September 24, 2022

Mr. Ronald Prellwitz
Chair
Hopkinton Planning Board

Re: Solar Developers Bait and Switch Tactics Cost Hopkinton Millions of Dollars in Revenue

Dear Chairman Prellwitz and Members of the Planning Board,

As planning board members are all well aware, the Town of Hopkinton Town has received a deluge of proposals from commercial solar developers in recent years asking the town council to rezone property in the residential RFR-80 zone to the commercial zone in order to permit the installation of industrial utility scale solar projects.

In every instance, the primary arguments advanced to the town council in favor of the proposed zone changes were: a) that the installation of the projects would create substantial incremental tax revenue for the town; and b) that the rezoning of the property would "automatically revert" to residential zoning at the end of the life of the solar project.

These "benefits" were cited by the developers, and by town council members who voted to approve some of the proposals, as the deciding factors for approval.

Town council members who voted to approve did not contest the fact that the projects would clearly have an adverse environmental impact or that they would compromise the rural character of the town of Hopkinton, but they argued that the Town needed the substantial boost in revenue that the solar projects were expected to provide.

Both of these promises have now proven to be false.

Thanks to the efforts of the solar developers – after they achieved their zoning approvals – the incremental tax revenue to the Town has been slashed from what was projected and will actually be minimal.

And there is no such thing as "automatic reversion" to the residential zone, which the Rhode Island Supreme Court has ruled to be illegal. The zoning of the parcels cannot change unless the owner submits, and some future town council approves, a new zone change for the property. The reality is that at the end of the life of the solar project, there will simply be a new discussion between the town and the owner about how the property should be zoned and used.

As members of the planning board may, or may not, be aware, every major solar developer in Hopkinton, including Energy Development Partners, the sponsor of the proposed solar projects at Skunk Hill Road and Main Street (Atlantic Solar), have appeared before the Tax Board of Review to appeal the increase in the assessed value of their properties after they were rezoned from residential to commercial use.

None of them protested the proposed revaluations to their properties or the financial projections of new tax revenue that were presented during their respective zoning hearings. Instead, they argued that the increased tax revenues from the rezonings would be a great benefit to the town – but then promptly contested them after the properties were rezoned.

It is my understanding that all of these developers are now *suing the town* in Superior Court to contest the increases in assessed value that followed the rezonings.

As members of the planning board also may, or may not, be aware, the Rhode Island legislature recently passed a new law (2022 – H8220) that *prohibits* towns – including the Town of Hopkinton – *from increasing the assessed value of property that is rezoned to commercial use for solar development.*

This new Act wipes out the lion's share of the incremental revenue that the town council believed would accrue from the projects.

The Hopkinton Tax Assessor recently provided a report to the town council, prior to the passage of this Act, that estimated that the passage of the legislation would cost the town more than $200,000 per year in tax revenue. In fact, because the report did not address *all* of the commercial solar projects in r the town, the actual figure is probably closer to $250,000 per year.

Over the projected 35-year life of these commercial solar projects, the passage of this bill will cost the Town of Hopkinton over $8 million in revenue ($250,000 x 35 years).

It is worth noting that Southern Sky, the largest solar developer in Hopkinton, was represented in zoning hearings before the town council by Joseph Shekarchi, Speaker of the House (then Majority Member).

As the planning board knows, Energy Development Partners (sponsor of Skunk Hill and Atlantic Solar / Main Street), has been represented by Robert Craven, also a delegate to the Rhode Island House of Representatives.

Both Mr. Shekarchi and Mr. Craven supported and voted for the recent Act that will deprive Hopkinton of millions of dollars in tax revenue that were the primary inducement for town council approval of the projects.

It is no secret that current and former members of the town council – including councilors who approved the commercial solar projects – have been angered by these machinations on the part of the solar developers – none more so than Mr. Frank Landolfi, the former town council president who argued so strenuously that the town needed the revenue that the projects would produce.

Mr. Landolfi was recently quoted as saying that he would never have approved ANY of the solar projects without the projected revenue from the revised tax assessments. I personally contacted Mr. Landolfi and he reiterated this statement to me. Mr. Landolfi also made it evident that he believed that the solar developers had acted in bad faith.

<u>Skunk Hill Solar</u>

The history of the Skunk Hill Solar proposal perfectly illustrates how solar developers touted these purported twin benefits of substantial incremental tax revenue and "automatic reversion" of proposed zone changes to the town council.

