

Memo

Date: June 23, 2026

To: BWC Wades Stream, LLC (BlueWave)

From: Tad Heuer

Regarding: Inapplicability of Worthington Zoning Bylaw § 3.3.(F) to 190 Ridge Road

OVERVIEW

BlueWave has proposed a solar project at 190 Ridge Road, a 71.6-acre lot whose underlying zoning is Residential-Agricultural. There is agreement that the northern portion of the lot is *within* the mapped boundary of an overlay district (the Water Supply Protection District, or “WSPD”), and that the southern portion of the lot is *outside* the mapped boundary of the WSPD.¹

The Planning Board has asked BlueWave to respond to the suggestion that notwithstanding the mapped location of the WSPD, § 3.3(F) of the Zoning Bylaw might require treating the *entire* 190 Ridge Road lot as if it were within the WSPD. Such an interpretation would be legally improper for at least three independent reasons. The first is that under prevailing appellate precedent, overlay districts are governed by (and limited to) their mapped boundaries. The second is the uniformity mandate of the state Zoning Act, G.L. c. 40A, § 4, prohibits such an interpretation. The third is that even if § 3.3(F) applies to lots in split *districts*, it provides no rule for a lot like this one, where the *frontage* is split between two districts.

I. FACTS

All land in the Town of Worthington is zoned in the Residential-Agricultural District. The Town also has three “overlay” districts: the Flood Plain District, the Westfield River

¹ The Zoning Bylaw states that the WSPD is established “to include all lands within the Town of Worthington lying within the primary recharge areas of groundwater aquifers and watershed area of the Worthington Fire District,” § 9.2.3. As the Planning Board Chair indicated at the June 18, 2026 public hearing, the Worthington Board of Water Commissioners determined in their [April 30, 2026 letter](#) that the Town’s water recharge zone “does not even touch the property [at 190 Ridge Road]” and is “definitely no way near the proposed solar field.” For purposes of this legal analysis we presume the WSPD applies to the northern portion of the lot, but it appears factually obvious that in reality there is no water supply on the lot requiring WSPD protection at all.

Protection District, and the WSPD. As the Bylaw makes clear, an overlay is an extra layer of zoning protection that applies only to the mapped land beneath it: the WSPD “is an overlay district and shall be superimposed on the other Districts” (§ 9.2.2) and the map “on file with the Town Clerk delineates the boundaries of the district” (§ 9.2.3).

Section 3.3(F) of the Bylaw reads: “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.”

The suggestion appears to presume that because a *portion* of the lot’s frontage falls within the WSPD (even though a portion of the lot’s frontage also falls *outside* the WSPD), the entire lot must be treated as WSPD land. For any of the three reasons below, that position is not legally tenable under state law.

II. LEGAL ANALYSIS

A. Overlay Districts are Governed By (and Limited to) Their Mapped Boundaries

First, the courts have held that overlay districts are governed by (and limited to) their own mapped boundaries and their own rules. In *South Kemble Fischer Realty Trust v. Board of Appeals of Concord*, 9 Mass. App. Ct. 477, 482-83 (1980), a single lot straddled the boundary of a flood plain overlay district. There, the owner tried to invoke a split-lot provision much like § 3.3(F), which purported to allow the *less*-restrictive district’s regulations to extend thirty feet across the boundary line into an otherwise *more*-restrictive zone. The Appeals Court said no: the overlay applied according to its own terms, and the bylaw’s split-lot provision neither overrode nor changed where the overlay district did (or did not) reach.

The lesson of *South Kemble* is clear: a split-lot frontage rule like § 3.3(F) operates on the underlying districts; it cannot move an overlay’s boundary in either direction. In *South Kemble* the owner tried to use such a rule to *remove* land from an overlay, whereas here the suggestion is that § 3.3(F) could *impose* the WSPD onto land beyond what the overlay map covers. That logic fails for the same reason as in *South Kemble*: An overlay applies where the map says it applies, regardless of its frontage location. Indeed, this is exactly what § 9.2.3 of the Bylaw says: the map “on file with the Town Clerk *delineates the boundaries of the district*.” And here, that map shows that the southern portion of 190 Ridge Road is outside the WSPD.

