

H. Laurie Degnan  
106 Osgood Road  
Charlton, Ma 01507  
774-200-3483  
pldegan@charter.net

December 8, 2020

Attorney David K. McCay  
Mirick O'Connell  
1800 West Park Drive, Suite 400  
Westborough, MA 01581  
[dmccay@mirickoconnell.com](mailto:dmccay@mirickoconnell.com)

Dear Attorney McCay,

Solar Collection projects are a relatively new industry here in Massachusetts and Towns have been at the mercy of industry lobbyists and developers to educate our volunteer boards and small town staffs. Myself and town official and volunteers in over a dozen towns have been sharing what we find out. Solar developers are not happy and continuously criticize the quotes we obtain as being unprofessional.

Bottom Line up front:

I hope that this document and attachments, will assist you to protect Charlton's Planning Board, the landowners who lease to solar and the Town. The Plaintiff, Zero Point Development LLC, aka ZPT Energy LLC, ZPT Energy II, ZPT Energy III, ZPT Energy IV LLC, claim Charlton is unreasonably regulating solar and acting arbitrarily and capriciously. Up until recently, solar projects were merely "rubber stamped" since the Board was advised by a former Planner, that there was nothing the Board could do because of the solar as of right mandate in MGL Chapter 40 A section 3. Zero Point will claim they had a good relationship with Charlton and question "what happened?" When the Board recently pushed back requiring a hearing for information on the huge battery additions and made bond corrections to include solar panel disposal costs, Zero Point added a mere \$5,000 per battery unit. When the Board voted on the amount, Zero Point threatened stating they may take "further action". This lawsuit will set a precedence since Charlton has 25 large, ground mounted solar collection systems with 5 more in the planning stages.

It is my hope that Mirick O'Connell will concur and prove that these surety amounts and form, presented in a town-hall, Board and Committee friendly format of per MW (DC) costs, are not arbitrary nor capricious. These quotes actually provide proof that at only \$100,000 per MW (DC), they are grossly underfunded! The charting and record keeping on the parcels, land owners, amounts, expiration dates, Bond Company, frequently changing Lease owners, yearly bond renewal premium payment verification is a hardship and huge liability for the Town. Some private landowners who lease to solar, have set up LLC's to protect themselves. Who is protecting the Town? The outcome of this lawsuit, will effect 29 other large solar projects and those across the State.

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I also hope that Mirick O'Connell proves Charlton has never unreasonably regulated solar and the revisiting and correcting of prior approved site plan's decommissioning amounts must be allowed. You will see that the past amounts will be proven inadequately cover the huge scope of work required and the disposal and recycling costs that were omitted. Per Attorney Bobrowski, the adding of lithium-ion battery storage units to these already approved solar collection projects pose significant issues and concerns of abutters and residents, that the Board should be consulted. During the new hearings to add these batteries, and add a new amount to the Decommissioning Bonds, is a good time to revisit the surety bonds for the photovoltaic panels. The Planning Board is in effect, correcting a grossly undervalued decommissioning bond total. Seeing 20 large projects quickly built in Charlton, the residents supported by 2/3 majority, a moratorium at the ATM in 2018. This gave a committee of town officials and volunteers, a short time to study and develop solar specific regulations that passed at ATM 2019. Many Towns are now investigating and fact checking what has been presented by solar lobbyists and developers and then they share this expanded information with all. This is reasonable - Bonds are only if the developer fails to do what they promised in the event that the insurance bonds lapse, developers go bankrupt, or in the event of destruction and ground contamination due to weather events.

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The actions of Charlton's Planning Board in addressing new panel information and lithium ion storage batteries in Decommissioning Bonds, has been proven in independent quotes and facts to ensure amounts are sufficient to protect the safety, health and financial welfare of the Town of Charlton. I have provided written quotes and listed names of professionals to corroborate Charlton Planning Board's decision.

As you know, the State mandated that we accept solar by right, the DOER worked with industry leaders to provide solar friendly policies and significant financial incentives, and with the tax loophole referred to as "Clause Forty-Fifth", Massachusetts is now known as a solar "nirvana" to solar developers. Massachusetts ranks in the top 5 of solar producing states! Considering our latitude, and the need for 40% more acreage and panels to gather a MW of power than southern states, this is a big price to pay on gobbling up open space. My repeated requests to Senator Gobi and Rep Durant, have proven that with pressures to address climate change and urgencies to fulfill the reduction in fossil fuels, politicians are hesitant to discuss the negative impacts of solar and proper e-waste management. Towns such as Charlton, Warren, Spencer, were a prime target for large-scale ground mounted solar due to their large tracks of vacant forests and fields, existing 3 phase power, and no solar specific zoning regulations. We now have 25 large projects already built, and 5 more in the planning stages. Zero Point is involved in more than half of these projects with many more across the state and has a history of lawsuits and threats of litigation when Towns push back. Now with new incentives added by the Mass DOER, that include lithium-ion battery storage, these tractor trailer size units plus attached HVAC units, are being added to existing projects, and being included on site plans on the newer proposed projects. Stand alone "battery parks" are also being proposed in several towns.

