



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

October 31, 2025

Lucille A. Dalton, Town Clerk
Town of Southampton
210 College Highway, Suite 2
Southampton, MA 01073

Re: Southampton Annual Town Meeting of May 6, 2025 – Case # 11888
Warrant Articles # 24, 25, 26, and 27 (Zoning)
Warrant Articles # 20 and 21 (General) ¹

Dear Ms. Dalton:

Article 27 – Other than a provision in Section 275-7.6 (G) (8) (e) (1) that prohibits herbicides, pesticides or chemical fertilizer use at the solar electric generating facility, that we disapprove because it is preempted by state law as explained below, we approve Article 27 from the May 6, 2025 Southampton Annual Town Meeting.

Under Article 27, the Town amended its zoning by-laws to make a number of changes related to solar installations. We partially approve the amendments adopted under Article 27 because the approved provisions are consistent with the Section 3's solar protections as analyzed by the Supreme Judicial Court in Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 779, 781 (2022) (to evaluate the validity of a solar by-law under Section 3, a court will "balance the interest that the ordinance or bylaw advances and the impact on the protected use" while keeping in mind that Section 3's solar energy provision "was enacted to help promote solar energy generation throughout the Commonwealth."); see also Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

In this decision we summarize the by-law amendments adopted under Article 27; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explain why, under that limited standard of review, we partially approve the by-law provisions adopted under Article 27. In addition, we offer comments for the Town's consideration regarding Chapter 239 of the Acts of 2024 and its potential impact on the Town's new by-law.

¹ In a decision issued September 2, 2025, we approved Articles 21, 24, 25, and 26; partially approved Article 20; and extended the deadline for our review of Article 27 for 60 days until October 31, 2025.

I. Summary of Article 27

Under Article 27, the Town amended several sections of its zoning by-laws regarding solar installations. The first change amends Section 275-2.3, “Definitions,” to insert new definitions regarding solar electric generating installations, including definitions for accessory; large-scale; medium-scale; and small-scale solar electric generating facilities. The next change amends Attachment 1, “Table of Use Regulations,” under the Wholesale, Transportation and Industrial Use categories to insert several new uses as follows: (1) small-scale solar electric generating facilities are allowed by right in all zoning districts; (2) medium-scale solar electric generating facilities are allowed with site plan review in the R-R and R-N districts and allowed with Minor Site Plan Review in the C-H and I-P districts; (3) large-scale solar electric generating facilities are allowed by special permit in the R-R, R-N, and C-H districts and allowed with site plan review in the I-P district; and (4) accessory and dual-use solar electric generating facilities are allowed by right (sometimes with site plan approval) in all zoning districts.

The last change deletes the existing Section 275-7.6 and inserts a new Section 275-7.6, “Solar Electric Generating Facilities,” that imposes requirements on solar electric generating facilities including general requirements [Section 7.6 (C) and (G)]; maintenance requirements [Section 7.6 (D)]; and site plan requirements [Section 7.6 (E), (F) and (H)].

II. Attorney General’s Standard of Review of Zoning By-laws

Our review of Article 27 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973).

Article 27, as an amendment to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). A municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Zoning Protections Granted to Solar Installations and Structures that Facilitate the Collection of Solar Energy by G.L. c. 40A, § 3

Solar energy facilities and related structures² have been protected under Section 3 for almost 40 years, since 1985 when the Legislature passed a statute codifying “the policy of the commonwealth to encourage the use of solar energy.” St. 1985, c. 637, §§ 7, 8. Id. § 2. Section 3’s solar provision grants zoning protections to solar energy systems and the building of structures that facilitate the collection of solar energy as follows:

No zoning . . . 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.

In adopting Section 3, the Legislature determined that certain land uses are so important to the public good that the Legislature has found it necessary “to take away” some measure of municipalities’ “power to limit the use of land” within their borders. Attorney General v. Dover, 327 Mass. 601, 604 (1950) (discussing predecessor to G.L. c. 40A, § 3); see Cnty. Comm’rs of Bristol v. Conservation Comm’n of Dartmouth, 380 Mass. 706, 713 (1980) (noting that Zoning Act as a whole, and G.L. c. 40A, § 3, specifically, aim to ensure that zoning “facilitate[s] the provision of public requirements”). To that end, the provisions of Section 3 “strike a balance between preventing local discrimination against” a set of enumerated land uses while “honoring legitimate municipal concerns that typically find expression in local zoning laws.” Trustees of Tufts Coll. v. City of Medford, 415 Mass. 753, 757 (1993). Over the years, the Legislature has added to the list of protected uses, employing different language—and in some cases different methods—to limit municipal discretion to restrict those uses.

