

## **HOPKINTON PLANNING BOARD HYBRID MEETING**

**January 4<sup>th</sup>, 2023 at 7:00 PM**

### **Moment of Silent Meditation and salute to the flag:**

Chairman Prellwitz led all in attendance in the Pledge of Allegiance and moment of silent meditation.

### **Call to Order:**

Meeting was called to order at approximately 7:00 PM by Chairman Prellwitz

### **Roll Call:**

Chairman Prellwitz, Mr. DiOrio, Mr. Lindelow, Mr. Wayles and Ms. Light in attendance as was alternate Ms. Bolek. Planner Jalette, Solicitor Hogan, Town Councilman Moffitt, and Planning Clerk Spellman all in attendance.

### **Pre Roll Call for the February 1<sup>st</sup>, 2023 Planning Board Meeting**

Chairman Prellwitz, Mr. DiOrio, Mr. Lindelow, Mr. Wayles, and Ms. Light all stating they will be in attendance. Ms. Bolek also indicated she would be in attendance.

### **Approval of the Minutes:**

Mr. Wayles expressed concern that the term “old growth forest” being substituted to “old growth status” during a framing of a discussion with the applicant, and that it was used in the minutes. He wanted to know if the Board was comfortable with the use of this term in reference to the forest area discussed. Ms. Light also felt they were discussing “new” growth. Chairman Prellwitz stated that aerial photos from Hopkinton from the 1930’s shows most of the town was barren and farmland. He said that with that as a frame of reference we would have to define the term relative to concept of time. He sought a forester from the audience to clarify but none was in attendance. Mr. Wayles said he was satisfied, and then made the motion to approve the minutes. His motion was seconded by Ms. Light. Chairman Prellwitz, Mr. Lindelow, Ms. Light and Mr. Wayles all voted to approve the minutes with Mr. DiOrio abstaining.

### **Order of the Meeting and Notices**

Prior to the meeting and to ensure the flow of the meeting and effective use of the Planning Board’s time, Chairman Prellwitz had spoken to Attorneys present and wished to move New Business first, and have the **Kenyon/Koseoglu Administrative Subdivision** heard first. Mr. DiOrio made a motion that was seconded by Mr. Wayles to amend the agenda so this application could be placed on the agenda after the **Hopkinton Industrial Park General Warehousing** and before the **Brushy Brook** proposal under Old

Business. Chairman Prellwitz, Mr. Lindelow, Mr. DiOrio, Ms. Light and Mr. Wayles all voted to approve the motion there were no votes in opposition nor abstentions.

Prior to addressing **Hopkinton Industrial Park General Warehousing**, Mr. DiOrio gave a notice of refusal to the Planner for the record as his firm had done work previously for the applicant.

### **OLD BUSINESS:**

Continuance Request- Development Plan Review- **Hopkinton Industrial Park General Warehousing**- Plat 4, Lot 13B, 0 Wellstown Road, Hopkinton Industrial Park, LLC., applicant.

Planner Jalette indicated that she had spoken with professionals representing the applicant, who advised they were still waiting for permitting from State of Rhode Island DEM Wetlands. They sought a continuance and were awaiting action by RIDEM. She suggested continuance to the February meeting. She indicated the applicant also was amenable to an extended window of review. Mr. Wayles asked if a date certain was appropriate in the motion needed to move the matter.

Mr. Wayles then made a motion to grant a Continuance Request- Development Plan Review- **Hopkinton Industrial Park General Warehousing** – Plat 4, Lot 13B, 0 Wellstown Road, Hopkinton Industrial Park, LLC., applicant to the February 1<sup>st</sup>, 2023 Hopkinton Planning Board meeting with a decision date certain of February 8<sup>th</sup>, 2023. His motion was seconded by Mr. Lindelow. Chairman Prellwitz, Ms. Light, Mr. Lindelow, Mr. Wayles and Ms. Bolek.

### **NEW BUSINESS:**

Administrative Request- waiver- Administrative Subdivision- **Kenyon/Koseoglu Administrative Subdivision**- Plat 24, Lot 173, 37 West Street, and Plat 24, Lot 174A, 46 Laurel Street. Roger and Marilyn Kenyon, and Kadir and Ebru Koseoglu applicants.

Planner Jalette advised she would assist with the presentation reference this application. She advised she had met with both the Kenyon and Koseoglu families to address the process. That they are seeking a waiver from one of the items needed on the checklist for an Administrative Subdivision. So technically speaking when you have an Administrative subdivision both properties involved need to be surveyed. Planner Jalette advised that this is an unusual situation as this situation is the result of a long protracted legal process undertaken by the Kenyons, the Koseoglu families and one of their neighbors. This disposition action tonight moves a parcel of the property this evening from the Kenyons to the Koseoglus. Frankly, she stated, surveying the 15 acres of the Kenyons property to transfer 7000 square feet on a peninsular to the Koseoglus due to access conditions does not have a lot of utility. Planner Jalette helped both parties draft and prepare a waiver request, and it comports with the three items necessary for a waiver request. She sought for the Planning Board to enshrine this in a motion.

