I don't want the applicant to think that this project isn't going to be reviewed, the, the - by the Planning Board, uh, and, and developed based upon anything other than its own merit. I mean, there are projects going on, on the perimeter of this, but, uh, asking for consideration about, uh, you know, on your – you, asking you – for consideration of the, uh, other development is, is a request. But the Planning Board is gonna make its decision based on this project's merits, and I just wanted to make sure that that was clear.”

Mr. DiOrio thanked Ms. Light for her comments. He then said that if there was “nothing else from the Planning Board and the Planner”, they would see if there were any members of the public in the audience who wanted to weigh in. He explained that it was a Pre-Application, so a decision was not going to be issued by the Board that night. Ms.

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<sup>3</sup> Clerk's Note: The subdivision in question was the one that had been approved earlier that evening – Fairview Estates.

Jalette directed those in the audience to press \*9 if they wanted to comment. When she did not see any members of the public pressing \*9 to indicate that they wanted to participate, she alerted Mr. DiOrio to that fact. He reiterated that it was Pre-Application, and then mentioned that he had a question for the applicant.

Mr. DiOrio: “I guess my only question, in closing, to the applicant is – did you get what you came for?”

Mr. Johnston: “I guess so. We’ll, we’ll get back to the drawing board. Uh, but no – I very much appreciate your time this evening. This was very informative and, um, I think we’ll bring something that looks similar, but also substantially, substantially different, so thank you for, uh, the clarity, thank you for the feedback. I appreciate everything, and I will, um, I’ll reach out to the Land, the Hopkinton Land Trust – I’ll get on Google on that, um, tomorrow, and, uh, reach out to them, and, uh, we’ll go from there.”

Mr. DiOrio and Mr. Johnston thanked each other. Mr. DiOrio then moved on to the next agenda item.

## **SOLICITOR’S REPORT:**

### **Memorandum from Maggie Hogan, Planning Board Solicitor – 6/7/21**

Ms. Hogan explained that she had submitted a “very brief” Solicitor’s Report to the Board, which was “really just updates of things.”

Ms. Hogan: “Um, site walks – uh, so after the last Board meeting, where we painstakingly scheduled and gathered our calendars, upon further review, I had determined that our proposal had – that we had designed for the site walks was not going to work after all, because we could not have simultaneous streaming, um, it – video or audio, and so we would be violating Open Meetings laws. So, we went back to the drawing board on that, and I’ve determined that, um, the only way for the Board members to see these, um, various sites that you’re, that you – come before you, is to, for the Board members to attend site visits, um, with less than a quorum, so no more than two, two by two, uh, and, um, with applicant’s representatives on the sites. Um – and so, we rescheduled, um, the two site walks for, um, the Comolli project and for Stone Ridge, um, to accommodate those, uh, conditions. Um, the bulk of that Board had already seen or was recused, uh, or couldn’t make the Chase Hill Road, so it was just Emily [Shumchenia] and I, uh, out on that on Thursday, June 3<sup>rd</sup>, and the Stone Ridge was last Wednesday, on probably the most humid day of the entire world. We were out for a couple of hours and, uh, that was John [Pennypacker] and Emily [Shumchenia] and I, along with a couple of representatives from the, uh, the developer. Um, so that takes care of the issue of site walks, so, going forward, um, that’s how it will be handled. Um, related to this – I, I had an inquiry via an e-mail, and we had the question – uh, has been raised at the Town Council level by a member of the public, concerned that, um, concerned that he can’t get an answer to a question is regards to, uh, who can attend and who can’t attend, and, uh, I looked back at my response to that particular individual, and, and perhaps I wasn’t as clear as I had intended, but the bottom line is that no members of

