

HOPKINTON PLANNING BOARD HYBRID MEETING

March 1st, 2023 at 7:00 PM

Moment of Silent Meditation and salute to the flag:

Chairman Prellwitz led the Pledge of Allegiance for those in attendance.

Call to Order:

Chairman Prellwitz called the meeting to order at approximately 7:00 PM.

Roll Call:

Chairman Prellwitz, Mr. DiOrio, Ms. Shumchenia, Mr. Lindelow, Ms. Light, Mr. Wayles from the Planning Board. Planner Jalette, Solicitor Hogan and Town Council liaison Moffitt.

Pre Roll Call for the April 5th, 2023 Planning Board Meeting

Chairman Prellwitz, Mr. DiOrio, Ms. Shumchenia, Mr. Lindelow, Ms. Light, and Mr. Wayles all indicated that they would be in attendance.

Approval of the Minutes:

Ms. Shumchenia made a motion to approve the minutes from the February 2023 meeting, and her motion was seconded by Ms. Light. Chairman Prellwitz, Ms. Shumchenia, Mr. Lindelow, Ms. Light and Mr. DiOrio all voted to approve the minutes. There were no votes in opposition or abstentions.

Order of the Meeting and Notices

Chairman Prellwitz indicated he had spoken to all Attorneys representing applicants appearing that evening. They indicated that they were amenable to a modification to the sequence of the announced agenda. Ms. Shumchenia made a motion to place “New Business” first and then attend to the “Old Business” portion of the agenda. Her motion was seconded by Mr. DiOrio. Chairman Prellwitz, Mr. Lindelow, Mr. DiOrio, Ms. Light and Ms. Shumchenia all voted to approve. There were no votes in opposition nor abstentions.

NEW BUSINESS:

Preliminary Plan- 2 Lot Minor Subdivision- **Saretzki Williams Minor**- AP22, Lot 53, 3 Old Hopkinton Cemetery Road. Michael L. and Brenda J. Williams (Estate of Helen L. Saretzki) applicants.

Prior to any discussion of this matter, Mr. DiOrio gave his notice of recusal and Mr. Wayles assumed his place on the Planning Board hearing the matter. Mr. Michael L. Williams approached the Planning Board and discussed his plans to subdivide his property and indicated he has appropriate approvals for septic and the home to be built. Solicitor Hogan spoke with the applicant and asked if the property in question was in a Trust. Mr. Williams stated it was and Solicitor Hogan sought to ascertain who specifically was in standing in regard to the property before the Planning Board. She also sought to have the OWTS number as it was illegible on the property being discussed. Planner Jalette stated she had no questions and Chairman Prellwitz sought to move forward a motion. She indicated a sample motion was in place for the Boards input.

Ms. Shumchenia made the following motion that she moved to approve this preliminary plan. I move to approve the Helen L. Saretzki Irrevocable Trust's application for **Preliminary Plan** for a minor subdivision located at 3 Old Hopkinton Cemetery Road, AP 22, Lot 53, for a total of two lots based on the following findings of fact and conclusions of law:

Findings of Fact

1. The Helen Saretzki Irrevocable Trust is the owner of the subject property by deed recorded in Book 558, Page 649. Details to be affirmed administratively later.
2. The Subject property is located in the RFR-80 Zone and has an area of approximately 5.2 acres. The property currently contains one single family dwelling. The parcel has 281.88 feet of frontage on Crandall Lane and 408.93 of frontage on Old Hopkinton Cemetery Lane.
3. The Proposal is for two lots, each exceeding minimal dimensional requirements for frontage and acreage. Lot #1 shall contain 80,761 square feet and shall have frontage on Crandall Lane. Lot #1 has an existing dwelling located thereon. Lot #2 shall contain 146,020 square feet and shall front on Old Hopkinton Cemetery Road.
4. On August 22, 2022, the Hopkinton Building and Zoning Department issued a letter indicating that utilizing frontage on Crandall Lane is permissible for the tow lot subdivisions.
5. On November 15th, 2022 the RI DEM issued an onsite Wastewater Treatment System (OWTS) permit number to be acquired administratively for a repair to the septic system servicing the existing single family dwelling.
6. On December 7th, 2022, the RIDEM issued a three (3) bedroom OWTS permit (#2214-1163) for the proposed second lot.
7. On December 14th, 2022 Joe Klinger, Principal environmental Scientist from Ecotones, INC issued a letter indicating that no wetlands were observed on site and that the closest wetland appeared to be 300' or more from the site. He also described the parcel as a "mix of predominantly evergreen forest and developed residential land. "He further opined that there were no jurisdictional wetlands or resulting required buffers.
8. On December 15th, 2022, Anthony Nenna from On-Site engineering, Inc discussed the anticipated traffic impact from the proposed subdivision. In referencing standards set forth on

the Institute of Traffic Engineers ITE Trip Generational Manual 11th edition, he stated that the traffic volume is minimal and will not have an impact on daily traffic associated with Old Hopkinton Cemetery Road.