In codifying solar energy and related structures as a protected use under Section 3, the Legislature determined that “neighborhood hostility” or contrary local “preferences” should not dictate whether solar energy systems and related structures are constructed in sufficient quantity to meet the public need. See Newbury Junior Coll. v. Brookline, 19 Mass. App. Ct. 197, 205, 207-08 (1985) (discussing educational-use provision of Section 3); see also Petrucchi v. Bd. of Appeals, 45 Mass. App. Ct. 818, 822 (1998) (explaining, in context of childcare provision, that Legislature’s “manifest intent” when establishing Section 3 protected use is “to broaden . . . opportunities for establishing” that use). Indeed, the fundamental purpose of Section 3 is to “facilitate the provision of public requirements” that may be locally disfavored. Cty. Comm’rs of Bristol, 380 Mass. at 713.

The Supreme Judicial Court reaffirmed this principle in Tracer Lane II. In ruling that Section 3’s protections required Waltham to allow an access road to be built in a residential district

² By statute, battery energy storage systems (“BESS”) qualify as “solar energy systems” and “structures that facilitate the collection of solar energy” and are protected by G.L. c. 40A, § 3. General Laws Chapter 164, Section 1, defines “energy storage system” as “a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy.” See also NextSun Energy LLC v. Fernandes, No. 19 MISC 000230 (RBF), 2023 WL 3317259, at *14 (Mass. Land Ct. May 9, 2023), amended, No. 19 MISC 000230 (RBF), 2023 WL 4156740 (Mass. Land Ct. June 23, 2023), judgment entered, No. 19 MISC 000230 (RBF), 2023 WL 4145901 (Mass. Land Ct. June 23, 2023) (finding that battery energy storage system is entitled to Section 3 solar protections).

for linkage to a solar project in Lexington, the Court explicitly noted that “large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth.” *Id.* at 782 (citing Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap, at 4, 59 n.43 (Dec. 2020) (“the amount of solar power needed by 2050 exceeds the full technical potential in the Commonwealth for rooftop solar, indicating that substantial deployment of ground-mounted solar is needed under any circumstance in order to achieve [n]et [z]ero [greenhouse gas emissions by 2050]”). The Court explained that whether a by-law facially violates Section 3’s prohibition against unreasonable regulation of solar systems and related structures will turn in part on whether the by-law promotes rather than restricts this legislative goal. *Id.* at 781. While municipalities do have some “flexibility” to reasonably limit where certain forms of solar energy may be sited, the validity of any restriction ultimately entails “balanc[ing] the interest that the . . . bylaw advances” against “the impact on the protected [solar] use.” *Id.* at 781-82.

IV. Summary of Recent Legislative Changes Regarding Solar Installations and Battery Energy Storage Systems

On November 20, 2024, Governor Healey signed into law Chapter 239 of the Acts of 2024, “An Act Promoting A Clean Energy Grid, Advancing Equity and Protecting Ratepayers” (“the Act”).³ Among other provisions, the Act establishes permitting requirements for “small clean energy generation facilities”⁴ and “large clean energy infrastructure facilities”⁵ that will take effect

³ The Act can be found here: <https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter239>

⁴ Section 23 of the Act defines “Small Clean Energy Generation Facility” and “Small Clean Energy Storage Facility” respectively as follows:

Small Clean Energy Generation Facility: “energy generation infrastructure with a nameplate capacity of less than 25 megawatts that is an anaerobic digestion facility, solar facility or wind facility, including any ancillary structure that is an integral part of the operation of the small clean energy generation facility or, following a rulemaking by the department in consultation with the energy facilities siting board in which the facility type is added to the regulatory definition of a small clean energy generation facility, any other type of generation facility that produces no greenhouse gas emissions or other pollutant emissions known to have negative health impacts; provided, however, that the nameplate capacity for solar facilities shall be calculated in direct current.”

Small Clean Energy Storage Facility: “an energy storage system as defined in section 1 of chapter 164 with a rated capacity of less than 100 megawatt hours, including any ancillary structure that is an integral part of the operation of the small clean energy storage facility.”

⁵ Large Clean Energy Infrastructure Facilities are defined in Section 57 the Act as “a large clean energy generation facility, large clean energy storage facility or large clean transmission and distribution infrastructure facility.” A “Large Clean Energy Generation Facility” is defined in relevant part as “energy generation infrastructure with a nameplate capacity of *not less than 25 megawatts* that is an anaerobic digestion facility, solar facility or wind facility, including any ancillary structure that is an integral part of the operation of the large clean energy generation facility...” And a “Large Clean Energy Storage Facility,” is defined as “an energy storage system as defined under section 1 with a rated capacity of *not less than 100 megawatt hours*, including any ancillary structure that is an integral part of the operation of the large clean

in March of 2026.

