

August 22, 2025

Via Electronic Mail

Peter Morin
Interim Town Administrator
Town of Marshfield
870 Moraine Street
Marshfield, MA 02050
pmorin@townofmarshfield.org

Re: Lease of Municipal Land – Solar Development

Dear Mr. Morin:

Thank you for meeting with the Office of the Inspector General (OIG) on August 5, 2025, regarding the request for proposals (RFP) issued by the town of Marshfield (the town) concerning development of a solar array on town-owned land at 23 Clay Pit Road, Marshfield, and the subsequent lease agreements entered between the town and a single lessee (lessee). As discussed, the OIG has reviewed the documentation produced by your office. We appreciate the time and effort you and your staff have dedicated to this matter and trust that this letter will be of assistance going forward.

As you are aware, cities and towns are required to follow the provisions of Chapter 30B of the Massachusetts General Laws when procuring supplies and services, as well as when acquiring or disposing of real property. Section 16 of Chapter 30B (Section 16) governs the disposition of real property and imposes a number of requirements designed to ensure open, fair, and competitive processes. These requirements include declaring the property available for disposition, identifying any restrictions on use of the property, and publicly inviting proposals through an advertised solicitation. In instances where a town intends to lease its real property, it must follow the applicable procedures in Section 16.

The records produced by the town indicate that in October 2019 the town issued an RFP seeking to lease a capped landfill at 23 Clay Pit Road for solar development, with the option for the town to enter into a power purchase agreement for energy produced by the facility. The RFP stated that the successful bidder would be obligated to negotiate a payment in lieu of taxes (PILOT) agreement with the town.¹ The scope of the RFP was limited to the Clay Pit Road property and did not include potential leases of any other town-owned properties.

¹ Solar facilities that satisfy the requirements of M.G.L. c. 59, § 5, cl. 45, are exempt from property taxes. One means of gaining the property tax exemption is through negotiation of a PILOT agreement with the municipality. Massachusetts law states that PILOT agreements concerning solar facilities “shall be the result of good faith negotiations and shall be the equivalent of the property tax obligation based on full and fair cash valuation.” M.G.L. c. 59, § 38H(b).

In 2019, the town approved a proposal submitted by the lessee and subsequently negotiated and entered a power purchase agreement with the lessee styled as a “Solar Photovoltaic Net Metering / SMART Agreement” (PPA). The PPA provided that the town would purchase energy generated by the facility at a set rate, and granted the lessee the “exclusive right to occupy a portion” of the capped landfill for a 20-year initial term, with three optional five-year extensions.² The PPA outlined several forms of compensation for the town, namely: (1) an allocation of net metering credits, (2) projected savings from purchasing energy at the set rate (anticipated to be below market rate), and (3) annual PILOT payments from the lessee. The PPA did not identify any lease payments and to date the town has not received any payments for the Clay Pit Road property.

Despite the absence of lease payments in the PPA and the use of the term “license” to describe the relationship, the PPA in fact functions as a lease and is legally a disposition of real property. The PPA includes protections for the lessee which prevent the town from revoking at will the lessee’s right to occupy the land. An agreement that is not revocable at will to receive compensation in exchange for granting an exclusive, long-term disposition of real property is a lease under Massachusetts law.³

Significantly, the PPA also contained a clause which states that the PPA “shall be treated as a form contract for any additional projects undertaken” with the town, including “any rooftop solar installation” within the town. This clause did not state that the town would issue additional RFPs or otherwise conduct a competitive procurement concerning such additional projects.

The town and lessee subsequently enacted amendments to the PPA in April 2021 (First Amended PPA) and December 2021 (Second Amended PPA). The First Amended PPA contained an attachment listing 14 municipal properties as “new, additional projects . . . hereby added to [the PPA].” In a footnote, the First Amended PPA referred to payments associated with these additional projects as “annual lease amounts.” The Second Amended PPA included a similar document listing 12 municipal properties in addition to the Clay Pit Road property and referred to payments associated with these properties as the “estimated yearly lease.”⁴

² See Recitals, Power Purchase Agreement. See also Article 6.2, Power Purchase Agreement (granting lessee exclusive license to install and operate the solar system and a non-exclusive license to occupy other areas of the property as reasonably necessary).