Mr. DiOrio spoke and said other projects are coming forward that will follow this same track of action. Hopkinton, Mr. DiOrio stated, has had a longstanding policy of addressing these type situations in the Planner's Office and not requiring boundary surveys on larger tracts of property. Simply put, not having

boundary surveys on large tracts of property to soften the burden on citizens of the town when it comes to surveying these larger tracts of property. This has existed for as long as Mr. DiOrio can remember. The Planner addresses this and does not involve the Planning Board. He specifically discussed large and small parcel transfers and survey needs. A lower standard of survey is used for the larger parcel and still ensuring that the remnant parcel meets all town burdens and zoning criteria to avoid the creation of non-conforming lots. If this is followed and the Planner is satisfied, the Administrative Subdivision should move forward. Following this procedure voids what Mr. DiOrio described as an undue burden. In a second concern, Mr. DiOrio discussed the treatment of this as a waiver. The word waiver carrying a different connotation to it, as opposed to hinging on a long standing policy the town has employed. Its use Mr. DiOrio stated, and he indicated that he would defer to the opinion of the Solicitor; Mr. DiOrio would prefer that it be addressed by the longstanding policy that the town has employed. He did want to indicate he was in favor of the approach employed by the Planner, and agreed there was no utility in engaging in a survey of a 15 acre parcel especially when the conveyed property was as it is in this case. He was in favor of the actions undertaken here, but wanted to work through the mechanics of the current approach. Mr. Lindelow expressed a concern as to how it would be recorded. Mr. DiOrio responded with a description of the actions taken by a Surveyor to record and document their actions and involve the Planner and Planning Office. Planner Jalette advised the Board that she had those very requirements discussed by Mr. DiOrio in the Planning Office.

Solicitor Hogan interjected that longstanding policy is not something that the Board can rely upon to make a decision. She indicated concern as it was an unwritten policy and the Land Development Act ensures and requires that those things need to be in writing. This so people can understand exactly what the policies and procedures regarding land use of the Town are. That the Planning Board per 11.2 (waiver and modifications) can do this but are required to have all these matters in writing and recorded. She recommended amending existing ordinances to address this issue and to incorporate this long standing policy into the town regulations. For this application she recommended acting under Section 11.2 section A as it is a reasonable action under the intent of these existing regulations. If you believe you are acting under this long standing policy it is also appropriate to reference subsection A and C as well. This waiver not reducing the standard of existing Hopkinton zoning ordinances. To Mr. DiOrio's point this ensures that the lots in question meet the dimensional requirements that Mr. DiOrio articulated are required. This will ensure and document the ordinances are followed. Mr. DiOrio responded and stated he was not saying they couldn't do it as a waiver, but invoking a "waiver" escalates and takes it to a higher Administrative level. Ms. Hogan stated it was already at a level of review at Administrative Subdivision review and couldn't exceed where it was. Planner Jalette stated she did this because she did not feel comfortable doing this action without seeking the approval of her oversight Board and acting independent of that seemed inappropriate. Mr. DiOrio stated he applauded that, but was concerned this could mire the Board in routine day to day operations. Planner Jalette stated that this was different as she sought a waiver. She indicated that not all Administrative subdivisions required a waiver.

Chairman Prellwitz after this review and discussion said the Board is ready for a motion. Planner Jalette stated she was simply seeking a waiver for this proposal to ensure compliance with Town regulations. There was no further discussion from the Planning Board or the Public reference this matter.

Mr. DiOrio made a motion that the Planning Board grant a requested waiver for the Administrative Request-waiver- Administrative Subdivision- **Kenyon/Koseoglu Administrative Subdivision** – Plat 24, Lot 173, 37 West Street, and Plat 24 Lot 174A , 46 Laurel Street, Roger and Marilyn Kenyon, and Kadir and Ebru Koseoglu applicants. That the waiver of modification is reasonable and consistent with the general purposes and the intent of the regulations, and literal enforcement of one or more of the provisions of the regulations would be impracticable, and would extract undue hardship because of peculiar conditions pertaining to the land in question, or waiver and or modification of the regulations are in keeping with good Planning practices and design is consistent with the comprehensive community plan and zoning ordinances, and the waiver does not lessen the standards of Hopkinton Zoning ordinances. Mr. DiOrio's motion was seconded by Mr. Lindelow. Chairman Prellwitz, Mr. DiOrio, Mr. Lindelow, Ms. Light and Mr. Wayles all voted to approve the motion. There were neither dissenting votes nor abstentions.

