

**Re: Re[2]: Solar Farm Follow-up**

From: "Sharyn Morin" &lt;skmorin@hotmail.com&gt;

07/22/18 10:27 AM

To: "Ann Morgan" &lt;amorgan@webster-ma.gov&gt;

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Dear Ms. Morgan / Planning Board:

I would welcome the support of the Planning Board to submit a warrant article to change the by-laws to prevent large-scale, ground-mounted Solar Farms in Residential, Agricultural and Conservation zones.

If Webster does not act (and quickly), Solar Farm companies will continue to install Farms in Residential-zoned neighborhoods to the detriment of both the people and the wildlife in the area. The purpose behind zoning is to protect the integrity of the Town and prevent the improper use of the land.

For the record, I am not anti-Solar. I am 100% in favor of roof-mounted Solar and properly located ground-mount Solar, where the Farm does not negatively impact residents and wildlife.

Please let me know what the next step in the process is to get a by-law in place (similar to Dudley's) that will restrict where Solar Farms can be located.

Thank you,

Sharyn Morin

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**From:** Ann Morgan <amorgan@webster-ma.gov>

**Sent:** Thursday, July 19, 2018 9:34 AM

**To:** Sharyn Morin

**Subject:** Re[2]: Solar Farm Follow-up

Dear Ms. Morin -

Thanks for your correspondence. I will forward it to the Planning Board and post it on the website for the 8/13 meeting under general correspondence. As you know, the public hearing for the solar project in your neighborhood was closed at Monday's meeting. Your comments can't be entered into the formal application project folder as part of that submission but can be forwarded as general correspondence.

Regarding changes to the Webster Zoning By-law: citizen's can prepare and submit petitions to Town Meeting to change the Zoning By-law. You should contact the Board of Selectmen's office to learn more about submitting citizen's petitions for Town Meeting (time lines, submission requirements, etc.)

You can work independently to submit that information directly to the Board of Selectmen or you can request that the Planning Board assist in proposing changes. The Board will have to decide if they will want to formally sponsor a warrant article. As required, any proposed warrant articles related to zoning will be referred to the Planning Board by the Selectmen for a formal hearing process regardless if the Planning Board sponsors the article or not.

If you'd like to come into a Board meeting to discuss the matter I'd be happy to schedule you on the agenda. I'd recommend that you review Section 650-91: Solar Use Facilities and the Table of Use Regulations (Attachment 1) of the Webster Zoning By-law prior to meeting with the Board.

Proposed changes based on your review can then be discussed. I know that the folks who attended the public hearing for the Upper Gore Road solar project expressed a number of similar concerns as you. The meeting sign in sheet has been posted to the website (Applications Under Review / 0 & 153 Upper Gore Road). You might find others on that list that you could collaborate with in moving forward with changes.

Please let me know if you have any questions or if you'd like to meet to review the process of revising Zoning By-law language in preparation a warrant article submission.

## Ann V. Morgan

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-----Original Message-----

From: "Sharyn Morin" <[skmorin@hotmail.com](mailto:skmorin@hotmail.com)>  
To: "Ann Morgan" <[amorgan@webster-ma.gov](mailto:amorgan@webster-ma.gov)>  
Date: 07/18/18 07:11 PM  
Subject: Re: Solar Farm Follow-up

Dear Ms. Morgan / Planning Board:

Just a quick follow up on your response...

As quoted in your e-mail below, "*precludes Massachusetts municipalities from prohibiting solar energy systems. In a nutshell, this includes all zoning districts which means that State law says that solar energy systems must be allowed anywhere regardless of zoning districts.*"

The neighboring Town of Dudley will be restricting large-scale, ground-mounted solar farms as follows: "*The Planning Board received unanimous support on its proposal to amend zoning bylaw to **prohibit large-scale, ground-mounted solar farms in residential zones**, the conservation and floodplain districts, as well as in one business and two light industrial zones. The **revision allows solar farms as a right in industrial 43 and industrial 130 zones only.***" as quoted from this Article in the Worcester Telegram: <http://www.telegram.com/news/20160524/dudley-voters-ok-17m-budget-solar-farm-restrictions>

