

Town Of Concord

Water Treatment Plant
Special Permit/Use Special Permit

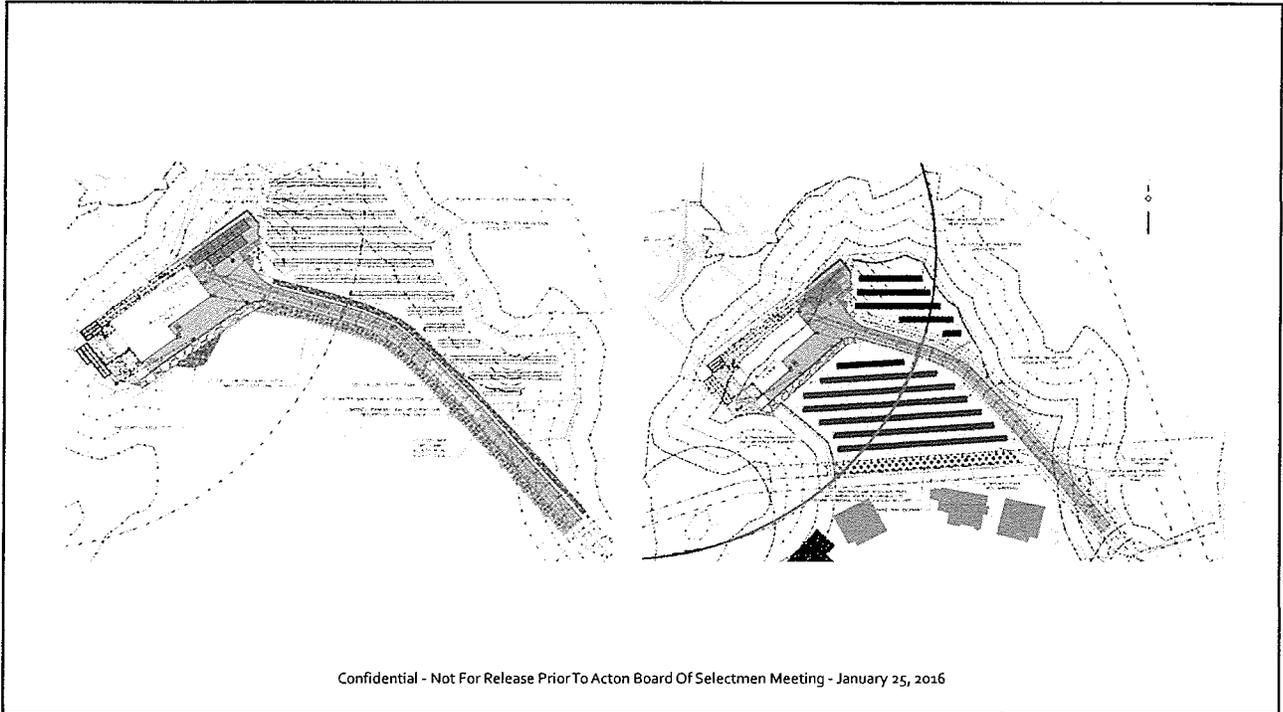
Not Right For Acton

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Introduction

- Carolyn Kiely – 11 Parkland Lane
- Maps Are Misleading
- Variance Is Also Needed
- Why This Project Is Wrong For Acton

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Use Special Permit

- Replacing Ozone Disinfection Facility
- With State-of-the-art Water Treatment Plant
- Including A "Solar Photovoltaic Array Accessory Use"

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What's Done Now?

- Ozone Disinfection Only
- Remaining Water – Treated Downstream
- Powered By Electricity
 - Public Utility – Eversource

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Presently / Proposed

- Present Building – 1,760 Sq. Ft.
- Proposed Treatment Plant – 9,338 Sq. Ft.
 - 530% Increase
- Present Lot Coverage – 17,374 Sq. Ft.
- Proposed Lot Coverage – 47,526 Sq. Ft.
 - 275% Increase
- New Building – Two Stories, Visible Around Watershed And To Neighbors

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Zoning Rules & Lots

- Concord Claims That The Solar Panels Are “Accessory Use”
- Zoning 3.8.4.10: Accessory Uses Must
 - Provide Benefit And Support The Principal Use(s)
 - On The Same Lot.
- The Principal Use – Water Treatment – Is On A Different Lot. The Solar Lot Is Open Space.
 - “Accessory Use” Of Solar Not Allowed Here.