### **OLD BUSINESS:**

Preliminary Plan –Public Hearing- **Brushy Brook** – 140 Unit- Comprehensive Permit- Plat 32, Lots 1, 4, 6, 8, 10, 12, 14, 16, 17, 21, 23, 25, 27, 30, 32, 34, 36, 38, 40, 41, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 63, 65, 67, 68, 69, 70, and 71, located at 130 and 0 Dye Hill Road, 0 Brushy Brook Drive, 0 Wedge Road, 0 Green Lane, LR6A Owner, LLC, and Realty Financial Partners applicants.

Attorney Landry spoke on behalf of the applicant. He indicated that it has been made clear to the applicant that the Board would not be making a decision tonight; therefore he wanted to discuss and inform the Planning Board as to what was being done to revising the existing plan. He sought to clarify they were at preliminary and not final approval stage of the proposal. That they (the applicant) have addressed initially 28 issues with the Plan to bring it to currently 10 significant issues of concern. He referenced efforts identified to meet the towns concerns. He referenced the applicant worked closely with the town under peer review to address this and stated it was the applicant's efforts to chase the science, and not the politics, to seek approval. They were he reiterated addressing issues under preliminary that were more applicable to Master Plan approval. This status he stated often accelerated things. He discussed specifics and conditions of final approval, such as water, septic, road improvements and discussed 10 of these issues in November that were before the Board. Mr. Landry stated that the one issue they had not gotten over yet, was the " water issue" on site. He referenced condition 4 from the Master Plan approval from 2010 was that they get away from individual wells and get to a community public water system. He discussed the science of achieving this, and good conceptual analysis as to the geology in the area. Utilizing a geological survey they identified an area where they believed they would be able to locate significant water supply of suitable potable water on site. He reiterated that the applicant was committed to, before going from preliminary to final approval stage on any of the seven phases; they would have final state permits for that phase based on actual drilled wells. They would not proceed to final without having that status being in place.

Attorney Landry stated the applicant was faced with questions more applicable to final review as opposed to preliminary review stage, and the applicant did not object to that. Upon drilling the first exploratory well, they observed abutting lots wells and did significant analysis with the best in the field to ensure existing substantial yields of potable water. They had a great test well; it responded immediately and consistently, with no impact on surrounding homes wells that were tested. There was no hydraulic connection with surrounding wells, and this test location, he stated, was in the setback area, and within a proposed leech field for a communal septic system. He stated they would have to make some adjustments to the plan to accommodate and facilitate this water discovery. He was pleased tonight to indicate between November and now, his recognized water experts had addressed this and located a second well and further ensure through acquired data that they do not impact the abutter's wells. They have measured it and utilized computer technology in the study. He described a discovery of a very robust system and is confident upon further analysis that the second located well will limit any material impacts to or by the plan. He described it as a robust system. They sought to make it as easy as possible to make a decision on this plan at the February meeting. That the nine or 10 issues they have before peer review are adequately met. So the Planning Board can look at this "stuff" before the meeting and ensure things that are technically complex are properly reviewed. He then sought to turn the matter over to Mr. Ferrari a recognized expert. Chairman Prellwitz asked what a minimum requirement was per the state for a well to service a project this large in size. Attorney Landry stated the 10,000 gallon figure is to ensure a robust and ready supply and to trigger necessary administrative reviews. He wanted Mr. Ferrari to focus on the science to achieve this volume in clarifying this in his comments. Chairman Prellwitz discussed the number of wells and needed yield. Attorney Landry stated that the pumping tests showed the volume of water beneath the site even under drought conditions is significant enough to meet the project and abutters needs." We are way past the question if there is enough water."

Planner Jalette stated it would be appropriate for Mr. Cabral of Crossman Engineering to comment on the testimony of Mr. Landry. Chairman Prellwitz stated that he wanted to complete his thought process first, and accept testimony from the public as well. Hopkinton Town Councilman Steve Moffitt then approached the lectern and spoke. He wanted to respond to Attorney Landry's testimony from Mr. Cabral's memorandum reference anticipated water demand. He referenced conditions items 19 and 20 of a report authored by Mr. Cabral on water withdrawal proximal to wetlands. The memorandum #2 referenced was from February from 2022. No well being able to draw more than 10,000 gallons being a point in it. Solicitor Hogan interjected and advised that Attorney Landry's comments were not testimony and that he introduced expert witnesses and their testimony was what was of note. He should not be held to expert status and allowed to defer to his experts to answer Board and public inquiry. This she believed would allow Mr. Cabral to respond to the expert testimony given. Attorney Landry agreed and thanked Solicitor Hogan for her input.