On April 22, 2019, during the zoning hearings for Skunk Hill Solar, Councilor Sylvia Thompson read into the record and submitted an estimate from the town tax assessor of the substantial increased tax revenues that would derive *from the revaluation of the subject properties* if the town council approved the zone change (see attached Exhibit).

No one from Energy Development Partners, including their attorney, Robert Craven, contested the proposed reassessment or the projected increase in revenue. To the contrary, Attorney Craven made the proposed increase in tax revenue the centerpiece of his argument for approval.

Throughout these same hearings before the town council – and in later proceedings before the Hopkinton Tax Board of Review - Attorney Craven falsely asserted that if the town council approved the proposed rezonings, the zone change(s) would only be "temporary." Attorney Craven insisted that the zoning would "automatically revert" to the original zone and that the town would benefit from preserving the rural properties as "land banks" (a process which regrettably required clear cutting unfragmented forest, reshaping the natural contours, destroying habitat and carpeting the parcels with industrial hardware).

In fact, the RI Supreme Court has issued a benchmark ruling to declare that property cannot "automatically revert" to a previous zone. No property can be rezoned without a noticed public hearing and there are no guarantees as to how a future town council may act.

On February 9, 2022, Attorney Craven appeared before the Hopkinton Tax Board of Review to protest that it was *unfair* for the town to increase the assessed value of the properties underlying Skunk Hill and Atlantic Solar / Main Street based upon the change in the zone from residential to commercial. Attorney Craven argued that since the proposed projects would be paying the tangible property tax for renewable energy ($5 per kW), they would be "taxed twice" if any consideration were given to the change in zone or the use of the property.

"Mr. Craven argued that the assessment of the land should stay as it previously was before the new assessment" (see meeting minutes, 2/9/22).

In so doing, Attorney Craven and Energy Development Partners were joining *a parade* of solar developers for every major solar project in town who appeared before the Tax Board on this date in the prior year, on April 15, 2021.

All of the solar developers made the same argument. They didn't want to pay any incremental taxes based upon a revaluation of their property because of the rezoning from residential to commercial status – which is standard practice in Hopkinton and other municipalities (see meeting minutes attached).

Never mind that the developers – including Skunk Hill – had touted this same new tax revenue to the town council as the primary incentive for their approval. None of them protested that it was "unfair" for the town council to "tax them twice" when these projected tax revenues were presented during the zoning hearings.

On February 9, 2022, Attorney Craven also repeated his false assertion that *"At the end of [project life], after decommissioning the project, the land goes back to its previous residential zone"* and that *"there is a temporary use for solar arrays only."* The "temporary" status of the zone change, due to the unenforceable, phantom "automatic reversion" – which was *previously* cited as a reason for the town council to approve the rezone - is *now* being offered *as a reason why the developer should not have to pay the increased property taxes that were presented as the primary benefit to the town!*

It is my understanding that the town is now being sued in Superior Court on all of these contested solar property valuations, after the Tax Board of Review declined to reduce the assessments.

Our "good neighbors" who promised to be our "partners," who sympathized with our fiscal challenges and who promised to contribute significant new tax revenues "to help pay for our schools" are all fighting hard to walk away from these promises now that they have their zoning approvals.

Sadly - regardless of the outcome of this bundle of lawsuits against the town seeking to avoid any significant (and realistic) increase in the assessed value of their newly lucrative commercial properties – it appears that the solar developers have rendered all of these arguments moot through the enactment by the legislature of H8220. This legislation *prohibits* any town from increasing the assessed value of property occupied by a solar project and mandates that the assessed value shall be equal to the value of the property immediately prior to the approval of the solar project.

Pursuant to this legislation, the *only* incremental tax that solar projects will pay – regardless of any rezoning – is the pitifully small tangible property tax of $5000 per MW. To put things in perspective, a 20MW solar project like Skunk Hill, which will reap tens of millions of dollars in revenue over its life, would pay only $100,000 per year in incremental tax from the tangible property tax.

The argument for passing this legislation was that it would provide *greater economic incentives* to encourage solar development and avoid the disincentive of (justifiably) higher property taxes – never mind the impact to all of the "municipal partners" who approved the projects because of the promise of this revenue.

Of course, it is helpful, if you are a solar developer, to have your attorneys serving – and voting – in the General Assembly as Speaker of the House (Joseph Shekarchi) and Representative from North Kingstown (Robert Craven).