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 in 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 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 run-off control, for suitable building sites, and for preservation of natural, historical, and cultural features that contribute to the attractiveness of a community, with required conditions of approval.

ORDER

- 1) The proposed Preliminary Plan for Helen L. Saretzki Irrevocable Trusts Plan entitled, "Saretzki-Williams Minor Subdivision" is approved, together with the following conditions of approval:
 - a) The requirements set forth in the RIDEM's permits referenced above are incorporated herein
 - b) The Storm water Management Narrative set forth on sheet 3 of 4 of the plans is incorporated herein.

Ms. Shumchenia's motion was seconded by Mr. Lindelow. Chairman Prellwitz, Mr. Lindelow, Ms. Light, Ms. Shumchenia and Mr. Wayles all voted to approve. There were no votes in opposition or abstentions.

Administrative Request to Conditionally Combine Stages of review- 6-Lot cluster subdivision- **S&L Family Properties-Fairview Residential Cluster**- AP 28, Lots 113 and 113B, 0 Fairview Avenue and 43 Fairview Avenue. David Johnston/Brushneck Cove Investments, LLC/S&L Family Properties, LLC, applicants.

Attorney David Johnston appeared before the Planning Board via ZOOM and was made a panelist. He advised he represented Brushneck Cove Investments and S&L Family Properties. He stated that he presented to the Planning Board an administrative request to conditionally combine stages of review so as to advance his client's proposal. He advised it was a cluster subdivision development located on PLAT 28 LOTS 113 and 113b located near an existing home at 46 Fairview Avenue with its acreage in the back. His proposal was looking to build 4 buildable lots with a fifth which is an existing single family home. The sixth lot is on the application and references an administrative subdivision, subject to this approval, for lot 114 with a slight encroachment on lot 113 sharing a driveway proximal to its access to Fairview Ave. These lots he identified as under the terms of an agreement with the owner of lot 114 and could proceed. He indicated initially this was seen as a Minor Subdivision by previous Planner Mr. Lamphere. They have appeared twice before to the Planning Board. This evening it is now undergoing a Major Subdivision review. He indicated they have necessary permitting with RIDEM and are seeking to meet all items on the checklist and await certification of approval. As a result they seek to combine the stages of review so they can bring everything to the Board at once at the next meeting. This of course being subject to their applications being approved and certified as complete by Planner Jalette.

Planner Jalette advised that this was similar to the previous Scalise application. The Board is combining the Master and Preliminary approval statuses on a conditional basis. This still contingent on review by the Planner. This allows the applicant to proceed in a more expeditious manner. Mr. DiOrio asked when the processes master and preliminary are combined can changes made by the Planning Board to the Master Plan be affected. Planner Jalette referred the inquiry to the Solicitor. Solicitor Hogan said they had the opportunity to refuse and cause changes and resubmission of the master and preliminary plans. Attorney Johnston stated he was aware of that and sought the Boards input and was ready to conditionally proceed. Ms. Shumchenia stated that was her only question and was comfortable as to how this project was proceeding.

Ms. Shumchenia made a motion to conditionally approve and combine the Preliminary and Master Stages of review for -6-Lot cluster subdivision- **S&L Family Properties- Fairview Residential Cluster - AP28, Lots 113 and 113B, 0 Fairview Avenue and 43 Fairview Avenue.** David Johnston/Brushneck Cove Investments, LLC/S&L Family Properties LLC, applicants. This approval was conditional to its being certified as complete by Planner Jalette and meeting further review of the Hopkinton Planning Board. It was seconded by Mr. DiOrio. Ms. Shumchenia, Mr. DiOrio, Mr. Lindelow, Ms. Light and Chairman Prellwitz all voted to approve the motion. There were no votes in opposition nor abstentions.

Pre-Application- **Ashaway Garden Cemetery NE-** AP2, Lot 32, 201 Chase Hill Road. Muhammad Quandil applicants.