Mr. DiOrio stated that he was very concerned that in the totality of testimony that "loose ends" existed and he wanted interaction closely between the applicant, the Planner and Crossman Engineering, all while utilizing the Solicitor to ensure that omissions or oversites not occur. He wanted a compilation of all the data and testimony be completed so he could render a decision and make an informed vote. His

concern is in the process of review going back to 2009 that items needed to be dealt with could have been missed. Until that compilation is completed, he is concerned “ loose ends” exist. Attorney Landry stated he understood that and understood the concerns of Mr. DiOrio. Ms. Light was concerned that they have been inundated with plans and with the files and transcripts and volumes of testimony, that she could have missed something. She reiterated a need for impact statements and wanted to make an “informed decision”. Currently she felt the presentation was “all over the place”. She stated she also sought impact statements from Town Departments this proposal would impact. Chairman Prellwitz stated he had two pages of questions and needed a lot of items of concern clarified. He sought good concise clarifying answers. He felt the applicant had a “ways to go.” He sought a solid summary in a Reader’s Digest type formula of the facts. Ms. Light indicated she has read all the documentation provided, and she is collecting her thoughts to make an informed decision.

Mr. Robert Ferrari of Northeast Water Solutions then addressed the Planning Board on behalf of the applicant. He advised he was not presenting tonight but was seeking to inform and clarify as to the regulatory process and give the Planning Board an update. He indicated in the regulatory process two agencies are involved. RIDEM, (Rhode Island Department of Environmental Management) and RIDOH (Rhode Island Department of Health) and they are the agencies of note. He discussed the evolving regulatory process from the last five years that the applicant has encountered from the two agencies. He discussed the regulatory oversight since 2008 existing in Rhode Island, or the “Groundwater Withdrawal Program” which are testing protocols reference wells bringing more than 10,000 gallons a day in yield. He described it as a rigorous program with water quality tests and a pumping test program, and he discussed the volume metrics related to it. If it’s a public well within the state of Rhode Island it must submit to this. This proposal before the Planning Board is a Community Public Water system, for a housing development, and by law it must have a redundant well for a minimum of two on site. An approval was given by RIDEM and RIDOH based on the proposal given on a theoretical presentation and currently on a conditional basis. The phased approach being a factor in their decision making and affecting the 10,000 gallon threshold. All this being contingent on a pumping test performed on site. In Rhode Island every new well and especially a Community Public well will submit to a pumping test. A 20 house development meets the criteria of being a community system. He described this testing as a rigorous program, which evaluates effects on aquifers nearby, wetlands, neighboring wells and also has a component to test water quality. He stated when the project team came to his firm he was familiar with the site. He felt they needed to evaluate the site and do so under the frame of reference of what is expected by the two regulatory agencies. He stated he was seeking high yielding wells to meet the needs of this project. He discussed its proximity to wetlands and that this can complicate matters with regulatory guidelines federally. His evaluation located an area on the property to do exploratory wells to meet these goals. At this point they prepared exploratory wells. They drilled the well and did pumping tests. It was a high yielding well and they discussed its findings at length in a previous meeting. Capacity and water quality being paramount and the well may need to cause alteration to site design of the access road, and keeping in mind that the need exists for a second well on site. A second well was drilled and that well at a 500’ depth with significant fracturing also found a well of a very high yield. He advised the pumping test was underway as he spoke and it had very favorable metrics. He sought to put the well during testing at maximal needs of output to ensure its viability and give all involved certainty and to

ensure no adverse impacts. Always pump at a maximal need at full development to ensure the capacity is present to serve this project with no adverse impacts. He tests for four days and that exceeds the 72 hour tests normally conducted. Some discretion is left to the engineer at testing but is reviewed closely, and contingent on the engineer making good decisions. The results from this latest test well yield are very promising. Recharge direction is consistent with what they had anticipated. This well appears to be able to handle this project at maximal build out due to preliminary testing. He closed that the permitting process allows for alterations to the site plan to accommodate water and sewer needs. His firm is very experienced and has seen changes from concept to reality in the plans of their clientele on a frequent basis. His work currently is exploratory to meet all water design and extraction needs for this project. If they are successful, they will return to RIDEM and RIDOH for continued regulatory review and input.

Ms. Light asked about compartmentalizing this process, and she asked as to the statuses of the two wells drilled and wanted to evaluate the plan better as she found this process confusing. Going from a proposed 7 wells to 2 and now altering the site plan she found confusing. Mr. Ferrari discussed evolving regulations and as to exploratory wells he factored in separation from storm water and septic, but did believe they will need to address issues with the access well. He reiterated this is looked at very closely by the regulatory agencies at the state level in the permitting process. He cautioned that policies and regulations have evolved over time. More exploratory wells may be drilled as they develop this proposal. Ms. Light discussed exploratory wells and redundancy as a point of clarification. Mr. Cabral from Crossman Engineering spoke to clarify items discussed in reference to permitting. He reiterated that the RIDEM and RIDOH are very involved in permitting and watch these matters very closely. He then sought to make two points. First that if there is any abutter who has a concern of an impact to their well, they really need to contact the applicant now and have Mr. Ferrari ensure a transducer is placed on their well for monitoring during the pump testing. That monitoring during a pumping test gives a true read as opposed to a theoretical. The second item was regard to exploratory well number 1. It is extremely unlikely that RIDOH will allow a road within 200' of the proactive radius of the well due to the layout of the proposal. He states that from his experience and wanted to advise it is unlikely a waiver would be granted.