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Concord's Feasibility Study

- Concord's 2013 Feasibility Study:
 - Cautions Concord Re: Uses Of Individual Lots For The Project.
 - Accessory Solar Arrays Must Be On The Same Lot.
 - Further Analysis: Use Of Adjoining Lots.
- Why Aren't Lots Shown?
 - Violates Bylaws
- Staff
 - Unaware Of The Two Lots.
 - Indicates Solar Panels Accessory To Principal Land Use
 - But No Principal Use On That Lot – Open Space

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State Requirements

- MEPA Certification – awaiting results
- DEP Guideline – solar power for water facilities
 - Favors solar
 - Must comply with municipal rules

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Article 97

- Massachusetts Constitution
 - Public Lands Can Not Be Converted To Another Use Without:
 - 2/3rds Vote At Town Meeting
 - 2/3rds Vote Of Legislature
 - Funding Compliance
- Article 97 Applies By Lot
 - Open Space Lot – Being Converted To Solar Panels
 - Disinfection Lot – Change In Use
 - Full-scale Treatment, Chemical Storage

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Variance Issues

- Original Facility – Variance (Board Of Appeals)
- Also –
 - Site Plan Special Permit (Selectmen)
 - Special Use Permit (Selectmen)
 - Flood Plain Special Permit (Selectmen)
- Concord Is Bypassing The Variance Process
- Without The Original Variance, This Building Couldn't Be There

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Variations (Cont'd)

- Case Law
- When A Building Is Originally Permitted Under A Variance, It Can't Then Only Use The Special Permit Process For Future Expansion
 - A Facility Originally Permitted Through The Variance Process Needs To Continue Through The Variance Process
 - The Variance Needs To Be Amended By The Board Of Appeals

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Variations (Cont'd)

- Wait Until The Board Of Appeals Acts Before Acting On The Special Permits Before You
- Permits/Variations Need To Be Filed With The Registry To Be Valid
 - Unclear If The Original Permits/Variation Were Ever Recorded
 - May Not Be Legally Effective
 - Town Counsel Review Needed

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Archaeological Impacts

- 1994 Archeological Study
 - "Historic Quarry Pit"
 - Located "East" And "South" Of The Ozone Facility
 - The Historic Quarry Pit Is In The Solar Array!!
 - Not Identified On Maps
- Need:
 - Locate Historic Pit
 - Preservation Plan
 - New Archaeological Study Of Palmer Land (Not Owned In 1994, Not Studied)

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No Water to Acton

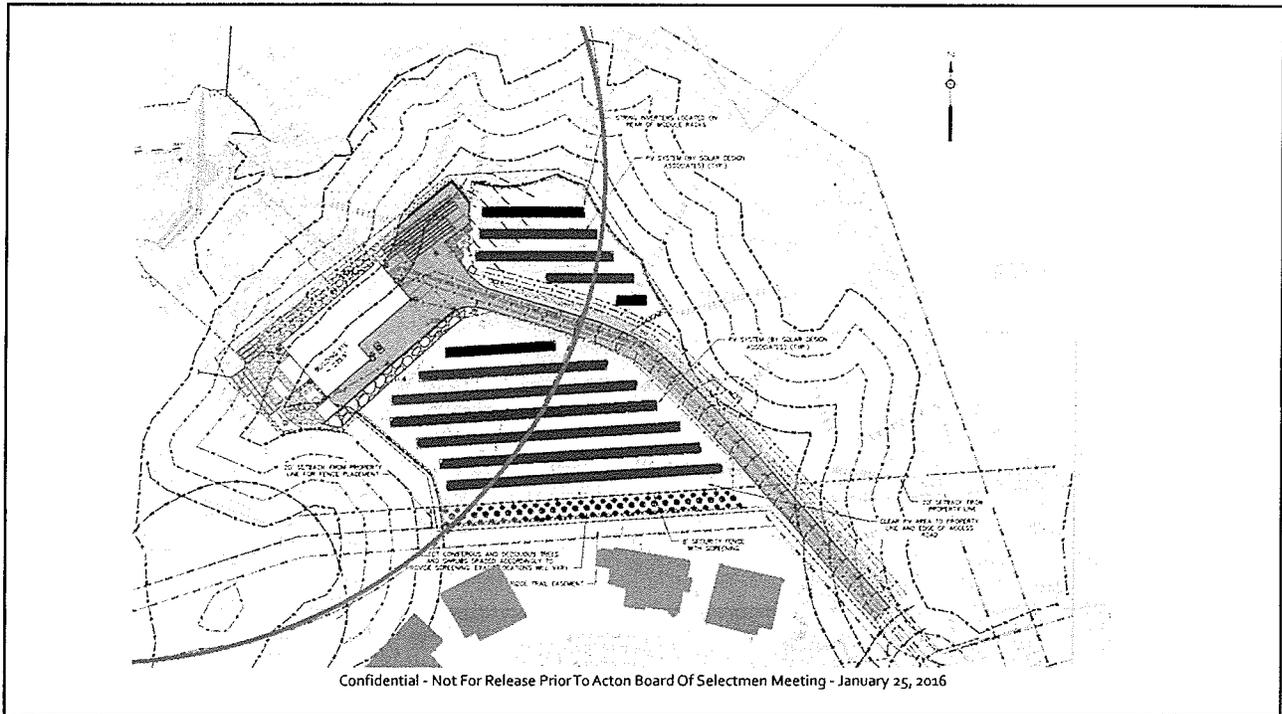
- Existing water customers
 - 70 in Acton
 - Less than 1%
 - Will continue to get water from Concord
- Concord's Policy: NO NEW CUSTOMERS IN ACTON
- Recent history:
 - Past year – fire hookup to an multi-unit complex
 - Before that – Staples/Trader Joe plaza – last hook-up