Attorney Kelly Fracassa appeared via ZOOM to represent Mr. Qunadil the applicant. He advised his application was for AP2, Lot 32, 201 Chase Hill Road located in a RFR80 Zone for a cemetery to be located there. It is a large property with a little over 23 acres. It has the requisite frontage. They seek review as Mr. Qunadil has sought to purchase the property. A cemetery is an accepted use by a special

use permit. Tonight they seek a pre applicative review knowing they will have to seek a special use permit from zoning. This is a major plan development and going through the Planning Board process. Brian Thallmann the engineer then spoke to give information on what they sought to do with the property and develop this cemetery proposal. Solicitor Hogan asked Attorney Fracassa if there was a residence on the property. He indicated that he believed that there was. She asked if they sought two or one use on the property. Attorney Fracassa answered that there would be only one use. Mr. Lindelow asked if there was a need for a cemetery locally. Mr. Thallmann indicated that there is a need and there has been an uptick in the industry. He referenced the impact of the recent pandemic. Chairman Prellwitz indicated he was aware of a space crunch for funeral plots locally.

Mr. DiOrio indicated that there would have to be some significant clearing on the site. He asked would it hurt abutter's views and would they seek revegetation. Mr. Thallmann indicated there was an easement for local National Grid in place, and they were cognizant of that concern. Mr. DiOrio requested they give consideration to ensuring an adequate vegetative buffer, and watch this closely to ensuring that where vegetation is sparse is considered. He was also concerned for an asphalt driveway and concerned it did not meet National Grid specifications. He also expressed concerns as to the landscape work and ensures plans needed are part of their submission packet. Mr. Thallmann indicated that would be addressed. Mr. Lindelow asked if abutters were queried. Ms. Shumchenia indicated that she was an abutting property. She expressed concerns as to the buffer being discussed; she also stated traffic was a concern as this is business use in a residential neighborhood and to the current roadway design. She would support a traffic study to ensure safety concerns on a roadway known to be difficult to traverse. He indicated he understood and reminded that funerals typically occur during the late morning and early afternoon, and do not occur during peak travel times on this road. He would ensure a traffic study. Ms. Shumchenia stated she liked phasing as it allowed the roadway improvements to be considered. Mr. Thallmann stated he understood. He also indicated the range of plots on site would range from 3900 to 4000 plots. Ms. Shumchenia clarified the number. Ms. Light indicated concern as to the buffer distance and discussed with Mr. DiOrio as to his knowledge of vegetation on site. Mr. DiOrio followed up to Ms. Shumchenia's concerns as to traffic patterns. He discussed access to the site to allay these concerns and to protect the town from design of roadway costs to accommodate this use. The Board then discussed area concerns as to roadway design. Solicitor Hogan asked about phasing as to Cemetery areas 1-6. She also observed no parking on site and she saw this as a potential long way to go for people walking. She asked if there would be a building to stage from. Mr. Thallmann indicated there would be graveside services and the existing building would be for maintenance use.

Mr. Lindelow indicated he wanted to discuss what impact this style development would have on local property values. Mr. Eric Bibler spoke on the cemetery plan and wanted to ensure that the rights of local abutters are considered and buffers are given significant consideration. Chairman Prellwitz advised at a later time that would be noticed and addressed and given an opportunity to give their input. Planner Jalette stated this would require both an aquifer protection permit and would require a special use permit. Ms. Shumchenia was concerned as to what level of involvement DEM would have. Mr. Thallmann stated they would have input and ensure protective steps taken.

He also stated they were required to ensure community wellheads and wells and storm water needs were addressed. Mt. Thallmann enquired as to the process and who they submitted information to so they could have a cumulative list of contacts to ensure they met all requirements. The Planner advised she would assist with the process. He further discussed his notification concerns with Solicitor Hogan.

No further action was taken by the Board reference this matter.

OLD BUSINESS:

Master Plan- Public Informational Meeting- Major Land Project- **Skunk Hill Road Solar**- Plat 18, Lots 8, 13, and 14, 0 Arcadia Road, 0 Lisa Lane, and 145 Skunk Hill Road. Skunk Hill Road Solar, LLC., applicant.