Ms. Sherry Aharonian of Dye Hill Road then spoke. She advised she had been hesitant to participate in any well studies. This was for several reasons. That the most recent test well drilled was not located within the setback area and only a test well. To her it did not appear to be a worthwhile exercise. This test well would need a waiver unlikely to be granted. She said she is now very worried over this plan. She discussed the plans she had seen submitted, and stated the changes were very concerning. It had well field acres away from her property and now is 500' away from her property. She expressed concerns with test well #2 and its location. It is proximal to her residence and will need to feed a large development. Ms. Aharonian is still she stated, "hung up on the 10,000 gallon discussion". She does not think this has been made clear. Previous discussions were clear but the new information is confusing. When you did the math on the 2/22 memorandum between DiPrete and Crossman the math reference water made sense; now it does not, and when things are not clear, people question, and will hold back. She stated that she was very worried, and "that's where we are with that". She then addressed Mr. Cabral, she stated she had read some information in other towns that referenced impacts on wells to

abutters from larger developments. That these impacts are often, "not felt until full build out", and although she stated she did not seek to put words in his mouth, that this is a comment he has made previously. This on real wells not test wells." If this means that if I participated in a test well pump test that I won't have a problem then she was ok with it." If things were running correctly," they (the wells) should be running together chiming like bells". Mr. Cabral stated that the fractures in the new wells are tested to ensure they don't impact abutting wells. He stated that although it is true that in the long haul a change can occur to the water table. He believed from the information she had, that he had been referring to a number of individual wells in a development versus a single public well. Ms. Light asked as a point of clarification was one well for 20 houses as opposed to two for 140. He discussed RIDEM limits and what the reasoning was for conditions imposed. He did agree that if he was an abutter he would prefer that the well not be 500' away but a larger distance to minimize impacts on the fractures. The testing done by Mr. Ferrari appeared to indicate abundant water for the site. Mr. Cabral then discussed some of the findings he had seen from testing and potentially impacts to proximal wells. He reiterated to her that testing was beneficial. By participating it gives an indication as to if there is a direct connection from the wells. He stated a drought as always could impact and there were no certain guarantees. The goal to be that the volume available exceeds the withdrawal rates for the homes. The water in the Southwest corner appears to be very abundant. Ms. Aharonian asked if she participated it would mean she would have no issues. Mr. Cabral stated that by participating it would indicate if there is a direct connection during a high flow pump test. Mr. Lindelow asked if the recent weather would impact results. Mr. Cabral advised there was a possible correlation but not of significance. Ms. Aharonian then asked if a new set of plans exist. Planner Jalette indicated she had asked for a new set of plans to reflect the changes to the well locations but had not been availed them. Mr. Landry stated that they had not filed an amended plan with revisions with the state at this point for approval. They wanted to check the results of the second and third test wells and ensure there is no impact on the septic and storm water drainage. It all appears fine, but they have to go back as they are proposing something new. They are not at the final stage. They are not sure at this point what there ask is going to be. They still are testing wells at this point and that is impacting the plans. They are not hiding anything they just want to ensure that they have an appropriate amended plan. Ms. Aharonian then asked if there were any comparable projects to this one in Rhode Island. Ms. Light recalls a comparable project to this one in she believed Smithfield. Mr. Ferrari stated that he makes no claim to be familiar with all Rhode Island projects, but in Exeter, RI a project was constructed with 132 houses. Condominiums and houses with two wells, pump house not too dissimilar to this proposal. It has a homeowners association, and has oversight over much of the development's needs. Public water systems have been developed locally in the state and he recommends checking with the Department of Health which regulates them all. He believed she could acquire the information she requested there. Mr. Cabral also stated that was an excellent source of data should she seek that. Ms. Aharonian discussed the needs at preliminary versus final stage of development. She asked for an interpretation from Solicitor Hogan as to if permitting and road improvements and the "nine letters" were part of preliminary or final checklist mandates to be certified complete. Solicitor Hogan stated other Department heads would be queried by the Planning Department for input but cannot be mandated to do so. They would be noticed queried and asked to opine. They could not be mandated nor could the applicant be held back should they fail to respond. Ms. Light stated that it was the Planning Boards hope that Department Heads and interested and



affected parties could respond. Planner Jalette indicated she had done just that and only the Hopkinton Land Trust and Mr. Cabral had responded. She indicated she had met at length with the Hopkinton Land Trust reference this project. Those she reiterated were the only two who responded. Ms. Light wanted to hear from the Department heads, The Department of Public Works, Schools and education interests reference this plan. Ms. Light stated a Fire Chief could easily comment on how a 140 house project would impact their operations. She really wanted to hear basic feedback from Public Works. She wanted to know what the burden would be on the Town of Hopkinton by these Department Heads. She also expected to hear from the Police Chief so as to guide the Planning Board. The people in these roles can express impact on Hopkinton's infrastructure. Ms. Light also referenced a thesis done by a URI student in 2003 on housing financial impacts done previously. Ms. Aharonian suggested that emails be sent to the Department Heads not responding to document that they failed to comment on this issue. She concluded by thanking the Planning Board for its work, and indicated among other issues that septic, and road design needed to be delineated and referenced the Homeowners Association looking at costs and that necessary details and phases needed to be "flushed out". Chairman Prellwitz stated that the Hopkinton Planning Board serves the people of the town of Hopkinton.