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Water Supply Protection Areas

- Nagog Watershed – Zone A
- 400' Arc – Water Supply Protection Area
 - Buffers Around Water Supply Sources
- Entirety Of Building And 50% Of Solar Array Within 400' Of Nagog Pond
- Concord Must Meet State Mandated Reduced Development Requirements
- State Requirements Apply 'Per Lot'
 - Panels – 100% Coverage On One Lot (Not Reduced)

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Conclusion

- Only Concord Benefits
- Acton Bears The Brunt
- Misleading Maps
 - Two Lots
 - Zoning Rules Apply Per Lot
- State Rules – Acton’s Bylaws Still Applicable
- New Variance Needed First
- No New Water Customers
- No Electricity
- Zone A Water Supply Area Jeopardized
- Archeological Study Needed, Protect Historic Site

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Introduction

- Barry Elkin – 57 Skyline Drive
- Speaking Out Against Solar Panels
- Good For The Environment And Green Source Of Energy
- So Why?
 - Concord's Own Statements
 - Acton Bylaw
 - Concord Bylaw
- Not NIMBY – ½ Mile Away

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Unacceptable Location ?

- Reasonable People Can Disagree
- Let's Not Debate
- Use Concord's Definition
 - 2011 Solar Siting Committee Report
 - Charged By Concord Board Of Selectmen
 - Comprehensive 118 Page Report

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Concord's Own Words

- "Present Or Potential Use For Agriculture, Forestry, Recreation, Or Conservation Land Clearly Outweighs Value Of Solar Site"
- "Site Is Forested And It Is Unlikely To Be Acceptable To Cut Trees; Or Major Impact On Other Vegetation"
- "Solar Array On Site Would Have Potentially Adverse Impact On Neighboring Town(s)"
- "Site Judged To Have Adverse Impact On Neighbors If Used As Solar Site"
- "Site Is Critical For Wildlife"

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December 2 Conservation Hearing

- Why This Location
 - Can't Locate In Concord – Sell Excess Power To Eversource
 - Makes This A Financial Issue
- Panels Can Be Located Any Place
- Power Balance
 - X Power Consumed
 - X Power Created
 - Net Zero Impact

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So Why Acton?

- Concord Gets To Sell Power To Eversource
- Creates Issues For Acton – Not For Concord
- Less Restrictive Zoning Bylaw Than In Concord
 - Minimum 5 Acre Lot Size
 - Acton Lot 3.75 Acres

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Permitted Uses – Acton Zoning Bylaw

- Ground Mounted Neighborhood
 - Primarily Designed To Benefit The Energy Needs Of Uses In The Immediately Surrounding Area Or Neighborhood.
 - Not More Than One Acre In Size

- Ground Mounted Industrial
 - Primarily Designed To Benefit All Energy Users
 - Any Size

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Is It Fish Or Fowl

- Not Industrial
 - Not Primarily Designed To Benefit All Energy Users
 - Accessory To Water Treat Plant
 - The Nagog Pond Watershed And Solar Feasibility Study
 - Letter From Mr. Stephen Olson, Environmental Partners Group

- Neighborhood
 - Primarily Designed To Benefit The Energy Needs Of Uses In The Immediately Surrounding Area
 - This Is What Concord Applied For
 - BoS Notice To Abutters (Section 3.8.4.10)