Attorney Robert Craven spoke on behalf of the applicant. He referenced that in December he was directed to work through the Conservation Commission and the applicant learned during the interim that Hopkinton lacks a Conservation Commission. He indicated he spoke to the Solicitor and made discussions about how to handle the situation. He referenced the defense of impossibility because no quorum exists for that Commission. In a second matter, he stated, that there was an Objectors request for a motion for dismissal. Solicitor Hogan discussed staying with the matter at hand and seeking public comment and Planner Jalette indicated Attorney Ryan was on Zoom as a panelist and prepared to discuss. Attorney Ryan advised that he had an idea on how to proceed with the Conservation Commission issue. He believed that the Board, if Master Plan approval is made, could give the proposal to this(Conservation Commission)group prior to its preliminary review. He stated this was a suggestion he had as to procedure. Mr. DiOrio indicated he felt that is worthwhile to have a Conservation Commission give input, and he stated that "It was unconscionable" for the Board to hold this applicant hostage to a lack of Conservation Commission quorum. Mr. Lindelow and Ms. Light echoed his sentiment on the matter.

At this point Solicitor Hogan opened the matter up to public comment. Ms. Luanne McCormick of Lisa Lane then spoke before the Planning Board. She advised she had several concerns from this proposal, the clear cutting of unfragmented forest, and potential runoff from the site being proposed to local wetlands, and damage to vulnerable habitat are all negative environmental impacts from this proposal. She advised these facts had been testified to by expert witnesses before the Planning Board. She then discussed the concept of an Environmental Impact Study, and it having been forwarded by Board members. She discussed the impacts to the neighborhood and heavy equipment dangers to children living locally. Point of access to the property and site lines were also a concern. Noise and 40 decibels at the property line from the Solar array was also discussed as a concern. She referenced that an expert witness had testified to drops in property values proximal to the proposal, and damage to the town infrastructure from the property use and construction. She advised all this negative impact benefitted a land owner and a developer only, not the betterment of the Town of Hopkinton. It does not benefit neighbors. The only reason this was approved because it was said to benefit our schools. Mr. Landolfi

being first and foremost in community anger. He stated he would not have voted for the project if knew then what he knows now. The opposition to this project is she described as massive. With no monetary gain, this developer still wants this approved, she reiterated despite no monetary gain to the town. Based on negative environmental impact per sections 3.5.3 and 3.5.7 she requested the Planning Board deny this application.

Ms. Colleen Steffen of 22 Lisa Lane a direct abutter of the project that she described as in an “intimate distance” to the proposal. She recognized that all in Hopkinton are on indigenous land, and her personal honor to live on the ancestral land of the Narragansett Tribe. She referenced colonial oppression that made settlement here possible. She then referenced the environmental impact of this proposal. The proposal has a profound and significant negative input on the environment. She defined what was adverse, loss of wetlands, animal habitat, and a clear cut of unfragmented forest. The source of revenue should not be at the expense, of social well being, economic well being, and quality of life. Mr. Landolfi she stated had testified that he would not have voted to approve this project knowing the loss of tax revenue. She referenced Ms. Steere’s testimony and her expert opinion that the applicant has failed to meet its burdens of proof as to not having a negative environmental impact. She stated that she was one of 44 residents who will lose property value as a result of this proposal. She described her loss of property value as insufferable and a loss of financial security for her and her family. She urged the Board to weigh all the evidence regarding this proposal.

Ms. Jane Rathbun of 135 Skunk Hill Road then spoke reference this proposal. She described herself as an abutter and that she wept at the approval of this proposal. She acknowledged her nervousness. She stated she has lived in Hopkinton for over 45 years and have poured her life savings into her home. She described a previous conversation with prior Town Councilman Mr. Landolfi. She advised that expert testimony would be needed to refute the assertions of the developer. She lamented the speed at which this matter was passed by the Town Council. She implored the Board to think of the abutting property owners as they make their collective decision. She was advised at one point she would not be able to see the array from her house. She can see it from the second floor. She stated the wetland was on her property, the runoff affected her property. She was worried about her well and wanted to know who was liable if her well was tainted. She implored the Board to turn this down. She thanked them for listening but questioned if it would make any difference.

Mr. David Gever of Anna Drive then spoke. He stated the testimony of the past four plus years is substantial. This testimony by Linda Steere’s and at least eight citations she referred to that could give the Board grounds, and credible ones, to deny this application. He wanted the Board to be courageous and deny this application. He described this project as putting a square peg into a round hole. In reliance on credible and well documented past testimony, it is his feeling, that this credible witnesses and testimony with citations, will allow the Planning Board to deny this proposal.