B. Reading § 3.3(F) to Apply the WSPD To the Entire Lot Would Violate State Law

The “uniformity” provision of the state Zoning Act, G.L. c. 40A, § 4, provides that local zoning by-laws “shall be uniform within the district for each class or kind of structures or uses permitted.” The principle behind uniformity is simple and well-established: “all land in similar circumstances should be treated alike, so that if anyone can go ahead with a certain development in a district, then so can everybody else.” *SCIT, Inc. v. Planning Board of Braintree*, 19 Mass. App. Ct. 101 (1984). As discussed above, an overlay applies where its map says it applies, and a split-lot provision cannot extend an overlay district’s use restrictions

beyond its mapped boundary. Put simply, under the uniformity provision of § 4, it is legally impermissible to interpret § 3.3(F) to expand the WSPD's use restrictions onto land that the WSPD overlay *does not actually cover*.

With respect to 190 Ridge Road, there is no dispute that the southern portion of the lot is *outside* the mapped WSPD area. Under § 4, land *not* mapped into the WSPD on the lot at 190 Ridge Road must be regulated the same as all other land that the Town has not mapped into the WSPD. A contrary interpretation would violate § 4, by subjecting the southern portion of 190 Ridge Road to the stricter use controls of the WSPD not because the *zoning map* places the southern portion in the WSPD, but solely because the southern portion happens to share a common owner and frontage with northern portion that *is* in the WSPD. Put plainly: such an interpretation would mandate treating two otherwise identical pieces of non-overlay land differently based solely on the presence or absence of common contiguous ownership with WSPD-mapped land. That is precisely the non-uniform unequal treatment that § 4 and the appellate courts expressly forbid.

C. Section 3.3(F) Supplies No Rule for a Split-Frontage Lot Like This One

Finally, the plain language of Section 3.3(F) applies to “the district in which the lot frontage is located.” That text—referencing “*the district*” in the singular—applies only to lots whose entire frontage lies in *one* district. It says nothing about a lot like 190 Ridge Road whose frontage is in two districts: *within* the WSPD as to its northern (Buffington Hill Road) frontage and part of its eastern (Ridge Road) frontage, but *outside* the WSPD as to the remainder of its eastern (Ridge Road) frontage. Since there is no single “district in which the lot frontage is located,” § 3.3(F) simply does not apply to the lot at 190 Ridge Road even on its own terms.

Further evidence that § 3.3(F) does not apply to split-frontage lots is the fact that § 3.3(F) says nothing about *which* of the two districts' use regulations (WSPD versus Residential-Agricultural) would control in such a situation. If it were meant to apply in such circumstances, it would provide instructions for doing so – and it does not. Nor could the Board lawfully interpret § 3.3(F) as requiring the WSPD to apply to the entire lot, for two reasons.

First, where a zoning provision is ambiguous as applied, the courts have instructed that the ambiguity should be resolved in *in accordance with the interpretation most favorable to the landowner*,” *Jenkins v. Pepperell*, 18 Mass. App. Ct. 265, 270 (1984) (emphasis supplied). Second, decades of Supreme Judicial Court precedent unambiguously prohibit the Board from interpreting § 3.3(F) as though it included *additional* language (e.g., “the district in which *the majority of* the lot frontage is located”) that Town Meeting (the legislative body of the Town of Worthington) did not adopt and the Attorney General did not approve (G.L. c. 40, § 32). “We will not add words to a statute that the Legislature did not put there, either by inadvertent omission or by design.” *Comm. v. McLeod*, 437 Mass. 286, 294 (2002). *See also Dartt v. Browning-Ferris Indus.*, 427 Mass. 1, 8 (1998) (“We will not add to a statute a word that the Legislature had the option to, but chose not to, include”); *Modern Cont. Constr. Co. v. Lowell*, 391 Mass. 829, 839-40 (1984) (“[S]tatutes must be interpreted as enacted and

statutory omissions cannot be supplied by the court”).

III. CONCLUSION

Each of the above three reasons independently preclude, as a matter of law, an interpretation of § 3.3(F) that requires a WSPD special permit for the entire 190 Ridge Road lot. Under case law precedent, as required by the state Zoning Act’s uniformity requirement, and under the plain language of the Bylaw’s text, at most the WSPD applies (*but see* note 1) only to the mapped, northern portion of the lot.