Zero Point wanted these lithium-ion battery storage units merely added as a simple field change, however Charlton Planning Board sought guidance from land law attorney Mr. Mark Bobrowski. Attorney Bobrowski concurred that the addition of these 2 large storage batteries (each about the size of a shipping container) which were not shown on the original approved site plan, constituted a modification that requires further approval by the Board. He went on to say the placement of these

storage batteries raises significant questions of safety and aesthetics. (See email of Nov. 6, 2019 to Planner Randy Benson). Thus the site plan hearings.

This is the first project the Planning Board experienced with requests to add these lithium-ion batteries to one of Charlton's 25 existing large ground mounted solar collection projects. (The Board explained this to Zero Point and requested patience as they sorted thru the information. The Board would then use what they learned from this first addition, and apply it to all future battery addition requests, thus quicker approval process.) The Charlton Planning Board sought independent quotes on the true costs to safely recycle and dispose of the ever changing chemical make-up of solar panels/modules and the new battery storage technology. Charlton Planning Board members realized the error in the omission of solar panel disposal/recycling costs from the decommission bond worksheets provided by developers. Former Town Planners and members were led to believe what the solar developers stated in that the solar projects were 100% recyclable, and the salvage amounts would more than cover the labor costs. We have learned that recycling costs money and with the hazardous ingredients in the thin coating on the solar panels glass collection system, major waste haulers, transfer stations and landfills are treating panels as special waste with significant documentation requirements. The correction and addition of these costs to bond amounts is necessary to protect the financial welfare of the Town!

Zero Point has been quite adamant, they do not want the Charlton Planning Board to review existing bond amounts for the solar panels to be addressed. Due to poor guidance from the former Town Planner, bonds were not requested for large ground mounted arrays that are built on leased land. Planning Board Members and other Departments were led to believe that liens placed on private land owner's properties would be sufficient enough to cover the entire Decommissioning costs. Based on the proven cleanup costs now known, there will be little value in back acreage covered with thousands of hazardous film covered solar panels. Thus why solar developers only want to only address the batteries being added to existing projects. (During one of the early hearings, Zero Point added in a line item in the pitiful amount of \$5,000 to cover the battery disposal costs to their worksheets hoping the Board would accept. They then came back with a questionable quote of \$48,000). Zero Point knows there are many Massachusetts Towns with higher per MW bond formulas (\$350,000! Per MW!) and these towns are watching what is happening in Charlton. The days of rubber stamping projects has ended. Towns are pushing back with reasonable requests. The decision of the court, will set precedence across the state!

With these new site plan hearings, and independently gathered health and safety information and quotes, Charlton Planning learned of the consistent lack of disposal and transportation costs being included on the existing approved solar photovoltaic site plans decommissioning cost worksheets. The *Mass DOER guide to model zoning for solar, specifically states under 1.3.3 Abandonment or Decommissioning ss 1.3.3.1 Removal Requirements, section (b) "Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations."* Town Engineers, consulting peer review engineers and solar developers continuously approved bonds that did not include any disposal or transportation costs. Charlton Planning Board and Planner, concurred that this should be corrected when the bond amounts are being increased to cover the new addition of these batteries.

It is imperative that we show the facts of the true costs to safely dispose and recycle solar panels and lithium-ion battery containers. Zero Point continuously states that there is a robust secondary market for panels, (my reply from Senator Ann Gobi also mentions a secondary market). Zero Point continues

to state panels are allowed in landfills or can be sold to secondary markets. This is why their calculations for the decommissioning of an entire solar project with battery unit is a mere \$150,000.00. Zero Point cannot rely on unsubstantiated statements made by small, independent trash haulers on what can and cannot go in landfills or misconstrued quotes gathered by the solar developers. The per MW (DC) simple formula was decided on due to the long list of moving parts that makeup the tasks needed to return the property to its pre-construction state. You can see the lists and the hours to complete each task, and the hourly rate of the various employees needed to complete them. The Planner used Zero Points own worksheet and corrected and added in the largest costs – DISPOSAL and RECYCLING COSTS and transportation of solar panels!

During litigation, my fear is that the judge will suggest a compromise between the amounts offered up by the Plaintiff and Charlton’s requirement. Charlton Planning Board already compromised on the bond amount by only requiring \$100,000 per MW (DC) for solar panels and \$100,000 per shipping container size, lithium-ion battery storage unit. Laurie Degnan, former solar Committee Chairperson, suggested \$125,000 per MW (DC) and \$125,000 per battery unit – which only covers the recycling and disposal costs of panels and battery. **The true cost per MW is over \$276,000.00** - explained in detail below.