With regards to Small Clean Energy facilities, Section 17 of the Act creates four new divisions within the Department of Energy Resources (“DOER”) including “a division of clean energy siting and permitting, which shall establish standard conditions, criteria and requirements for the siting and permitting of small clean energy infrastructure facilities by local governments and provide technical support and assistance to local governments, small clean energy infrastructure facility project proponents and other stakeholders impacted by the siting and permitting of small clean energy infrastructure facilities at the local government level.” See Section 17 of the Act.

Notably, Section 23 (b) of the Act requires DOER to establish standards, requirements and procedures governing the siting and permitting of small clean energy infrastructure facilities by local governments, including, among other provisions, (1) uniform public health, safety, environmental and other standards; (2) zoning criteria that local governments shall require for the issuance of permits for small clean energy infrastructure facilities; and (3) standards for applying site suitability guidance to evaluate the social and environmental impacts of proposed small clean facilities. Importantly, Section 23 (b) of the Act provides that “[l]ocal governments acting in accordance with the standards established...pursuant to this subsection shall be considered to have acted consistent with the limitations on solar facility and small clean energy storage facility zoning under section 3 of chapter 40A.” The Act allows a proponent of a small clean energy infrastructure facility to submit a consolidated small clean energy infrastructure facility permit application seeking a single permit consolidating all necessary local permits and approvals. See Section 23 (c) of the Act. Thereafter, the local government will issue a “single, final decision on a consolidated small energy infrastructure facility permit application. See Section 23 (d)(1) of the Act.

As part of this new legislation, DOER has been tasked with drafting Regulations and Guidance. On September 26, 2025, the Clean Energy Siting Division published *draft* Regulations, 225 CMR 29.00, “Small Clean Energy Infrastructure Facility Siting and Permitting Draft Regulations.” See <https://www.mass.gov/regulations/225-CMR-29-225-cmr-2900-small-clean-energy-infrastructure-facility-siting-and-permitting-draft-regulation>. In addition, DOER has published Preliminary *Draft* Guidelines regarding (1) pre-filing guidelines; (2) public health, safety and environmental standards; (3) common conditions and requirements in case of constructive approval; and (4) minimization and mitigation measures. See <https://www.mass.gov/info-details/clean-energy-siting-permitting-regulations#regulations-guidelines-and-model-bylaws>. Lastly, DOER has published *draft* Model Solar and BESS by-laws that can be found here <https://www.mass.gov/doc/doer-draft-solar-model-bylaw/download> (solar) and <https://www.mass.gov/doc/doer-draft-battery-energy-storage-systems-bess-model-bylaw/download> (BESS).

With regards to Large Clean Energy Facilities, the Act designates the Energy Facilities Siting Board (“EFSB”) to be the state permit granting authority for large facilities. The Act creates a new consolidated permit process “by which the Siting Board will issue all necessary local, regional, and state permits and approvals for large clean energy infrastructure facilities.” See id., at pg. 3. The consolidated permit includes “all state, regional, and local permits that the clean

energy storage facility. (emphasis added).

energy facility would otherwise need to obtain individually, except for certain federal permits that are delegated to specific state agencies.” *Id.* In addition, the EFSB is also authorized to issue a consolidated permits for a small clean energy infrastructure facilities under G.L. c. 164, § 69U (that allows proponents of small clean transmission and distribution infrastructure facilities to elect to seek a consolidated permit from the EFSB that includes all necessary state, regional, and local permits) and G.L. c. 164, § 69V (that allows proponents of small clean energy generation facilities and small clean energy storage facilities to elect to seek a consolidated state Permit from the EFSB that includes all necessary state permits.). *Id.* EFSB has also issued *draft* Regulations related to Large Facilities, 980 CMR 1.00. See <https://www.mass.gov/doc/efsb-25-10-decision-opening/download>.

We strongly encourage the Town to consult with Town Counsel regarding Chapter 239 of the Acts of 2024, as well as the draft and final Regulations promulgated by DOER and EFSB, to ensure compliance with these new provisions. In addition, the Town should monitor any guidelines, guidance and model solar and BESS bylaws promulgated by DOER and EFSB and discuss with Town Counsel any actions the Town may need to take to comply with the new law.

