

July 11, 2025

Via Electronic Mail Only

Marlene McCollem
Town Administrator
Town of Bourne
24 Perry Avenue - Room 101
Buzzards Bay, MA 02532-3441
mmccollem@bourne-ma.gov

Re: Lease of Land at Ernest Valeri Road for Solar Development

Dear Ms. McCollem:

Thank you for meeting with the Office of the Inspector General (OIG) on July 1, 2025, regarding a proposed real property transaction between the Town of Bourne (town) and a solar developer (developer) concerning property at Ernest Valeri Road in Bourne. As discussed at that meeting, the OIG has reviewed the records produced by your office in connection with this matter. 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, M.G.L. c. 30B, § 16 governs the disposition and acquisition of real property by governmental bodies subject to the Uniform Procurement Act (Chapter 30B). A lease of real property qualifies as a disposition.¹ Furthermore, while contracts funded by proceeds derived from gifts to a town – including acquisition of real estate – may be exempt from Chapter 30B,² Massachusetts law requires that a gift be made with “donative intent” and the donor must not retain control over the property.³ In the absence of this donative intent, or if the donor retains some control, the acquired property would not be considered a gift and would be subject to Chapter 30B.

Records produced by the town indicate that the developer approached the town in 2020 seeking to partner on a proposed solar development. The developer proposed to “gift” several parcels of land to the town in exchange for entering a long-term lease agreement with the town to build a solar array on the land. Under the proposed lease agreement, the town would have received certain lump sum payments, annual rent, and other compensation.

¹ M.G.L. c. 30B, § 16(a).

² See M.G.L. c. 30B, § 1(b)(20).

³ See, e.g., *Matter of Murray*, 408 Mass. 731, 734, 563 N.E.2d 217, 219 (1990) (“In order for a transfer to qualify as a gift, there must exist donative intent on the part of the donor and actual or symbolic delivery of the subject matter in a manner which completely transfers the dominion and control of the subject matter from the donor.”) (citing *Silverman v. A. & L. Heel Corp.*, 353 Mass 108, 110 (1967)).

This proposal was memorialized in a July 2021 memorandum of agreement (July MOA) between the town and the developer, which was subsequently nullified by the Bourne Select Board and replaced with another MOA executed in December 2021 (December MOA). The December MOA included a \$15,000 transaction fee to cover the town's legal and consulting expenses, to be paid to the town upon execution of the December MOA. The December MOA also stated that the document would be null and void if the developer had not received all governmental and utility approvals before December 30, 2022. Finally, the December MOA would have given the developer a right of reversion, giving them the option to purchase the property back from the town at the end of the lease for a set price.

In reviewing the documents produced by the town, the OIG has identified the following issues concerning the MOAs:

1. The town executed the MOA with the developer intending to acquire and subsequently lease real property in violation of Chapter 30B. The MOA provided the developer would "gift" the land to the town in exchange for a valuable commercial lease, as well as the option for the developer to buy back the property from the town after the lease. It is the opinion of the OIG that such an arrangement would not constitute a gift under Massachusetts law, and therefore both the acquisition of the property by the town and disposition of that property by lease should have been subject to the competitive bidding processes set forth in M.G.L. c. 30B, § 16.
2. The town negotiated with the developer to receive a \$15,000 transaction fee upon execution of the December MOA, which you advised the developer did not pay. During the meeting, you informed the OIG that the developer ultimately did not receive the approvals outlined in the December MOA, that the town is no longer engaged with the developer, and that the town has not been in contact with the developer and considers both MOAs to be null and void. Regardless, under the December MOA, the town appears to be owed this \$15,000 transaction fee.

While you advised the town does not intend to move forward with this arrangement, the OIG recommends the town take the following steps:

1. Implement internal procedures concerning the disposition and acquisition of real property that comply with Chapter 30B, ensuring that the town:
 - a. Identifies and follows applicable requirements under M.G.L. c. 30B, § 16; and
 - b. Consults with counsel to evaluate whether it is in compliance with the applicable laws governing a particular procurement. The town is encouraged to contact the OIG's Public Procurement Technical Support Team with procurement questions.

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2. Consult with counsel concerning whether the town is owed the transaction fee under the December MOA, and if so, options to pursue recovery of this amount.
3. Enroll employees involved in procurements 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.

We hope our discussion and this letter will assist you in future procurements, including the lease of municipal property for the purpose of solar development. It is important that cities and towns act as good stewards of their assets while simultaneously helping to achieve the Commonwealth's clean energy goals.

If you have further questions regarding this matter, please feel free to contact Jack Foster, Associate General Counsel, at jack.foster@mass.gov or by phone at (617) 722-8881.

Should you have additional questions about the town's acquisition or disposition of real property, please review the Chapter 30B Manual and other resources on the OIG's website or contact the OIG's Public Procurement Technical Support Team at www.mass.gov/oig-public-procurement.

Thank you again for your assistance in our review of this matter.

Sincerely,



Jeffrey Shapiro, Esq., CIG
Inspector General

cc (by email):

Melissa Ferretti, Chair, Town of Bourne Select Board
Jennifer Copeland, Town Planner, Town of Bourne
Erica Flemming, Treasurer, Town of Bourne
Eugenia M. Carris, Esq., General Counsel, OIG
George Xenakis, Director of Audit, Oversight, and Investigations, OIG
Nataliya Urciuoli, Senior Executive Assistant, OIG