According to the written companies quotes contained in this packet:

- Battery Solutions- \$125,000 per Container of Lithium-ion batteries. Not including freight.
- Complete Recycling Solutions Inc. - \$45.00 per solar panel. Not including packing and freight costs.

**Based on the estimates (No freight or concrete disposal included) - The Osgood Road Project of approximately 4.5 MW containing approximately 19,180 panels, at a quoted cost of \$45 each for recycling/disposal cost per panel = \$863,100.00 and adding in the 2 shipping container size, lithium-ion energy storage units = \$250,000.00 plus contactor, wire, equipment, pad estimates of \$131,870.00 TOTALS a project Decommissioning estimate of \$1,244,970.00. This works out to approximately \$276,660.00 per MW (DC) (Not including any freight charges nor disposal of concrete pads.)**

Zero Point’s template worksheets average a grossly inadequate amount of \$52,000.00 per MW!!! A difference of \$224,660 per MW!!! Zero Point’s letter of March 3, 2020 to Charlton Planning Board shows they hoped the Town would accept their offer of \$50,000.00 to cover the incorrect battery storage recycling amount but only if they did not address the solar panels. “.....Assuming the cost for decommissioning the remaining components of the solar array remains unchanged.” In other words, only if the Town does not correct Zero Point’s worksheet templates missing any disposal and recycling costs for the panels!

**\$276,660 per MW vs \$52,000 per MW.** This shows proof that even Charlton’s request of only \$100,000 per MW does not sufficiently protect the landowners who lease to solar nor the Town residents who may ultimately foot the bill if the insurance bonds premiums are not paid yearly, the solar developers or landowner files bankruptcy, or if there is widespread damage of panels due to storms. Evidence presented from independent parties, and myself – former chairperson of Charlton’s Solar Committee – written price quotations from Recycling Companies, quotations on clarifications of quote differences from Battery Solutions, Inc., Special Waste Coordinators from National companies who own the landfills – stating panels will not be accepted as MSW and they are considered “Special Waste”, chemical analysis of the panels would not be accepted unless provided by US labs only, claims of secondary

markets have not been validated, damaged panels will have no secondary markets and a quotation from a reputable, Tighes and Bond engineer **Dennis Moran** – explaining why peer reviews ok these low amounts – because they are licensed and have to abide by what is the standard now however, Towns have the right to set what they feel will protect the Town. The EPA and Mass DEP have neglected to address solar photovoltaic panels on waste bans – believing they have time due to claims of panels lasting 20 years and overseas secondary markets. **Eugene Lunney**, a special waste coordinator for Republic Waste, with over 30 years’ experience in the waste industry, stated he feels a waste ban will ultimately be imposed on solar panels in the near future. **Sabrina Barber**, Special Waste Rep of Waste Management Company, also concurred that panels are currently considered “special waste” thus a significant process of manifests and SDS’ is required. (ZPT only used small, independent hauler’s MSW container pricing!). A letter from Laurie Degan, dated March 3, 2020 to the Charlton Planning Board, Attorney Cosgrove, and Planner Randy Benson, fact checks and provides proof of several misleading and false statements made at a hearing by attorney Kiritsy and the Plaintiffs. There is Proof that Charlton Planning Boards Battery Solution quote of \$125,000 for the safe handling is correct and this exists in a taped Planning Board meeting whereby Zero Point contradicted their \$48,000 quote (which we later learned was low because Zero Point would pay landscapers to remove and palletizing volatile batteries onsite in Charlton and then ship the pallets of stacked batteries to Battery Solutions Company.) Zero Point contradicted their quote on tape by stating the battery units were designed to have a truck back up, hook up and drive it safely away! This concurs it’s the safest way to remove the battery storage container and confirms the accurate quote of \$125,000.00 per container plus freight! (*Belinda Foreman stated that while the SDS’ presented were chemically different, they were handled the same and the discrepancies in the two quotes was due to the form in which the units arrived to their site. An email copy is attached.*)

Charlton and many other Towns are setting Bond amounts based upon new information on the toxicity of the varying chemical make-ups of the solar panels being manufactured overseas. Many countries fear this is the NEW ELECTRONIC WASTE ISSUE for the world. (As quoted by Chris Davis of We Recycle Solar) China has even banned direct import of foreign e-waste in 2018!! Countries such as Bangladesh, have instituted strict testing standards for panels in fear that they will again be a dumping ground for old and substandard electronic products. Arizona has HB 2828 pending that will enact a landfill ban on solar panels. California has already mandated recycling and banned solar panels from landfills. Other states are currently reviewing their policies. New York has successfully enacted the “Solar Panel Collection Act” and South Carolina has bills pending.