In light of G.L. c. 40A, § 3’s protections for solar installations, and the Act (effective March 1, 2026), we offer comments below for the Town’s consideration regarding the new Section 275-7.6.

V. We Disapprove Section 7.6 (G) (8) (e)’s Herbicide, Pesticide and Fertilizer Prohibition Because it Conflicts with State Law

Section 7.6 (G) (8), “Design and Performance Standards,” Subsection (e), “Vegetation Management,” provides as follows with emphasis added:

[1] Herbicides, pesticides, or chemical fertilizers may not be used to manage vegetation at the solar electric generating facility.

We disapprove the above text in bold and underline regarding herbicide, pesticide, and chemical fertilizer use because it is preempted by G.L. c. 132B, Massachusetts Pesticide Control Act (“Act”) and is preempted by Chapter 262 of the Acts of 2012 (amending G.L. c. 128, § 2), which grants the Department of Agricultural Resources (MDAR) the exclusive authority to regulate the application of plant nutrients, including fertilizers, in the Commonwealth.

A. The Pesticide Control Act

General Laws Chapter 132B establishes MDAR’s “exclusive authority in regulating the labeling, distribution, sale, storage, transportation, *use and application*, and disposal of pesticides in the commonwealth....” G.L. c. 132B, § 1. General Laws Chapter 132B, Section 2 defines “Pesticide” to include herbicides, as follows: “a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant....” The Act establishes a Pesticide Board within MDAR (Section 3) and authorizes the Pesticide Board to register pesticides for use in the Commonwealth if the Board determines that “a pesticide, when used in accordance

with its directions for use, warnings and cautions and for the uses for which it is registered...will not generally cause unreasonable adverse effects on the environment..." (Section 7).

A town by-law that regulates the application of herbicides and pesticides in a way that interferes with the purpose of the Act is preempted. Town of Wendell v. Att’y Gen., 394 Mass. 518, 528-529 (1985) (by-law that “contemplates the possibility of local imposition of conditions on the use of a pesticide beyond those established on a Statewide basis under the act” is preempted). Because the by-law text in Section 7.6 (G) (8) (e), shown above in bold and underline, regulating herbicide and pesticide use at solar installations is preempted by state law, we disapprove it.

B. General Laws Chapter 128, Section 2 (k)

The use of plant nutrients, including fertilizers, in the Commonwealth is regulated by G.L. c. 128, § 2 (k) (as amended by Chapter 262 of the Acts of 2012, “An Act Relative to the Regulation of Plant Nutrients.”). General Laws Chapter 128, Section 2 grants authority to MDAR to regulate the application of plant nutrients, including fertilizers, in the Commonwealth, by adding to the list of the MDAR’s duties the following Subsection (k):

k. Maintain authority to regulate and enforce the registration and application of plant nutrients put on or in soil to improve the quality or quantity of plant growth, including, but not limited to, fertilizer, manure and micronutrients in the commonwealth.

In addition, G.L. c. 128, § 2 (k) authorizes the MDAR to “promulgate regulations that specify when plant nutrients may be applied and locations in which plant nutrients shall not be applied” and directs the MDAR to work in conjunction with the University of Massachusetts Amherst Extension to “ensure any regulations of the department relative to plant nutrients are consistent with the program’s published information, educational materials and other public outreach programs relative to nutrient management and fertilizer guidelines.” General Laws Chapter 128, Section 2 (k) also authorizes the MDAR to establish penalties for violations of the regulations and establishes an appeal process.

The sole authority to regulate the use and application of plant nutrients is vested in the MDAR. As authorized by G.L. c. 128, § 2 (k), the MDAR has promulgated regulations (330 CMR 31.00) that establish “limitations on the application of plant nutrients to lawns and non-agricultural turf to prevent these non-point source pollutants from entering the surface and groundwater resources of the Commonwealth of Massachusetts.” 330 CMR 31.01, “Purpose.” These regulations are comprehensive “state-wide limitations on plant nutrient applications.” Id. Where the Legislature has made a specific determination to vest regulatory authority with the MDAR, rather than cities and towns, the Town may not validly adopt (and the Attorney General may not approve) a by-law which conflicts with this legislative determination. St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire Dep’t of Springfield, 462 Mass. 120, 126 (2012) (local legislative action “is precluded...where...the purpose of State legislation would be frustrated [by a local enactment] so as to warrant an inference that the Legislature intended to preempt the field.”). Because Section 7.6 (G) (8)(e)’s regulation of the use of chemical fertilizers at solar installations is preempted, we disapprove it.

