

ZONING BOARD OF REVIEW, SITTING AS THE BOARD OF APPEALS MEETING
MINUTES – June 16, 2022

State of Rhode Island
County of Washington

In Hopkinton on the sixteenth day of June, 2022 A.D. the said meeting was called to order by Zoning Board of Review Chairman Jonathan Ure at 7:04 P.M. in the Town Hall Meeting Room.

PRESENT: Jonathan Ure, Ronnie Sposato, Daniel Harrington, Daniel Baruti, Joseph York, Chip Heil, and Solicitor Per Vaage of Gidley, Sarli, and Marusak LLP; Building Official Anthony Santilli
Zoning Board Clerk: Katrina Caputo
Absent: Alternate Member Phil Scalise; Town Council Liaison Michael Geary

Sitting as Board for Petition I: Ure, Sposato, York, Harrington, Baruti

Petition I

A petition filed by Peter F. Skwirz, Esq. on behalf of Tom & Cynthia Sculco on an appeal of the decision of the Hopkinton Planning Board; appealing the decision of the Planning Board granting the approval of the master plan application submitted by RI-95, LLC for a large scale photovoltaic solar energy system located on property identified on the Hopkinton Tax Assessor's Map as Plat 11, Lot 47A; addressed as 0 Palmer Circle, Hope Valley, RI 02832 in accordance with R.I.G.L. 45-23-67, as amended. Appeal is made subsequent to the former R.I.G.L reference and Article XV of the Hopkinton Subdivision Regulations.

Applicant or representative present.
Presentation of parties' positions
Board deliberations.
Decision.

****A Stenographer was present.****

*****A transcript will be filed as part of this record.*****

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A MOTION WAS MADE BY MEMBER HARRINGTON AND SECONDED BY MEMBER YORK TO END THE PUBLIC HEARING. ALL WERE IN FAVOR.
SO MOVED

FINDINGS OF FACT:

- The subject property is located at 0 Palmer Circle, Assessor's Plat 11, Lot 47A.
- It consists of approximately 251.96 acres.
- It is zoned as Commercial Special.
- By Planning Board decision on July 21, 2021, the owner of the subject property RI-95 LLC, received master plan approval on approximately an 81-acre Commercial solar array with a 15,000 square foot accessory storage.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THOSE AS FINDING OF FACT. ALL WERE IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The applicants, Thomas and Cynthia Sculco, are appealing the July 21, 2021 master plan approval on approximately an 81-acre solar array with a 15,000 square foot accessory storage building. The Sculco's appeal is on three basis:
- The subject property had previously been specifically rezoned for a destination resort development and was not rezoned to allow any other uses. Therefore, the Planning Board committed a clear error of law in granting master plan approval for a commercial solar array. In that the Planning Board inappropriately applied the Doctrine of Equitable Estoppel in concluding that a commercial solar array is a permitted use in the subject property and granting the master plan application and therefore committed a clear error of law.
- The Vice Chairman of the Planning Board evidenced a bias against them and should have recused himself from considering the master plan application,

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There is some discussion among the Board of whether or not this qualifies as a finding of fact. Chairman Ure clarifies this a finding of fact on what is being appealed. The Town Solicitor agrees that this finding of fact is appropriate.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THOSE AS A FINDING OF FACT. ALL WERE IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- Prior to 1994 the subject property had been zoned Commercial as a result of a zone change amendment sought by a developer and approved by the town council on July 2, 1990, for a resort development known as Brae Burn.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THAT AS A FINDING OF FACT. ALL WERE IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- Prior to July 2, 1990, the subject property and the surrounding properties involved in the zone change had been zoned as RFR, Residential and light Industrial.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THAT AS A FINDING OF FACT. ALL WERE IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- On July 2, 1990, the Town Council added a use to the permitted uses in a Commercial zone called Mixed Use Planned Development.

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A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The Mixed Use planned development was made to accommodate the Brae Burn project and were applied to those properties which were subject of the zoning change, including the subject property.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The Mixed Use planned development permitted a combination of pre-existing uses as well as hotels, motels, conference centers, golf courses, swimming areas, country clubs, and central facilities of water distribution and waste treatment.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The Mixed Use planned development made such projects subject to restrictions on the density and number of residential and hotel units as well as dimensional restrictions and provisions for open space.