Mr. Eric Bibler of Woodville Road then spoke. He spoke of the four plus year testimony of this project. No one in Hopkinton, other than the three Councilors who voted for the zone change, and those who are benefiting from it financially, have spoken in favor of this project to his recollection. The length of
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the discussions have led to confusion on the part of many Hopkinton residents. He referenced that at least 100 people spoke against the Town Council voting for the Zone Change. He referenced that many dozens are disillusioned by the adverse reactions and hostile reactions to them by the Hopkinton Planning Board and Town Council as to their concerns. He described them as disillusioned. He referenced the testimony of former Town Councilor Mr. Frank Landolfi who voted for the project because of tax benefits to the town in an economic benefit. That the revenue to the town is no longer the case, and 40% of the proposed revenue is "out the window", and Mr. Landolfi stated he would not have voted for it (the zone change) knowing that. He discussed the Plan of Comprehensive Development and that the economic development revenue argument no longer applies in his opinion. He advised the Board it is a requirement that this proposal not have a negative environmental impact. "Grass is as good as trees" is not evidence that there is no significant environmental impacts. He also stated evidence of negative impact on property values was presented by James Houle and that was never rebutted, and Mr. Bibler discussed a Planning Board members acquiring a study and 'shoveled" it to the applicant as not refuting it. Ms. Light asked at what point Mr. Bibler had received that report he referenced. Was it in 2019? Mr. Bibler stated he did not recall that. Mr. Bibler stated that a qualified expert testified as to the decrease in property values and it was never refuted. Mr. Bibler and Ms. Light then spoke over each other as to when the report was sent to him. Chairman Prellwitz interjected and indicated he did not want a debate. Chairman Prellwitz indicated he lived near an array and it was quiet and his property value had increased in recent years. He had an exchange of comments with Town Council member Moffitt as he sat in the audience, tape did not catch Mr. Moffitt's comment.

Ms. Light made a comment and discussed the anticipated revenue issue from the Solar Array project and how it has changed from recent legislation. Ms. Light directed her comment to Mr. Moffitt. She asked about Revenue anticipated, and now the real amount generated to Hopkinton from taxes acquired from this project. She enquired as to when the previously seated Town Council made the decision as to revenue acquired from the array, asking as a resident, what was the money value that was going to be acquired. For a comparison post the new legislation, what is it now? For clarification she indicated the Stanford University study she had referenced previously indicated a 3% depreciation in value. Town Council member Stephen Moffitt then spoke and stated to Ms. Light that he did not understand her point. He felt Ms. Light had gone off on to a different subject and may have asked four separate questions. First he stated he was not on the council, that she referenced, in question. He advised that any solar project can only be taxed at what it was assessed at previously. Mr. Moffitt referred Ms. Light to the Tax Assessor to answer the questions she had asked. Further discussion was made as to a definitive of what the revenue from the proposal for solar here was. Definitions as to proposed, anticipated and after the legislative change what is the actual number. Mr. Moffitt stated he felt that the Board was talking about tax revenue was ridiculous. Mr. DiOrio reminded all that this discussion was not noticed and not on the agenda. Solicitor Hogan concurred and indicated that it was difficult for the transcriptionist to capture what was being said as parties were speaking rapidly and over one another. Discussion was made as to anticipate revenue and that the effect of the new legislation significantly reduced that anticipated revenue. Mr. Moffitt stated this project was not rubber stamped by the prior Town Council. He stated the Planning Board had to fulfill its oversight role. Mr. Moffitt stated

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that is exactly why we have a Planning Board; he wanted to reiterate its oversight duties. Mr. DiOrio stated that the Solicitor has already weighed in on this matter. Mr. Moffitt reiterated we have a Planning Board for oversight, and if they don't fulfill their role, then just have a Solicitor and let them make all the rulings. Mr. DiOrio then stated it was a solid practice to listen to the advice of the Solicitor who has ruled on this matter. Solicitor Hogan then interjected and advised she gave advice and answered questions, and that she did not make the rulings, The Planning Board did.

Mr. Richard Noel from Lisa Lane then spoke. He advised he has been following the process for the past four plus years. He challenged the revenue coming in and described it as "chump change". He stated he believed in Mr. Moffitt's argument that the Planning Board has a role and it does not have to agree with the Town Council. It has to see if this proposal adheres to the POCD. Simply, does this or does this not belong in Hopkinton.

Ms. Colleen Steffen then spoke via ZOOM. She thanked Town Councilman Moffitt for his comments this evening and respected his perspective. She thought her town assessment went up ridiculously, but this project will have in her opinion overall a negative impact. She expressed concern as to market prices dropping and individual home owners abutting this proposal losing financial security from the impacts of projects like this. She made clear she fully expects not to get that assessed value of her home, should she choose to sell, should this project go forward.