Also, another neighboring Town of Sutton, recently reject the requests to location three (3) Solar Farms in the town: Also, as quoted in the Worcester Telegram: "*Three citizen petition articles, seeking to amend zoning bylaws to add large parcels of privately owned land to the Solar Photovoltaic Overlay District, **all failed.***" <http://www.telegram.com/news/20180514/sutton-town-meeting-bans-retail-marijuana-allows-growers>

The Town of Webster and the Planning Board needs to protect the integrity of the Town and **not allow** large-scale, ground-mounted Solar Farms in residential neighborhoods. If the Town of Dudley and Sutton are allowed to restrict Solar Farms from being located in residential neighborhoods, **then Webster can (and should) be doing the same.**

Thank you,

Sharyn Morin

**From:** Ann Morgan <[amorgan@webster-ma.gov](mailto:amorgan@webster-ma.gov)>  
**Sent:** Monday, July 2, 2018 10:21 AM  
**To:** Sharyn Morin  
**Subject:** Re: Solar Farm Follow-up

Dear Ms. Morin -

Thank you for submitting your comments. I will include this letter, the attachment (Notice of Decision) and my response on the July 16th Planning Board agenda under Correspondence. It will be forwarded to the Board and posted to the website.

With regards to your questions, below is some information to help you with the issues you raised.

1. Special Permit - Solar Project - Batten Street: Massachusetts General Law (MGL), Chapter 40A, Section 3 (attached - see second to last paragraph) precludes Massachusetts municipalities from prohibiting solar energy systems. In a nutshell, this includes all zoning districts which means that State law says that solar energy systems must be allowed anywhere regardless of zoning districts. You'll note that there are a number of other uses that have this same legal protection whereby State law overrides local zoning or other permitting requirements. However, the State does give municipalities various rights to grant special permits with regards to solar (see MGL, Chapter 40A, Section 9B - Solar Access - attached) after a local zoning ordinance has been adopted. Webster adopted such an ordinance at the October 19, 2015 Town Meeting: Section 650, Article XI - Solar Use Facilities.

As such the Special Permit granted for this project was procedural correct in accordance with State law and local law and is not considered "spot zoning" as zoning does not apply to solar uses.

2. Spot Zoning - The "classic" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." Another definition: spot zoning occurs when a parcel is singled out for different zoning treatment than neighboring parcels for the economic benefit of the landowner unless a substantial public benefit can be determined. There's a lot of case law on this subject. However, the Attorney General's office approves any rezoning proposal which passes Town Meeting. They review each request based on the legal standards determined by land use law. They have the final say and can overturn Town Meeting action.

Regarding the Old Worcester Road properties - this has come before Town Meeting three times in different forms all from the same petitioner.

2017, July: The first request, to rezone a 2 acres from Single Family Residential (SFR) to Business without Sewer (B5). There was a public hearing before the Planning Board who recommended passage at Town Meeting. This was not considered spot zoning because the adjacent properties to the south are also zoned B5. This change just expanded an existing district - it did not create a stand alone district. Town Meeting approved this as did the Attorney General.

2018, May: The second request, to rezone two parcels to Industrial - one of the parcels, zoned B5 was the same parcel that was rezoned from SFR in July 2017; the second parcel, 5.5 acres, was zoned Single Family residential. In this case, which you note in your email, the applicant was seeking to essentially rezone a total of approximately 7.5 acres to industrial. The Planning Board held a public hearing which you attended and voted to not recommend passage of the article because of spot zoning as the adjacent zoning district to south is B5 and to the north is SFR. This proposal would create a stand alone zoning district not adjacent to or an expansion of the abutting districts which is considered "spot" (see attached map). This warrant article was defeated at Town Meeting and, therefore, did not progress to the Attorney General's office for review. The 5.5 acres remained SFR zoning and the 2 acre parcel remained B5 zoning.

2018, June: The third request was to rezone just the 5.5 acre parcel to B5 (see attached map) The Planning Board held a public hearing and recommended passage at the June 25 Special Town Meeting. You'll see from the map (attached) that the proposed rezoning shows an expansion of the existing B5 zone which is not considered "spot" as it is not a stand alone zoning district. Town Meeting passed the warrant article and the materials have been sent to the Attorney General's office for review.

3. Is the solar project "spot" zoning. No. Solar projects are not subject to zoning in accordance with State law. The Old Worcester Road "spot" zoning discussion with regards to the May 2018 proposal was based on the fact that the applicant was trying to create a stand alone district, not the expansion of the abutting districts.