VI. The Remaining Approved By-law Provisions Must be Applied Consistent with G.L. c. 40A, § 3

Under our standard of review, we do not find that the remaining by-law provisions adopted under Article 27 conflict with state law or violate G.L. c. 40A, § 3 and we therefore approve them. However, we offer the following comments to the Town to ensure that the by-law provisions are applied consistent with the protections given to solar uses and related structures such as BESS under G.L. c. 40A, § 3, as well as the new Chapter 239 of the Acts of 2024.

A. Financial Surety

Section 7.6 (G) (6), “Abandonment or Decommissioning,” Subsection (c), “Financial Surety,” requires the proponents of a solar electric generating facility to provide a form of surety, either through an escrow account, bond or other form of surety, to cover the cost of removal of the solar facility and remediation of the landscape. General Laws Chapter 44, Section 53 requires that performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town’s general fund (and subject to future appropriation), unless the Legislature has expressly made other provisions that are applicable to such receipt. General Law c. 44, Section 53G ½ does allow the deposit of surety proceeds into a special account under certain circumstances, as follows:

Notwithstanding section 53, in a...town that provides by by-law...rule, regulation or contract for the deposit of cash, bonds, negotiable securities, sureties or other financial guarantees to secure the performance of any obligation by an applicant as a condition of a license, permit or other approval or authorization, the monies or other security received may be deposited in a special account. Such by-law...rule or regulation shall specify: (1) the type of financial guarantees required; (2) the treatment of investment earnings, if any; (3) the performance required and standards for determining satisfactory completion or default; (4) the procedures the applicant must follow to obtain a return of the monies or other security; (5) the use of monies in the account upon default; and (6) any other conditions or rules as the...town determines are reasonable to ensure compliance with the obligations. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. Monies in the special account may be expended by the authorized board, commission, department or officer, without further appropriation, to complete the work or perform the obligations, as provided in the by-law...rule or regulation. This section shall not apply to deposits or other financial surety received under section 81U of chapter 41 or other general or special law.

For the Town to deposit surety proceeds into a special account, the Town must comply with the requirements of G.L. c. 44, § 53G ½. Otherwise, surety proceeds must be deposited into the Town’s general fund pursuant to G.L. c. 44, § 53. The Town should consult with Town Counsel with any questions regarding the proper application of Section 7.6 (G) (6).

B. Land Area and Land Clearing

Section 7.6 (G) (8), “Design and Performance Standards,” Subsection (g), “Impact on Agricultural and Environmentally Sensitive Land,” provides in relevant part that “[n]o more than 50% of the total land area proposed for the solar electric field may be occupied by solar panels,

with the remainder of the land remaining as undeveloped open space left in its natural state.” In addition, Section 7.6 (G) (9), “Safety and Environmental Standards,” Subsection (b), “Land Clearing, Soil Erosion, and Habitat Impacts,” paragraph 2 provides that “[n]o less than 50% of the land parcel utilized for solar electric generating facilities shall remain forested.”

Although the by-law imposes extensive provisions limiting the land area of a solar field occupation to no more than 50% and prohibiting more than 50% of the land from being forested, based on our standard of review, we cannot conclude that these provisions conflict with Section 3. However, if these provisions are used to deny a solar installation, or otherwise applied in ways that make it impracticable or uneconomical to build solar energy systems and related structures, such application would run a serious risk of violating G.L. c. 40A, § 3. As the court stated in PLH LLC v. Town of Ware, No. 18 MISC 000648 (GHP), 2019 WL 7201712, at *3 (Mass. Land Ct. Dec. 24, 2019), *aff’d*, 102 Mass. App. Ct. 1103 (2022), “the review of the municipality conducted under the bylaw's special permit provisions must be limited and narrowly applied in a way that is not unreasonable, is not designed or employed to prohibit the use or the operation of the protected use, and exists where necessary to protect the health, safety or welfare.” The Town should consult further with Town Counsel on this issue to ensure the by-law provisions are applied consistent with G.L. c. 40A, § 3.

VII. Conclusion

We approve Article 27 because, on the record before us, we cannot conclude that the by-law provisions amount to an unreasonable regulation of solar in conflict with Section 3. However, if the provisions in Article 27 are used to deny a solar installation, or otherwise applied in ways that make it impracticable or uneconomical to build solar (or related structures such as BESS), such application would run a serious risk of violating G.L. c. 40A, § 3. See Tracer Lane II, 489 Mass. at 775. The Town should consult with Town Counsel with any questions and to ensure the by-law provisions are applied consistent with G.L. c. 40A, § 3.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Deputy Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4418

cc: Town Counsel Michele E. Randazzo