Mr. Moffitt then spoke and said the Board was charged to address environmental issues on this proposal. Mr. DiOrio spoke and stated he wanted to clarify so as to not confuse the public. He stated the issue with consistency with the Comp plan is behind them. That said, the Planning Board has findings of fact that they must bring forward. Mr. Moffitt reiterated that findings of fact are in place as to environmental issues. Mr. DiOrio stated as to the role of the Planning Board, and they were not a rubber stamp for the Town Council, and would under the advice of their Solicitor, ensure their role was met. Mr. Moffitt stated he wanted to clarify his previous statements and concurred with the thoughts of Mr. DiOrio.

Mr. Gever called in again. He wanted to reiterate that there is environmental damage he described as irrevocable. This was made clear in the environmental testimony of expert witness Linda Steere. He feels this is a key consideration for the Planning Board on the application before it is moving forward. He felt it was a clear basis for denial of the application.

Ms. Lynn LaPierre of Maxson Hill Road spoke. She spoke as to environmental damage to her property from runoff from the Solar Array located nearby her property. She stated that it was a cost and a burden to be borne by an abutting property owner. She had experienced expensive repairs as a result for her property being next to a Solar Array.

Chairman Prellwitz then sought input from the Solicitor Hogan as to areas to proceed. She discussed querying the Town Tax Assessor for needed data from previous Planning Board discussion. She also recommended seeking status of the abutting property owner's counsel, Attorney Craven, so as to see

where they stood as to final arguments. She recommended seeing if Attorney Craven sought to rest. She also advised that this was a voluminous application with a tremendous amount of documentation. She advised a special meeting to discuss was appropriate in an open forum. She discussed process and advised a significant amount of work was ahead. She said to be thorough and seek to get this right. Ms. Light stated she has heard that Mr. Brown from the Narragansett Tribe was going to work with the Hopkinton Land Trust. She wondered if this was an outstanding issue. Attorney Craven advised it was and he was having details prepared as to what if anything develops between the Tribe and the Hopkinton Land Trust. Unfettered access to Goat Rock had also been discussed at the Hopkinton Town Council level. Liability being a very significant concern. They also awaited the transcripts to be prepared for perusal. He awaited the needs of the Board as to any current and future inquiry. The stenographer could let him know how long it would take to acquire all information. Solicitor Hogan advised the Planning Board that there also was the issue of a lack of quorum by the Conservation Commission. Were they going to continue to require a previous referral or waive it.

Ms. Shumchenia moved to vacate the prior referral to the Conservation Commission for the Skunk Hill Road Solar project Master Plan be waived as a result of that town body not having a quorum. Her motion was seconded by Mr. DiOrio. Chairman Prellwitz, Mr. Lindelow, Mr. Diorio, Ms. Shumchenia and Ms. Light all voted to approve the motion. There were no opposing votes or abstentions.

Mr. DiOrio stated he agreed with Solicitor Hogan and wanted to caution regarding a public forum. He wanted it discussed among Planning Board members and not a recap of Attorneys arguments. Chairman Prellwitz asked the stenographer when she thought her work could be completed. He was advised as early as two weeks to a month. Planner Jalette advised that the April meeting had a heavy agenda. Ms. Shumchenia advised she would like to have a series of three meetings. One for Attorney's arguments, one for Planning Board discussion and one for a decision would be the order of meetings for the Board to render judgement. Mr. DiOrio agreed with the idea of three meetings. Discussion was made by Mr. Wayles as to how to acquire the entire volume of items to be reviewed. Solicitor Hogan wanted to present Applicants exhibits, Abutters objecting exhibits and letters coming in from the public. Ms. Shumchenia discussed when the closing argument meeting would occur. The month of May was discussed as the time the three meetings could occur extending into the month of June. Planner Jalette stated once the items were acquired and organized for review the Board would have a better feel for the timeline discussed. Both Attorney Craven and Attorney Ryan advised that they were good with an extension of the decision date. Attorney Ryan advising he was available on May 3rd, 2023, the May Planning Board meetings date.

Ms. Shumchenia made a motion to continue the Public Hearing and closing arguments for the Skunk Hill Road Solar project Master Plan to the May 3rd, 2023 Planning Board meeting, with a decision date extended to May 30th, 2023. Her motion was seconded by Mr. DiOrio. Chairman Prellwitz, Mr. DiOrio, Mr. Lindelow, and Ms. Shumchenia all voted to approve, there were none in opposition or abstentions.

The stenographer was offered a break and she chose to decline. A five minute break was then held.