4. *If Nexamp has failed to comply with the Conservation Commission requirements and/or has failed to replace the dead trees behind the Hospital, then the approval should be withdrawn for these reasons alone,*

Conservation Commission requirements / conditions are based on their Order of Conditions and ConCom legal requirements. The Planning Board Special Permit / Site Plan Approval and their Order of Conditions are not legally bound to each other so you can't rescind one permit if the conditions of the other permit are not met. There is legal and procedural recourse if an Applicant fails to meet the conditions of any Town permit. You should contact Mary Overholt directly regarding the Order of Conditions for this project but the Planning Board has no legal authority to rescind its Special Permit on the premise that the ConCom Order of Conditions was not met.

Replacement of dead trees at the Hospital and rescinding the Special Permit for the solar project in your neighborhood - that Hospital solar project received a Special Permit which is separate from the Special Permit granted for the solar project in your neighborhood. These two permits are not connected in anyway from a legal perspective and the Town can not conditionally approve, reject or rescind these types of permits based the performance or conditions of the other. Yes, the applicant is the same and it does show bad faith that they haven't maintained the landscaping at the hospital. Unfortunately, the conditions of the Hospital Special Permit did not include and performance standards or surety for the establishment and maintenance of the landscaping. The Special Permit for the project in your neighborhood does require both (see attached). Conditions of Approval are enforceable by the Town.

I hope this answers all your questions. There are some pretty advanced Massachusetts land use law issues identified in your email which explains the length of my response which is really a condensed version of complicated material. Feel free to call me at the office if you have additional questions.

### **Ann V. Morgan**

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-----Original Message-----

From: "Sharyn Morin" <[skmorin@hotmail.com](mailto:skmorin@hotmail.com)>

To: [amorgan@webster-ma.gov](mailto:amorgan@webster-ma.gov)

Cc: [planning@webster-ma.gov](mailto:planning@webster-ma.gov)

Date: 07/01/18 07:00 AM

Subject: Solar Farm Follow-up

Dear Ms. Morgan / Planning Board:

I am in receipt of your Notification of Decision letter dated 06/26/2018 (copy attached). I do have a question regarding the Decision, as follows:

Please explain the difference between "Special Permit" and "Spot Zoning."

Regarding the Solar Farm off of Batten Street, the Industrial use of this land parcel (which is zoned as Single Family Residential) was granted via a "Special Permit." All of the surrounding properties are zoned as Single Family Residential, Agricultural or Conservation. There are no nearby properties zoned as either Business or Industrial. There are numerous abutters who are residing in Single Family

Residential homes, who objected to the Industrial use of the land parcel. Yet, the Planning Board approved the Industrial use of this land parcel.

Regarding the land parcel located off of Old Worcester Road, which is owned by St. Joseph's Church. At the very same meeting that the Solar Farm was approved via "Special Permit", the Planning Board rejected the Church's request to change the land parcel from Single Family Residential to Industrial, citing "Spot Zoning". In this case, there are no Single Family Residential homes that directly abut the property. The direct abutters are Leo Construction, the old Webster Sheet Metal and St. Joseph's cemetery. No Single Family Residential homeowners would be negatively impacted by the Industrial use of this land parcel. Furthermore, given the direct abutters, it is unlikely that this parcel will be developed for Single Family Residential homes. Yet, the Planning Board denied the request.

From my perspective, the use of "Special Permit" is nothing more than a means to circumvent the law against "Spot Zoning" and that the Industrial use of the Batten Street parcel should not have been approved.

Please explain how the Solar Farm approval is not "Spot Zoning" by another name (Special Permit).

Additionally, please be aware that I will be following up with the Conservation Commission's Mary Overholt to confirm that Nexamp has complied with two provisions that Conservation Commission required:

1. The Army Corp of Engineers is supposed to complete an assessment of whether the ditch would be considered a resource area.
2. The Vernal Pool area shall be assessed during the 2018 season.

Finally, I will be checking behind the Hospital to confirm that Nexamp has replaced the dead trees, which they agreed to do.

If Nexamp has failed to comply with the Conservation Commission requirements and/or has failed to replace the dead trees behind the Hospital, then the approval should be withdrawn for these reasons alone, regardless of whether this approval can be considered "Spot Zoning."

Thank you,

Sharyn Morin