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**TO:** Town of Worthington Planning Board (*By Electronic Mail Only*)

**FROM:** Jeffrey T. Blake, Esq.

**RE:** 190 Ridge Road, BlueWave Solar Project – Applicable Zoning Requirements

**DATE:** July 9, 2026

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**Question**

It is my understanding that the Planning Board has received Special Permit and Site Plan Review applications from BWC Wades Stream, LLC, A/K/A BlueWave (“BlueWave”) for a solar project to be located at 190 Ridge Road, a 71.6-acre lot in the Residential Agricultural (R-A) zoning district (the “Property”). A portion of the Property is located within the Water Supply Protection Overlay District (WSPD), necessitating the special permit. The question has now been raised whether § 3.3(F) of the Town’s Zoning Bylaw requires that the Planning Board treat the entire Property as if it were located within the WSPD, rather than just the portions of the lot which are within the delineated boundary of the WSPD.

In my opinion, based on the language of the Zoning Bylaw and relevant caselaw, it is likely that upon a challenge, a Court would conclude that § 3.3(F) does not require the Planning Board to treat the entire Property as if it were located within the WSPD, and only such portions of the Property which are within the WSPD should be subject to the WSPD’s regulations and requirements under § 9.2 of the Zoning Bylaw.

**Detailed Analysis**

§ 3.3(F) of the Zoning Bylaw states as follows:

Where a district boundary line divides a lot existing as of the effective date of this Bylaw, the district in which the lot frontage is located shall determine the use regulations that apply to the entire lot, but the portion of the lot located in the less restrictive district shall conform to the dimensional regulations of that district.

This provision addresses the situation where the boundary line of a zoning district divides an existing lot, seemingly subjecting it to the conflicting dimensional and use regulations of both zoning districts. Here, pursuant to the Town’s Zoning Map referenced in § 3.2 of the Zoning Bylaw, the Property is located in the A-R zoning district. A northern portion of the Property is also located within the WSPD overlay district, and a small southern portion of the Property also falls within the Flood Plain Protection Overlay District. Thus, the Property is only located within one underlying zoning district, although portions of it fall within two overlay districts’ boundaries.

In my opinion, § 3.3(F) of the Zoning Bylaw will most likely be interpreted to apply only to situations in which underlying zoning districts divide a lot, and will not likely be interpreted to apply the more restrictive regulations and requirements of an overlay district to areas outside the delineated boundaries of such overlay district. “The typical overlay district is not an independent

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zoning district but simply a layer that supplements the underlying zoning district regulations.” KCI Management, Inc. v. Board of Appeal of Boston, 54 Mass. App. Ct. 254, 259 (2002) (quotations omitted). By their nature, flood plain, water supply protection, and other overlay districts created to protect environmental interests are usually delineated by reference to professional surveys or hydrogeologist reports. See Zoning Bylaw § 9.2.3 (WSPD includes all lands within the primary recharge areas of groundwater aquifers and watershed area of the Worthington Fire District, and Town may engage a professional hydrogeologist to determine areas in dispute); see also Collings v. Planning Board of Stow, 79 Mass. App. Ct. 447, 456 (2011) (floodplain/wetlands overlay district boundaries delineated on 1966 Army Corps plan); S. Kemble Fischer Realty Trust v. Board of Appeals of Concord, 9 Mass. App. Ct. 477, 482-83 (1980) (whether land is subject to flood plain overlay district restrictions is a function of the grade of the land).

As the area of the WSPD and other overlay districts in the Town is determined based on geological and hydrogeological features of the land, such overlay districts will often not align with lot boundaries and rights of way. By imposing the more restrictive requirements of the Town’s overlay districts on all lots with even a small portion of their area within an overlay district, the overlay districts’ boundaries would be effectively expanded far beyond the delineated areas they were created to protect. This leads to the conclusion, in my opinion, that § 3.3(F) of the Zoning Bylaw will not likely be interpreted to expand specifically delineated overlay districts, but rather only to address what use regulations should apply to lots located in more than one underlying zoning district. In my opinion, such conclusion is consistent with the fact that overlay districts are “simply a layer that supplements the underlying zoning district regulations.” See KCI Management, Inc., 54 Mass. App. Ct. at 259.

Please feel free to reach out with any further questions on this issue.

Very truly yours,

/s/ Jeffrey T. Blake

Jeffrey T. Blake

JTB/JAD

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