³ See *Baseball Pub. Co. v. Bruton*, 302 Mass. 54, 55 (1938) (“A lease of land conveys an interest in land, requires a writing to comply with the statute of frauds though not always a seal, and transfers possession. A license merely excuses acts done by one on land in possession of another that without the license would be trespasses, conveys no interest in land, and may be contracted for or given orally.”); see also *Carroll v. Select Bd. of Norwell*, 493 Mass. 178, 193 (2024) (“[A] license is freely revocable at the will of the promisor.”).

⁴ The additional properties listed in the First Amended PPA and the Second Amended PPA largely overlap; two properties identified in the First Amended PPA are not listed in the Second Amended PPA.

The town thereafter signed lease agreements with the lessee permitting the lessee to develop solar arrays on rooftops⁵ and/or parking lot canopies on six town-owned properties identified in both the First Amended PPA and the Second Amended PPA.⁶

Each lease agreement carried a 20-year term with three optional five-year extensions and states that the PPA, as amended, “was replaced” by the lease agreement. Each lease agreement also identifies an amount of annual “rent” to be paid to the town. Rent payments are set to commence upon the utility granting permission to operate. The town did not issue an RFP identifying any of these six municipal properties as available to lease for solar development.

In reviewing the documents produced by the town, the OIG has identified the following issues concerning the RFP, the PPAs, and the various leases entered into by the town:

- The town issued only one RFP for the purpose of leasing only one town-owned property for solar development at 23 Clay Pit Road. The town thereafter executed lease agreements for solar development on six additional properties for which no steps were taken to comply with Section 16. The town failed to publicly declare any of these properties as being available for lease, failed to ascertain the value of any lease, failed to publish appropriate advertisements, and failed to issue any RFPs or conduct any other type of competitive process prior to executing the leases of these additional municipal properties as required by Section 16. None of these violations can be considered a waivable minor informality.⁷ Pursuant to Section 17(b) of Chapter 30B, any contract made in violation of Chapter 30B is invalid. **Accordingly, all of the leases of town-owned land that the town entered into without complying with the required Section 16 processes are presumptively invalid.**⁸
- The town executed agreements (the First Amended PPA and the Second Amended PPA) that included promises between the town and the lessee concerning

⁵ The OIG notes that several of the rooftop leases involve public schools which the town has identified as requiring roof repair. The OIG understands that the lessee offered to repair the roofs prior to installing the solar array and that some discussion occurred concerning this offer, but that the town intends to go to bid for the repair as required under M.G.L. c. 149.

⁶ The leases concern the following properties: 165 Eames Way, 167 Forest Street, 1456 Ocean Street, 1639 Ocean Street, 965 Plain Street, and 60 Regis Road.

⁷ Chapter 30B states that “minor informalities do not require invalidation of the contract.” M.G.L. c. 30B, § 17(b). “Minor informalities” are defined as “minor deviations, insignificant mistakes, and matters of form rather than substance of the bid, proposal, or contract document which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body.” M.G.L. c. 30B, § 2.

⁸ The OIG notes that the invalidation provision of M.G.L. c. 30B, § 17(b) can be limited by M.G.L. c. 40, § 3A, which preserves a recordable instrument entered into by a party acting in good faith “notwithstanding inconsistent provisions of general or special law.” Section 3A requires that any such instrument be executed “in the name of a town by its selectmen.” The OIG’s understanding is that none of these additional leases were specifically executed or approved by the Town Select Board.

disposition of municipal properties other than 23 Clay Pit Road. Namely, those agreements set forth annual lease payments concerning the additional municipal properties. Municipalities should not enter agreements that preemptively negotiate the disposition of real property in advance of, or instead of, a competitive Chapter 30B procurement process concerning that same property. Such agreements are anti-competitive and can lead to fraud, waste, and abuse.

- The town issued an RFP for the purpose of leasing 23 Clay Pit Road, with the option of entering a power purchase agreement for energy generated from the solar array built on the leased land. The town executed a power purchase agreement governing energy generated from the property but never executed a separate lease agreement for the land. The failure to execute a clearly identified lease agreement could result in difficulties exercising legal rights concerning the municipal property, such as default or termination. Unclear contracting practices concerning disposition of municipal real property can lead to loss of use of valuable town assets.
- The town entered a PPA which provides for annual payments to the town under a PILOT agreement, but no lease payments. The First Amended PPA and the Second Amended PPA contain documents which define the compensation to the town as “lease payments.” PILOTs are required to be equal to the property tax obligation based on full and fair cash valuation.⁹ PILOT payments and lease payments serve specific functions; interchanging the two forms of payment can potentially result in undervaluation of the property, lost revenue for the town, and misclassification of the lessee’s business expenses for federal and state tax reporting purposes.
- The town entered lease agreements containing nonstandard terms that were detrimental to the town and negatively impacted the town’s revenue. Namely, the agreements do not contain deadlines, do not require reasonable efforts for the lessee to obtain necessary approvals and commence construction, and do not require payments to commence until after the utility has granted permission to operate, which could potentially take years. Agreements which tie up municipal property in this manner without payment for indefinite periods of time can cause loss of potential revenue for the town while simultaneously depriving the town of the use of its own property.