Town Councilor Moffitt then spoke. He stated that there is a letter from the School Superintendent dated in 2021 reference a request for impact analysis and assessment made to him by previous Hopkinton Planner Jim Lamphere. He wanted it delineated that that there was a letter drafted and that it was part of the record and was available. Mr. Moffitt referenced that a State Housing Appeals Board ruling, a ruling about the previous master plan from this applicant having been appealed to them for its review. That one of the appeals to the State Housing Appeals Board was that there was a "premature finding of environmental impact". That currently we await the final plan submission here to review items of community concern. He discussed Rhode Island General Law 45-53-4 and its subsections and its impact on this application. That this law that Councilor Moffitt referenced, allows a Planning Board to "outright deny an application for failing to adequately address environmental concerns". He stated he assumed water and septic is part of an environmental concern. He wanted to suggest to the Planning Board they should ask specifics reference these items. That while they are seeking approvals and licensing, they should be able to answer more specifically. He wanted to give this to the Planning Board "as an fyi". Councilman Moffitt discussed a memorandum from Planner Jalette asking questions to the applicant from 9/12/2022. There was a list of six questions," but I don't think were ever made public". Ms. Light interjected she believed they were posted on the internet. Mr. Moffitt was concerned this was not asked in a public forum. One of these questions was for an emergency route, and he believed safety is a "big issue" and should be addressed. Mr. Moffitt stated that he had not heard those questions asked and thought the answers would be valuable to guide the Planning Board. Chairman Prellwitz asked to interject and indicated both he and the Planner were going to ask a series of questions this evening. Mr. Moffitt felt that there were a lot of loose ends. Ms. Light indicated they are seeking input in impact statements from Department Heads for public review.

Chairman Prellwitz stated he was concerned as to many topics being discussed reference this application. He was concerned as to the wells, roadways and septic. He mentioned off site roadway improvement and widening the road. Chairman Prellwitz saw the roadway being chip sealed and this he

did not see that as a significant improvement. He was concerned there was no definitive plan as to the septic system and its location. He further stated he was concerned as to the impact on the town in financing the educations of students in the Chariho system. He also was concerned that Accessory Dwelling Units or ADU were significantly modified by legislative act. Those stipulations were taken away and that development infuriates him. He was concerned a “can of worms” was opened up and could influence state policies and municipal ones. Ms. Light concurred with this assessment. Ms. Light was concerned with the question as to if or could the town regulate this development or others with what was mandated or regulated by the state. Solicitor Hogan stated it complicated matters but ultimately all state regulations must be met. Ms. Light asked Attorney Landry if this was a consideration as a contingency by this applicant. He advised that the statute was somewhat “unclear” and may be clarified further, and may not be valid. He felt the 140 domicile approval was not different fundamentally, and a lot of this ground has already been covered. He stated there were a lot of contingencies to consider and the goal is to increase needed affordable housing. We can only act on “what’s in front of us”. He further stated comprehensive plans call for affordable housing and this proposal fits that role. It will take a while, “to sort it’s self out”.

Solicitor Hogan wanted to clarify that the Planning Board cannot mandate something that is in conflict or opposition to state law. They can however suggest changes that the applicant can be receptive to and may accommodate a town’s wish. To place this in their covenant so as to mitigate any future liability to the town. They do not have to agree to it but the town can ask. Chairman Prellwitz then followed up and continued discussing traffic and volume of cars in the development and wear and tear on town roads. He then wanted to discuss lawn chemicals and its potential damage and impact to ecosystems and wells. How can that be regulated. He also discussed the potential need for additional police and fire services. He was concerned that an HOA placed a burden on people who sought an affordable housing component. Both he and Ms. Light wanted to know what the “contingency plans” were for EMS access to the development.