Objector Request- Master Plan- Public Informational Meeting- Major Land Development Project- **Atlantic Solar**- Plat 7, Lot 31, Plat 10, Lot 87, Plat 11, Lot 35, 0 Main Street. Atlantic Solar, LLC., applicant.

Mr. DiOrio issued his notice of recusal prior to any discussion of the topic. Attorney Ryan spoke representing the objector to the application. He felt he could assist the Planning Board procedurally, and indicated his document filed was a motion to dismiss, it was really more appropriate to designate as a motion to deny. He believed in the findings of fact that the Planning Board would have to apply the April of 2021 ordinance as the ordinance of record and one to be applied. The ordinance of 2019 is not. That is his argument and he referenced the Solicitor's statement that the abutters objecting did not appeal the certificate of completeness that was forwarded and issued by the Planner in July of 2021. He did not believe that the statute was clear and although the statute does not directly say whether a neighbor can appeal or not, the courts have ruled that neighbors cannot appeal certificates of completeness, but that the applicant can. They, the applicant, can appeal a denial, and they do so on conditions. Neighbors do not have standing to appeal in certificates of completeness in and of themselves. The Hopkinton Town Council in 2019, somehow put a clause in that ordinance, that the ordinance applied that night, that this ordinance supersedes future ordinances. The principle problem with that is it violates state statutes. Town Councils cannot change state law. In this case they changed the zone for the Atlantic Project. They stated their ordinance would apply in perpetuity. The change in the Town Ordinance in April of 2021 bars this type of commercial solar development within the town of Hopkinton. The application was not ruled complete at that time. It was certified in July of 2021 by the Planner. This triggers vesting under the statute. The application of master plan can proceed but it has to in Attorney Ryan's opinion, that when the Board finds its findings of fact, it has to conform to the ordinance of April of 2021. This was passed before the application was certified as complete. The applicant had an ability to appeal this condition and did not.

Attorney Craven disagreed. The Solar ordinance of 2016 is not only the one that was legally in place, it is now the "law of the case" as this matter has been heard previously by the Superior Court. The objector did not file an appeal or even appear in a summary judgement notice reference this matter. A Superior Court of the State of Rhode Island has ruled on the case, it was dismissed, and that is the decision of note. It is the law of the case. In discussions with the Planning Board Solicitor discussions were made as to answering questions as to this motion to dismiss. The Solicitor's questions were, Can a Planning Board dismiss a case without reaching the merits? Attorney Craven stated that it was his opinion that there is no such authority. The Planning Board has only three options, the Planning Board shall within 90 days of Certification of completeness of the master plan application, approve, approve with changes in conditions, or deny an application. Rhode Island Law 45-23-63 45-23-40e is very clear on this, and it is also ensconced in the zoning ordinances of the town of Hopkinton. The second question from the Solicitor, the Planner issued a Certificate of Completeness that was not appealed. What impact does this have on any general authority a Planning Board? Again it had no impact Attorney Craven indicated, as it

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can appealed to the Zoning Board of appeals. It must be done within 20 days of that decision. In this case it was not. Once a plan is certified it is reviewed by a technical committee if established and then ruled on by the Planning Board within 90 days of its certification as complete, unless otherwise extended by the parties. He closed that the motion should be denied.

Ms. Light asked if the questions were also asked of Mr. Ryan. The Planner advised she had received the response from Mr. Ryan but was unable due to time frames to avail those responses to the Board. Mr. Ryan answered the inquiry and advised of a similar circumstance that occurred in Little Compton. He discussed the merits of that case and its appeal to the Superior Court. He has been very busy but he respectfully asks that the court case he referenced, he respectfully requested that the Planning Board review that case. He also can give other impactful cases for review. Chairman Prellwitz asked if the timeline laid out by Attorney Craven was accurate. Solicitor Hogan explained her questioning and its impact on the Planning Board. She believed Attorney Craven answered the question, and Attorney Ryan may be asking for more time. Chairman Prellwitz was concerned as to the timeline laid out by Attorney Craven.