No wonder former town council president Landolfi – who was the most outspoken advocate for the development of commercial solar energy projects in Hopkinton, including Brushy Brook, Skunk Hill and Atlantic Solar/ Main Street – now says that he "*would not have voted for a single one of these projects*" had he known that the town would *only* receive the tangible property tax and would *not* receive the anticipated tax revenue from change in assessment from residential to commercial property (as is typically done).

"*The tangible property tax is simply not enough*," Mr. Landolfi told me. In referencing the bait and switch tactics of the solar developers, in the wake of the tax appeals and their successful efforts in getting their cronies to pass legislation to relieve them of paying these taxes, Mr. Landolfi said: "*They're all laughing at us*."

Clearly, Mr. Landolfi believes that the solar developers acted in bad faith – and rightly so.

I recognize that, as Solicitor Hogan says, the planning board "cannot undo" the prior zoning change approval of the town council and that the amount of property taxes paid by the solar developers is not a criterion for determining whether to approve, or deny, an application for master plan approval of any solar project, including Skunk Hill.

But I hope that the next time that a solar developer begins whining about all the money they have spent pursuing approval of their projects – or more ominously threatens to sue the town, based upon a misguided application of the principal of "equitable estoppel" if the planning board dares to exercise its authority to deny master plan approval for an application, just because the applicant has spent a lot of money on the approval process – that the planning board will consider that **these developers individually, and collectively, have now succeeded in depriving the Town of Hopkinton of *millions of dollars* in anticipated tax revenue that provided the primary incentive for allowing them to proceed this far.**

I hope that the planning board will consider carefully the "required positive findings" that the Board is obligated to make as a prerequisite to any master plan approval, including whether the board can truthfully attest that there will be *"no significant negative environmental impact"* from clear cutting unfragmented forests to accommodate these highly lucrative commercial ventures.

No one - including the developers - has ever disputed that all of these projects have a *highly detrimental environmental impact* when they involve clear cutting of forests. The town council was willing to tolerate this damage when the price was right – i.e. because of the now non-existent incremental tax revenue – and was willing, in the process, to subscribe to the convenient fiction of preserving "land banks" by building such industrial projects with a massive footprint.

The planning board is justified in asking itself if there are ANY benefits left to the town – or to our community - that can possibly offset the gross environmental damage that will undeniably occur.

As we also learned from the uncontested expert testimony of Mr. James Houle, a licensed real estate appraiser – and from the comments of various members of the planning board - at the recent planning board meetings for Skunk Hill, *no one disputes* that these commercial solar projects will have a *significant adverse impact* on the quality of life in our community, which will inevitably translate into lower residential property values and impairment to home equity, relative to the property values in locations that are unimpaired by such incongruous development.

Under these circumstances, perhaps the planning board can spare some sympathy for the plight of the Skunk Hill project abutters – 64 of them – and hundreds of other nearby neighbors who feel cheated knowing that they will be sacrificing their quality of life and some significant percentage of their home equity – with no significant benefit to anyone, other than the developers.

"*It's all about the revenue,"* we were told by some of our former town council members to justify their zoning approvals in 2018 through 2020.

Now, however, the scales are clearly unbalanced since most of the revenue has disappeared. Now, it's all about the unconscionable environmental damage and the compromise to our quality of life.

Actually, now – as before – it's all about the profits of the solar developers, which will be realized at the expense of Hopkinton residents.

I fervently hope that the planning board will recognize, with respect to solar projects that propose to clear cut forests, that it is not possible to make a positive finding that there will be "no significant negative environmental impact" and that **no one** – not even the former town council members like Mr. Landolfi who once advocated so strenuously for these projects – believes that the approval of these ventures is in the best interest of the Town of Hopkinton and its residents.

Sincerely,

Eric Bibler
Hopkinton

Attachments:

Exhibit 1: Anticipated Revenue for Skunk Hill Solar LLC Project submitted in town council zoning hearing on 4/22/2019

Exhibit 2: Tax Board of Review – Meeting Minutes for April 15, 2021

Exhibit 3: Tax Board of Review – Meeting Minutes for February 9, 2022

Exhibit 4. State of RI General Assembly – Bill 2022 – H8220

Exhibit 5: House Roll Call Vote for 2022 – H8220 Sub A

Exhibit 6: Senate Roll Call Vote for H8220 Sub A