Planner Jalette stated she had many similar comments and concerns, and was concerned with the statement of subdivided intentions reference the bonding of town road improvements by the applicant, as she currently advises that she only had estimates for the internal roads of this subdivision. To this date she had not received anything addressing estimated costs to improve external roadways owned by the town such as Dye Hill Road or Saw Mill Road. She wanted concrete specifics and estimates of cost, and evaluations of overall roadway infrastructure to address town concerns for their necessary and needed projected improvements. She referenced internal correspondence between the town and the applicant. Surface conditions only had been evaluated at this point and subsurface evaluation had not been conducted or was not available. Pavement depth recommendations she indicated being of note. She continued advising that she had concerns over who was recommending what, based on what, for the roadway improvements on town roads. She needed more specifics. Ultimately how can the Planning Board make an informed decision without a status of current roads and existing infrastructure, absent a cost estimate and a timetable to achieve the improvements. Another concern she had was how the affordable units would be distributed throughout the development. How this achieved through phasing and her wishes to see a clearly defined plan. They cannot be grouped in only one section of the

development. They have to be distributed throughout the site. She also queried Solicitor Hogan reference waiver of town ordinances. She also referenced the Town Growth Management Ordinance, aka as the "Pacing and Phasing Ordinance", she does not believe the applicant has provided clear evidence that the town or Planning Board has waived this ordinance for this proposal. Her final concern was exactly who will be defined as the party monitoring the affordability component of the affordable units. The state act requires an approved entity to monitor the long term affordability of the units in question. It was the Planners concern that the applicant had not delineated who would be the party responsible for this element. These were immediate concerns but she reserved as time allows the ability to comment and ask questions later.

Chairman Prellwitz than sought to seek questions from the audience or on line with no further commentary made in a direct question or online component from the public. Solicitor Hogan then asked the Attorney representing the applicant if they had any comments on questions directed toward them, and it was his intention to seek a decision. It appeared the Board had many questions of the applicant and the Board was not ready to proceed. Attorney Landry indicated what was enquired upon, "obviously there is a lot to tackle here, and if the Board got to have this two weeks before the meeting, or whatever the deadline is 10 days..or what is reasonable, that means we would have to have all this sorted out in the next two weeks." He indicated he would have to discuss this all with his client and would seek to have this matter continued to February 1<sup>st</sup>, 2023.He indicated in the next two weeks it would be difficult to promise that all the test results and necessary information would be able to be availed to the Planning Board. Attorney Hogan stated she is seeking to ascertain is a response from him as it is clear the Board has articulated that this proposal is not ready at this point, referring it was not "ready for prime time", and decision making. The question then becomes, she stated, "would you be able to have answers" to the questions raised by Chairman Prellwitz and Planner Jalette to present to the Board by the next meeting. Attorney Landry stated that he would, "be prepared to do something important and significant" by the next meeting. Many items are easy to deal with and some do not apply to this applicant. They will do the best they can to ensure they do not waste anyone's time at the next meeting and can move forward. That they will have a conference call with their team in the next few days, and would like to be a part of that agenda for the next meeting, this so they can keep working at this. She inquired as to the availability of transcripts, and Attorney Landry stated he could accommodate that. Solicitor Hogan then asked is whether the applicant is seeking to have its final approval for wells and septic issues prior to its preliminary plan decision. Attorney Landry stated that they are seeking a preliminary plan approval conditional upon on all final permits being issued. They are looking for conditional preliminary approval. They know approvals are conditional on items beyond their control. They will await approval on some of these items from DEM and DOH. The Judge was correct he advised, as was quoted by the Town Council member, in the Planning Board not disregarding environmental impacts. However, you have an applicant that is seeking that and looking to comply with all regulations. Discussion was made to the configuration of the road system on site and has been looked at "exhaustively". There was no requirement for an Emergency access, but that is something the applicant is willing to visit. If you think it's important the applicant would address it.

Ms. Aharonian then spoke and addressed a setback issue that had been discussed previously she stated by Mr. Duhamel. She was very concerned about that and through the years she hoped this minor detail, which was important to her was not overlooked. She also wanted a clarification as to where Mr. Cabral stood on this and would he be working on the plan and giving his valued analysis. Mr. DiOrio stated this was an issue in the “ether” that needs to be brought back up and addressed. He thanked Ms. Aharonian for her input. Town Council member Mr. Moffitt then spoke and wanted to know if a pro forma is available and a financial statement as to the project. Planner Jalette stated she would review the project. Ms. Light asked if Mr. Cabral had any comment. Mr. Cabral stated he was involved and was working through a list of priorities and discussed roadway configuration and drainage. He discussed working with Public Works as to who was responsible for repairs and what would happen if there was a water main break. He concluded he would give a list of concerns to Planner Jalette as to his continued reviews.

Mr. DiOrio made a motion to extend the hearing on this issue until February 1, 2023 with a decision date of February 15<sup>th</sup>. His motion was seconded by Ms. Light. Chairman Prellwitz, Mr. DiOrio, Ms. Light, Mr. Wayles and Mr. Lindelow all voted to approve. There were no votes in opposition nor abstentions.

Amendment to an Approved Development Plan Review Application- **Anderson Mixed Use** – Plat 15, Lots 4, 5, and 6A, 916 Main Street woodland Ridge, LLC., applicant.