Solicitor Hogan discussed the legal arguments before the Board briefly. She also indicated that Attorney Ryan is in effect seeking not a motion to dismiss but requested that the Planning Board consider a motion to deny this evening. She asked him if that was accurate and he said it was. He then discussed the applicability of his motion, referencing, among others, the Little Compton case. Ms. Shumchenia stated that the Planning Board does not have to act, no one is asking them to act, but it can collectively move on. Mr. Lindelow sought to understand, and clarified her concerns in discussion between them. She referenced legal guidelines issued by the Solicitor in a memo from August of 2022. Upon her review she believed it was best to move on beyond this objector request and not act upon it. The Board should review them memorandum closely, and closely apply the matter and the documentation provided however prior to its making findings of facts. Town Council member Moffitt spoke and inquired as to is there an agreement on the vesting mechanisms. The vesting mechanism is the certification of the master Plan application. He was concerned that the Town Council has put many months in when drafting and preparing the April 2021 ordinance. He was concerned that Attorney Ryan may be correct in his interpretation. That the application was vested after zoning amendment application, as opposed to one for its actual use. He believed there was a clear distinction. He sought clarification and he believed that there was a complete distinction between both of these, and a further review would enlighten all as to the matter at hand. He described it in defining his distinction, as a "special thing going above the state". The law doesn't say this. He believed it was possible that the previous Town Council may have exceeded their authority. Ms. Shumchenia believed if they followed the same structure as was followed with the Skunk Hill project, they could hear the complexities with this matter and make the proper interpretations. She spoke specifically to Council member Moffitt, and agreed, but was concerned with ambiguous language in the Town Council ruling and ordinance, describing it as rough. Mr. Moffitt said he wanted to hear some concrete examples. He advised he was confused and referenced previous history relevant to this case. Mr. Moffitt stated that the merits on the Superior Court case were completely different.

Chairman Prellwitz wanted to know if it was the place of the Planning Board to interpret what the Superior Court had said. Mr. Moffitt stated that they were two totally different things. Attorney Craven then interjected and stated this was not a permanent change. He discussed his opinion as to zones and at what point an application is vested in the process. This application was solar for this process and this use. Eric Bibler then spoke. The question of automatic revision is a false one. That there is existing case law on this. He stated he believed it is in the practice book. No zone can be changed without going through the process. The idea is that this is temporary because it is only 30 years is not a relevant one. He discussed the Skunk Hill project and the concept of vesting. It was done in mere hours before the change. This came in after and was incomplete. Mr. Bibler wanted to discuss automatic reversion and to if this is consistent with the Skunk Hill project. He wanted to know how a town ordinance can supersede state law. How does the Town Council enact this in 2019 and is in effect for perpetuity. He reframed how can the Town Council in 2019 have an act they pass in 2019 that will supersede state law. He wanted reviewed by the Town Planning Board Solicitor. There is a conflict between state law and town ordinance in 2019.

No further action was taken.

Master Plan- Public Informational Meeting- Major Land Development Project- **Atlantic Solar**- Plat 7, Lot 31, Plat 10, Lot 87, Plat 11, Lot 35 0 Main Street, Atlantic Solar, LLC., applicant.

Ms. Shumchenia made a motion to extend the public informational meeting for **Atlantic Solar** to the June 7th, 2023 Planning Board Meeting with a date certain of June 30th, 2023. Her motion was seconded by Ms. Light. Chairman Prellwitz, Ms. Shumchenia, Ms. Light, Mr. Lindelow and Mr. Wayles all voted to approve there were no votes in opposition or abstentions.

SOLICITOR'S REPORT:

None.

PLANNER'S REPORT:

1. Planning Board Comments on Housing working Group 11/10/22 publication will be drafted and discussed by the Planning Board at the April Meeting, prior to submission to the Town Council for their review and potential approval.
2. Comprehensive Plan 5- year Update Workshop, set for March 15, 2023 at 7:00 PM.
3. Please complete the Hazard Mitigation Plan Survey which can be found on the town website. It can be completed by residents, property owners, and local employees alike. If you have any questions about completing the survey, you are welcome to contact the Planning Department.

CORRESPONDANCE AND UPDATES:

Letter from Ostergaard Acoustical Associates to Mr. Bruce Remington – Accoustical Review of Application, Anderson Mixed Use, 916 Main Street Hopkinton RI OAA File 4647A 1/31/23

Letter from Sherri Aharonian to the Planning Board- Clarification on the Westerly Sun Article- 2/9/23

PUBLIC FORUM:

There was no public comment at the meeting.

DATE OF NEXT REGULAR MEETING:

April 5th, 2023 at 7 PM

ADJOURNMENT:

Ms. Shumchenia made a motion to adjourn. It was seconded by Ms. Light. Chairman Prelists, Ms. Shumchenia, Ms. Light, Mr. Lindelow, and Mr. Wayles all voted to adjourn there were no votes in opposition or abstentions.

Michael Spellman

Senior Planning Clerk