Massachusetts has no disposal standards for an industry excelling on the backs of our small towns. It bears repeating - politicians are hesitant to discuss the negative impacts of solar. The EPA does not even mention solar recycling in their draft National Recycling Strategy (EPA-HQ-OLEM-2020-0462). Charlton and others are on their own, with little staff to dive into the details of what big solar is proposing. Charlton Planning is merely requiring sufficient Decommissioning Bonds in forms that add much needed assistance. The State of Massachusetts leaves Bond amounts up to each Town. Charlton is merely being proactive, and instituted a low bond amount in a part cash, part line of credit form of surety. They will keep this 25% cash in an account to follow the parcel since lease owners and project manager’s change quickly and our Assessors are having a difficult time keeping informed of these changes and the Town Collector has the burden to ensure the yearly bond renewal premiums are indeed paid – on 30 projects!!!

**Towns such as West Brookfield and Warren, have a formula of \$350,000 per MW for the solar array and \$350,000 for each battery unit in CASH.** I can provide written proof of these requirements. This amount will only be used should these companies fail to abide by their promises to return the land to its pre-construction state. Charlton's request of \$100,000 per MW solar and \$100,000 per energy storage unit, in the form containing 25% cash with the remaining 75% in a secured line of credit from an FDIC backed institution, ensures Charlton is protected should anyone go bankrupt, go out of business, or the yearly dues of the insurance bond lapse. The cash account will secure legal counsel to begin the process of accessing a line of credit. Charlton will have 30 of these energy collection systems, thus the tracking of the financial bond companies, bond renewal dates, solar array lease owners, land owners, solar developers has proven to be a huge burden for our Town Hall employees to police.

Thank you again for reading this summary.

H. Laurie Degnan  
Former Chairperson of Charlton's Solar Committee

**Please note:**

*[The original approved site plan was of one large project – Osgood Road/Brookfield Road Solar owned by McDougal/Mitchell. Zero Point chose to divide the project into 2, with the listing of the 2 separate landowners, and thus why these are now listed and discussed separately. ZP-15 and ZP-18].* Ms. Lori Provost co-owns McDougal's property on Osgood Road and has stated she was unaware that battery storage was even being added to her project. This contradicts what engineer Harold Reader stated at one of the hearings on camera. Provost has been involved in legal issues with Zero Point due to this. Provost also informed the Town that the project has already been sold to a California company with over 10 Billion in assets. Former Planning Board Chairperson, Patsy Rydlack, now a Board of Selectmen member, would be able to confirm this information.

**Enclosures:**

-Zero Point Development, Inc. March 3, 2020 letter and packet to Randy Benson with written comments from LD. *(Is it legal for Charlton to negotiate bonds with developer and not require signatures of agreement from the landowner on these contracts? The site plans are with LLC's that also own Zero Point Development - not Zero Point Development....???)*

-Email from Attorney Mark Bobrowski to Charlton Planner Randy Benson dated 11/06/2019.

-List of industry professionals contacted for guidance on hazmat and special waste and discussions with consulting engineer. (NOTE: peer engineer reviews are usually perceived as THE advice these volunteer boards follow. My conversation with Dennis Moran truly opened the Board's eyes as to why engineers agree to low bond amounts and explained a Town's right to incorporate other mechanisms and set bonds we feel are in amounts that protect us. Engineers are fallible. Each project has an engineer design and another review the drainage plans yet 2 projects in Charlton, 3 in Warren and 1 in Southbridge have had significant runoff problems! (Contact Joyce Eichacker, Chairman of Warren Conservation) Zero Point also added batteries to Spencer, Ma without approval. Contact Ralph Hicks, Board of Selectmen)

-Page 17 of the Department of Energy Resources and Massachusetts Executive Office of Energy and Environmental Affairs Policy Guidance for Regulating Solar Energy Systems. Original date of 2014.  
Section 1.3.3

-Price Quote: Complete Recycling Solutions listing recycling costs for Solar Panels dated 11/16/2020.

-Price Quote: Battery Solutions Inc. Dated 1/17/2020

-Price Quote clarification: Email dated 2/21/2020 from Belinda Foreman to Laurie Degnan

-Charlton's Decommissioning Bonds Received summary (Note only 7 Decommissioning Bonds!) from Joanne Savignac, Charlton's Treasurer/Collector and Planning Board.

-Charlton's decommissioning spreadsheet (incomplete), from Treasurer and Planning Board.

-3 pictures – shipping container photos - that will house 66,000 lithium ion batteries each plus hvac units, a hurricane destroyed solar project in Puerto Rico. No used market for these!