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A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The Mixed Use planned development was subject to site plan review and issuance of building permits.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The Mixed Use planned development amendment to the zoning ordinance did not limit the availability of any other uses permitted at the time on the subject property.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- In 1994 the Town of Hopkinton updated its Zoning Ordinance.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

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FINDINGS OF FACT (Cont.):

- Among the additions to the Zoning Ordinance was a provision for special districts which was defined as being composed of parcels of property which heretofore were the subject of the zoning map boundary change or amendment to the text of the prior ordinance and in connection with which the Town Council imposed use limitations, conditions, and/or restrictions. The terms of such limitations, conditions, and/or restrictions shall continue to be applicable between each said property until redeemed, readopted, and incorporated here in, except as the limitations, conditions, and/or restrictions as individually applicable to the property within each said Zone, District are controlling. The use and the dimensional regulations of this ordinance from the Rural Farming Residential-80 District shall apply to the Residential Special District, the Neighborhood Business District shall apply to the Neighborhood Business Special District, the Commercial District to the Commercial Special District, and the Manufacturing District to the Manufacturing Special District.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THOSE AS FINDING OF FACT. ALL IN FAVOR.
SO MOVED

FINDINGS OF FACT (Cont.):

- The Brae Burn development was never built.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINTON TO ACCEPT THOSE AS FINDING OF FACT. ALL IN FAVOR.
SO MOVED

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FINDINGS OF FACT (Cont.):

- In 2011 upon inquiry, the Town's official legal opinion issued by Attorney Romano, was that the uses permitted by right or Special Use Permit in the Commercial District are applicable on the various properties that made up the Brae Burn project, are not restricted to only the uses proposed to that project.

A MOTION WAS MADE BY MEMBER HARRINGTON AND SECONDED BY MEMBER SPOSATO TO ACCEPT THOSE AS FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The second consecutive formal determination was made in 2011, a month later by the Town's Building and Zoning Official, Brad Ward, in summary the determination was that the Commercial Special Zone created in 1990 not only allows the use of a Commercial Zone but also the mixed uses approved in the July 2, 1990 amendment associated with the Brae Burn project.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THOSE AS FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The third and fourth determinations by the Town in 2018 and 2019 was made during the developmental plan review approval for two separate PSES projects on parcels that had been part of the original Brae Burn project. Both were consistent with previous determinations and the uses permitted by right on the parcels making up the Brae Burn project are not confined to only the uses that have been proposed for the project.

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A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THOSE AS FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- The fifth and sixth determinations made by the Town in 2009 during the project application that is the subject of the appeal, was consistent with all previous determinations in that the uses permitted by right in the parcels encompassing the Brae Burn project are not the only uses allowed in that Commercially zoned property.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THOSE AS FINDING OF FACT. ALL IN FAVOR.

SO MOVED

FINDINGS OF FACT (Cont.):

- In the seventh consecutive determination, Attorney Kevin McAllister, the solicitor representing the Town in 2020, stated all of the various confirmations and reaffirmations over the years were and are entirely correct and that the Planning Board should read the Commercial Special District as allowing all current uses including use 486-PSES which is for solar.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THAT AS A FINDING OF FACT. ALL IN FAVOR.

SO MOVED

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Chairman Ure asks the Board if they want to add any findings of fact on the equitable estoppel or the Facebook comments. Chairman Ure continues that he didn't find much relevance in the equitable estoppel that was mentioned during one of the meetings by either a Planning Board member or a member of the community. At said meeting, the Planning Board Solicitor or the Town Solicitor made a comment that it didn't apply and it wasn't the main reason why they made their decision. The board did not have any further input.

Chairman Ure states it's the same with the Facebook forum posts, he didn't find any relevance in the Planning Board decision and he feels it is a red herring that was thrown out there as a distraction. The Town Solicitor asks Chairman Ure if he wants to incorporate the Planning Board's finding of facts in this decision. Chairman Ure agrees that those finding of facts should be incorporated.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT THE PLANNING BOARD'S FINDING OF FACTS FROM THE HEARINGS THEY HAD ON THEIR DECISION.

A vote was not held on this motion.

Member Sposato states there was never any break in protocol from the way the Planning Board normally operates and it didn't appear they made any errors. Chairman Ure added that the Planning Board did everything by the book and it was supported by numerous attorneys, numerous times, over numerous years.

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER HARRINGTON TO ACCEPT ALL FINDINGS OF FACT, INCLUDING THE FINDINGS OF FACT FROM THE HEARINGS AND DECISION MADE BY THE PLANNING BOARD. ALL IN FAVOR.
SO MOVED

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A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER SPOSATO TO DENY THIS APPEAL ON ALL GROUNDS AND UPHOLD THE PLANNING BOARDS DECISION AS THE BOARD OF APPEALS FINDS NO PREDJUDICIAL PROCEDURAL ERROR, CLEAR ERROR, OR LACK OF SUPPORT BY WEIGHT OF THE EVIDENCE ON THE RECORD. ALL IN FAVOR.

SO MOVED

A MOTION WAS MADE BY MEMBER SPOSATO AND SECONDED BY MEMBER YORK TO ACCEPT THE MINUTES FROM THE ZONING BOARD REVIEW MEETING HELD ON MAY 19, 2022. ALL WERE IN FAVOR.

SO MOVED

A MOTION WAS MADE BY MEMBER YORK AND SECONDED BY MEMBER SPOSATO TO ADJOURN THE MEETING AT 7:25 PM. ALL WERE IN FAVOR.

SO MOVED

Respectfully Submitted,
Katrina Caputo
Zoning Board Clerk

Next Scheduled Meeting: July 21, 2022