The OIG understands that the town has acknowledged that the leases for properties other than 23 Clay Pit Road did not follow the required Section 16 process and does not intend to move forward with leases for the properties on which construction has not yet begun. However, the OIG also understands that solar installation has occurred on one of the properties, 1639 Ocean Street, and that the town has received lease payments from the lessee and net metering payments from the utility. The lease at 1639 Ocean Street did not follow the required Section 16 process. Pursuant to Section 17 of Chapter 30B, subject to Section 3A of Chapter 40, the lease is presumptively invalid.

⁹ See M.G.L. c. 59, § 38H(b).

It is therefore imperative that you consult with your town counsel to determine how to resolve this incongruity with the lessee.

Based on the foregoing, the OIG recommends that the town take the following actions with respect to this matter:

1. Due to the town's failure to conduct procurements prior to executing six leases of municipal property at 165 Eames Way, 167 Forest Street, 1456 Ocean Street, 1639 Ocean Street, 965 Plain Street, and 60 Regis Road, consult with counsel regarding the implications of entering agreements that violate Section 16. The six executed leases are presumptively invalid and the Chapter 30B violations cannot be waived.
2. Due to the town accepting payments from the lessee of 1639 Ocean Street under a lease that violates Section 16, consult with counsel regarding the implications of the town receiving payments under an invalid contract.
3. Going forward, implement internal procedures concerning disposition and acquisition of real property that comply with Section 16, ensuring that the town:
 - a. Follows all Section 16 requirements for every disposition of real property, including lease of rooftop and parking lot canopies for solar development;
 - b. Prepares real property agreements with terms that are clear and appropriate for the manner of disposition at issue;
 - c. Does not enter agreements that make preemptive promises to specific parties concerning the disposition of real property prior to a competitive procurement; and
 - d. Seeks guidance to understand if an RFP may be amended or if a new RFP must be issued when municipal needs change during the procurement process.
4. Enroll town employees in OIG Academy courses and designate at least one employee to obtain the OIG's Massachusetts Certified Public Purchasing Official (MCPPO) Designation. Ensure that the town maintains at least one MCPPO at all times.

The OIG believes that the town violated Chapter 30B in negotiating leases of town-owned property beyond what was contemplated in the RFP. Moreover, the terms were unfavorable to the town in that they significantly reduced the town's available revenues.

Within 60 days of receipt of this letter, please inform the OIG of the steps the town intends to take regarding the six leases and payments made thereunder. This response should (1) address the lack of a lease agreement for 23 Clay Pit Road; (2) state the town's position regarding the payments received under the invalid lease of 1639 Ocean Street; and (3) affirm that the town will not submit to invalid lease terms concerning the other municipal properties.

Thank you for your cooperation with our review. We hope the guidance outlined in this letter will assist you in future procurements, including the lease of public property controlled or owned by the town for the purpose of solar development or otherwise. In working toward the Commonwealth's clean energy goals, it is important that cities, towns, and public governmental bodies act as good stewards of their public property assets and negotiate lease terms that do not adversely impact municipal revenues.

If you have further questions regarding this matter, please contact James Craig, Senior Counsel, at James.S.Craig@mass.gov or by phone at (617) 722-8833.

If you have any additional questions about the disposition of real property, or on any other aspect of Chapter 30B within the OIG's jurisdiction, please contact the OIG's Public Procurement Technical Support at 617-722-8838 or at OIGProcurementSupport@mass.gov.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (by email):

Robert W. Galvin, Esq., Galvin & Galvin, PC, Marshfield Town Counsel
Eric S. Kelley, Chair, Marshfield Select Board
George Xenakis, Director of Audit, Oversight and Investigations, OIG
Eugenia M. Carris, Esq., General Counsel, OIG
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