the public were invited for any of these visits – nor will they be in the future, because we can't have a public meeting, so, when the Planning Board members do go visit these sites, they will not be within the scope of a public meeting. It will not be in a situation where Open Meetings laws could be violated. So, no members of the public, uh, would be, uh, necessarily invited. If an applicant wants to invite the public, that's up to them. They are not required to allow the public onto their property, uh, and, in fact, when we did attend the Stone Ridge one, um, I readily signed a, a waiver form, and, uh, I expect that that's what – if a landowner wants to let members of the public on their property, they're not required to, but if they want to let them on, the members of the public need to understand that they're, they're signing a waiver of liability when they enter onto that property. So, I apologize to that member of the public for any confusion as a result of that, uh, of my answer in, in regards to that particular question. Uh, second item on my report is regarding Open Meetings compliance. This is the same individual who's also concerned, and has expressed these concerns most recently at the Town Council meeting that, um, that I, as the new Solicitor have, um, implemented new procedure and a new process, um, here, ah, in regards to Board members, uh, answering questions and speaking to members of the public. Um, all I can say to you is that, um, if, if the compliance with Open Meetings is a new thing for this Board, um, that I'm glad I'm here to tell you that you do need to comply with it. So, um, I haven't implemented anything new. I've advised the Board on, um, their requirements under both, um, public records access as well as Open Meetings, and obviously Open Meetings is the one that the Board members deal with the most frequently, and so I will reiterate for the Board's edification, as well as members of the public, what the requirements are for the Board. Um, the Board members, um, are required to have all discussions regarding a pending application in the public forum. So, that means here at a meeting. Um, and members of the public can certainly e-mail, uh, the, the Planning Office. They can, uh, send a letter to the Planning Office. They can attend the meetings both virtually and then, when we get back to in person, there as well. But, that's the forum and the location where questions need to be answered, um, for any pending application. It's not appropriate for a Board member to – in the grocery store or a restaurant or in their home e-mail, uh, respond to questions from members of the public, or an applicant, or an objector, um, on a pending application. It's a violation of Open Meetings, and it's not permissible. So, to the extent that, that I have not been clear on that, uh, I apologize for anyone who's been confused, um, but that is not my rule, that's State law, and it's important that we all are cognizant of it, and if it implements a change from the way – maybe things were done a little more informally, I don't know, I wasn't here, um, but, it, that's my obligation – is to advise you on how to do it going forward. Um, so – and associated with that, um, I, I also do not respond, generally, to e-mails. I work for the Town, uh, the Planning Department, um, and I'm not instructed to, or authorized, if you will, to, uh, respond to miscellaneous e-mails from members of the public. On occasion, I might, uh, but generally speaking, if a member of the public has a question, uh, for the Solicitor, that needs to go through the Planning Department, uh, and be authorized by the Town, because the Town is, um, expending funds when, when I respond, um, to any questions. So, I, I hope I've cleared that up for anyone who was confused about, um, how this works, um, on all questions to the Planning Board members should be going through – not directly to them, at their, their e-mail - they should be going through the, uh, Planning Department. Everyone is invited to

ask whatever questions they would like to, but they, they – it does need to be done within the scope of a, of a public meeting, so I hope I’ve made that clear. And, finally, the last item on the agenda is the Revity appeal, um, was rescheduled yet again, um, due to the unavailability of a sitting Board member. Uh, I do believe that we are scheduled for next Thursday, June 24<sup>th</sup>, um, again, via Zoom. So, um, other than that, I don’t have anything further.”

Mr. DiOrio thanked Ms. Hogan, and said that her comments were “educational as always.”

**PLANNER’S REPORT:**

Mr. Lamphere did not have a report.

**CORRESPONDENCE AND UPDATES:**

Mr. DiOrio noted that there was not any correspondence nor any updates.

**PUBLIC FORUM:**

Mr. DiOrio explained that this would be the time for members of the public to ask questions. There were not any members of the public who wanted to be heard during Public Forum.

**DATE OF THE NEXT REGULAR MEETING:** July 7, 2021 (6:00 p.m.)

**ADJOURNMENT:**

MR. LINDELOW MADE A MOTION TO ADJOURN.

IT WAS SECONDED BY MS. SHUMCHENIA.

IN FAVOR: DIORIO, LINDELOW, LIGHT, SHUMCHENIA, PENNYPACKER

ABSTAIN: NONE

OPPOSED: NONE

5-0, THE MOTION PASSED. THE MEETING WAS ADJOURNED AT APPROXIMATELY 8:16 P.M.

**By: Talia Jalette, Senior Planning Clerk, 7/7/21**