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Violates Acton Zoning Bylaw

- More Than One Acre In Size
 - An Acre Is 43,560 Square Feet
 - Total Photovoltaic Surface Array Will Be 62,454 Square Feet
- Over 40% Too Large
 - Doesn't include related buildings, structures and equipment
- If Reclassified As Industrial
 - Primary Use Must Change
 - "Not More Than One Acre Of Land Shall Be Deforested For Any One Ground-mounted Industrial Solar Photovoltaic Installation"
 - Collateral Deforestation

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Concord Will Argue

- State Law
 - Massachusetts General Law Chapter 40A
 - "No Zoning Ordinance Or Bylaw Shall Prohibit Or Unreasonably Regulate The Installation Of Solar Energy Systems Or The Building Of Structures That Facilitate The Collection Of Solar Energy, Except Where Necessary To Protect The Public Health, Safety Or Welfare".
 - "Unreasonably Regulate" Not Defined

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However....

- Commonwealth Of Massachusetts
 - Department Of Energy Resources
 - Massachusetts Executive Office Of Energy And Environmental Affairs
- Model Zoning For The Regulation Of Solar Energy Systems
- "This Model Zoning And Accompanying Guidance Were Prepared To Assist Massachusetts Cities And Towns In Establishing Reasonable Standards To Facilitate Development Of Solar Energy Systems."

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DOER Says:

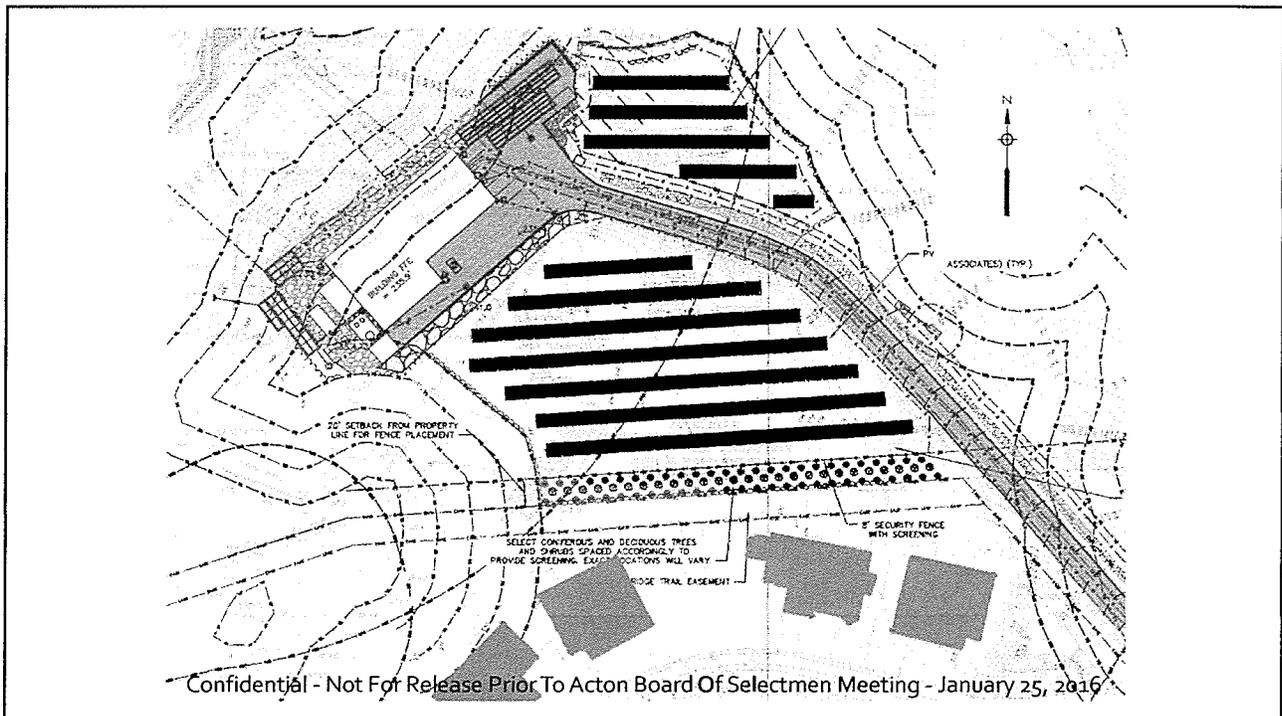
- "Clearing Of Natural Vegetation Shall Be Limited To What Is Necessary For The Construction, Operation And Maintenance Of Solar Energy System Or Otherwise Prescribed By Applicable Laws, Regulations, And Bylaws/Ordinances"
- "DOER Strongly Discourages Locations That Result In Significant Loss Of Land And Natural Resources, Including Farm And Forest Land, And Encourages Rooftop Siting, As Well As Locations In Industrial And Commercial Districts, Or On Vacant, Disturbed Land"
- "Significant Tree Cutting Is Problematic Because Of The Important Water Management, Cooling, And Climate Benefits Trees Provide"