Mr. Jad Anderson then appeared before the Planning Board. Solicitor Hogan addressed the Planning Board and said an approval was granted in November. That the decision was given based on a distance estimate which needed to be 300’ from neighboring structures. Subsequent review found the building was actually under the 300’ threshold by a few feet. In discussions with the Planner she learned that the applicant will move the building to now comply with the 300’ threshold and not seek a Planning Board waiver. Solicitor Hogan stated she was unsure if there was a need to even appear on this development. Solicitor Hogan advised the Board that an abutting property owner has a concern that there is a “material omission” on the site plan and a public well which was not shown on the plan, nor its radius. She cautioned this matter was not noticed nor on the agenda and she gave this information as a background. She recommended a continuance so the well could be reviewed by the Town consulting engineer. She clearly indicated she was unsure if a compliance filing was necessary. Her recommendation was to continue the matter to address the well issue with the Town’s consulting Engineer.

Mr. Sam Hemenway spoke on behalf of the applicant. He stated he assumed it would be a continuance and wanted a point of clarification. Solicitor Hogan indicated that both she a Planner Jalette are not Engineers and wanted a review by the Town Engineer. A letter from an abutter was referenced that a radius needed to be shown in a letter to DEM and the Town of Hopkinton; this letter addressing a well. Solicitor Hogan stated it was outside the regulations of the Town of Hopkinton, but was unsure as to DEM jurisdiction. The Town Engineer would weigh in and give advice before the next meeting. Mr. Hemenway indicated he disputed the “logic” of this. Mr. Hemenway sought clarification and to ensure

that the full plan met all matters of compliance from November. Mr. DiOrio stated the applicant had complied with what they sought. That an application could be withdrawn and reapplied after meeting with the abutter. Mr. DiOrio did not know if a whole new application was necessary. That the applicant could resolve the well issue with the abutter. He did not believe this needed to create a whole new process. It just needed to be addressed and clarified by the applicant for the Board.

Attorney Surdut representing the abutter indicated he was recently brought on and will meet with the applicant in good faith and resolve the matter reference the well. Solicitor Hogan cautioned the Board on interaction as this was not a noticed item on the agenda.

Mr. DiOrio made a motion that the matter be continued to the February 1<sup>st</sup>, 2023 meeting. It was seconded by Ms. Light. Chairman Prellwitz, Mr. Lindelow, Mr. Wayles, Ms. Light and Mr. DiOrio all voted to approve the motion; there were no dissenting votes nor abstentions.

### **SOLICITOR'S REPORT:**

Solicitor Hogan asked that the Revity decision be put on the agenda. The hours of work by day, and the amount of vegetation in the buffer area were areas the Planning Board sought to have had input on. The matter was approved with conditions. Conditions effecting hours of operation and vegetation on site were imposed. The applicant appealed to the Zoning Board for review. The Zoning Board upheld the Planning Board's decision. The applicant appealed then to the Superior Court. The Superior Court reversed the Zoning Boards affirmation of the Planning Board. In the court's analysis the court said the Planning Board lacked the authority to impose those conditions. The court was concerned as to the Boards standing as a result of ordinances on file. Solicitor Hogan indicated she had reservations on the decision. When the project goes forward it will be absent two protections to the public sought to be imposed by the Planning Board. Mr. DiOrio stated he disagreed with the Judges findings and it sounded quite candidly as a Judge meddling in town affairs. Also of concern in this Judges effort to trouble shoot our decision, Mr. DiOrio asked did the Judge give any recommendation as to what the Planning Board could have done better. Discussion was then made to specificity and conditions of town Ordinances and protecting abutting property owners. Hours of operation are a big deal to abutting property owners in Mr. DiOrio's view. Town Councilman Moffitt addressed the Planning Board and indicated that possibly ordinances need to be modified to avoid this type situation. Discussion was made to certiorari status and town options to appeal. The Council was advised regrettably not to appeal. Mr. DiOrio stated they need to be more specific in the language given in their decisions and those abutters were not having their concerns factored in and the Planning Board had tried to meet them. Mr. Wayles felt hours of operation were something a Planning Board can weigh in on. Mr. Lindelow concurred. Mr. DiOrio stated troubleshooting is important. Moving forward Solicitor Hogan stated to stipulate on the record as a condition of approval to affirm and avoid litigation in the future.

### **PLANNER'S REPORT:**

Nothing to report.

**CORRESPONDANCE AND UPDATES:**

Nothing to report.

**DATE OF NEXT REGULAR MEETING:**

February 1<sup>st</sup>, 2023 at 7 PM

**ADJOURNMENT:**

Mr. DiOrio made a motion to adjourn seconded by Ms. Light. Chairman Prellwitz, Mr. DiOrio, Ms. Light, Mr. Lindelow and Mr. Wayles all voted to approve. There were no votes in opposition nor abstentions.

Meeting adjourned at approximately 10:31 PM

Michael Spellman

Senior Planning Clerk