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Concord Agrees

- Concord Zoning Bylaw
 - "Clearing Of Natural Vegetation Shall Be Limited To What Is Necessary For The Construction, Operation And Maintenance Of The Large-scale Ground-mounted Solar Photovoltaic Installation Or Otherwise Prescribed By Applicable Laws, Regulations, And Bylaws."
- Feasibility Study
 - "The Towns May Impose Reasonable Regulations On A Solar Installation Based Upon Public Health, Safety, And Welfare Considerations"

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Additional Concord Violations

- "Landscaping Or Architectural Screening Shall Be Provided To Reduce The Visual Impact Of Installations And Specifically To Protect Nearby Receptors From Danger, Harm, Or Nuisance That May Result From Reflective Solar Glare Of Photovoltaic Panels. Where Necessary, Panels Shall Be Oriented Or Tilted In A Manner To Prevent Such Glare Upon Receptors."
- Panels Directly Aimed At Multi-Story Homes
 - As Close As 70 Feet Away
 - Directly To The South
- Planning Board Can Require Additional Setbacks

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Landscaping

- "In The Case Of A Residential District Location, The Visual Impact Of The Installation On Its Immediate Abutters And On The Nearby Neighborhood Has Been Effectively Neutralized Through Appropriate Designs, Landscaping, Or Structural Screening"
- DRB
 - "If Granted, The Permits Should Condition That Prior To A Building Permit, The Applicant Must Submit A Landscaping Plan That Meets The Intent Of ZBL Section 10.4."
- Prior To Approval
 - Heights And Density.
 - Not Extended Out For A Number Of Years When The Landscaping Grows
 - The Landscape Plan Must Provide Complete Screening Right Away.

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Concord's Solar Siting Report

- The Town Of Concord And The Concord – Carlisle Regional School District:
 - Own About 848 Acres Of Land In Concord
 - 73 Parcels
 - Not Designated As:
 - Conservation Land
 - Not Protected By Deed Restrictions
 - Other Legal Instruments
 - Identified Six As Being Suitable For Hosting Ground Based Or Utility-scale Solar Power Systems

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Questions And Issues

- Solar Panels....
 - Violates Concords Own Guidelines
 - Solar Glare
 - Visual Impact
 - State Guidelines
 - Over 40% Non Compliant
 - A More Suitable Location For The Array ... Concord
- Other Questions:
 - Article 97
 - Zone A Water Supply Area
 - Multiple Lots
 - Wildlife Impact
 - Septic Plan
 - Archeological Impact

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Granting Authority

- ...The Special Permit Granting Authority Shall Not Issue A Special Permit Unless Without Exception It Shall Find That The Proposed USE:
 - Is In Harmony With The Purpose And Intent Of This Bylaw.
 - Will Not Be Detrimental Or Injurious To The Neighborhood In Which It Is To Take Place.
 - Complies With All Applicable Requirements Of This Bylaw.
- As One Resident Who Gets To Speak For Many
 - How Does Concord Propose To Address These Issues And Questions ?
 - Until Resolved This Request Cannot And Should Not Be Granted
 - Nothing In This Proposal Positively Impacts Acton

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Introduction

- Robert Sekuler - 17 Parkland Lane
- Additional Issues To Consider
- Although "Additional" – Not Insignificant

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Wildlife

- Not Under Conservation Commission Jurisdiction
- Over An Acre To Be Cleared
 - Adjacent Areas Developed
- Wildlife And Habitat Impacts
- Must Minimize Deforestation

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Alternative Analysis

- Water Can Be Treated "Downstream"
 - Treated Today
- Solar Panels Are Not A Requirement
- Only Nagog Pond Area Considered
- Concord Solar Siting Committee
 - Alternative Sites Need To Be Considered

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Storm Water Analysis

- Analysis
 - Does Not Include Impact Of Solar Panels
 - Acton Town Engineer
 - "Applicant Should Address How Storm Water Runoff Is Being Handled"
- Solar Panel Mitigation Evaluation

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Access

- Skyline Drive Is Private
- All Access Via Acorn Park
- Cannot Post Private Road Signage
 - Golf Course
 - Palmer Kennel
- Clear Language To Concord

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Additional Issues

- Septic System and Leach Field
 - Board Of Health Approval
 - Additional Clear Cutting Required?
- Building Aesthetics
- Noise

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