

July 15, 2022

Gregg J. Corbo
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Margaret Hurley, Esq.
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608

Re: Town of Carver Annual Town Meeting – April 12, 2022
Solar Moratorium Adopted Pursuant to Article 26

Dear Ms. Hurley:

KP Law, P.C. represents the Town of Carver (“Town”) as Town Counsel. I am writing to respectfully request that you approve the zoning bylaw amendment adopted pursuant to Article 26 at the April 12, 2022 Annual Town Meeting which will add a new section to the Town’s Zoning Bylaws adopting a temporary twelve month moratorium on the issuance of special permits for new Large Scale Ground-Mounted Solar Voltaic Installations (“Solar Installations”) or the expansion of existing installations, not including expansions that do not increase the footprint of existing installations. For the detailed reasons set forth below, the Town states that the proposed moratorium is a reasonable regulation of solar facilities that is necessary to protect public health, safety and welfare in the Town of Carver.

Background

The Town of Carver is a rural community that is heavily dependent upon agricultural land uses, particularly the use of land for the growing and harvesting of cranberries. Cranberries are grown and cultivated in wetland areas known as bogs. Cranberry bogs are not only essential for the promotion of agriculture, but they also play a vital role in the preservation of the environment and wildlife habitat and they protect the local drinking water supply.

The Town enacted a comprehensive bylaw regulating Solar Installations at the Annual Town Meeting held on December 6, 2012. The bylaw was subsequently amended in 2014, 2018 and 2019 to address certain issues that arose in connection with the original bylaw, including designating additional areas in which Solar Installations would be allowed. Under the current bylaw, as amended, Solar Installations are allowed by special permit in six (6) of the Town’s eleven (11) zoning districts, provided that such installations cannot account for more than fifteen percent (15%) of the total land area in the Green Business Park and Airport districts. Under the bylaws currently in place, Solar Installations are allowed by special permit in more than eighty-five percent (85%) of the Town’s total land area.

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Since the adoption of the bylaw, special permits have been issued for nineteen Solar Installations. There are also a number of smaller installations that do not require special permits, including a number of roof-mounted solar installations. A number of the permitted installations have been installed on land dedicated to agricultural use, including land used for cranberry bogs, and in other wetland areas. These projects have caused the removal of trees and other vegetation and have reduced the number of acres of land available for agricultural and other uses.

As a result of this new type of development, residents have raised concerns about the impact that such installations will have on the Town's groundwater supply. Residents have noted that there is a risk of groundwater contamination from the use of certain types of building materials and from installations in or near wetland resource areas. These concerns were discussed at length at the Planning Board's public hearing on March 31, 2022. The minutes from that meeting are available at:

https://www.carverma.gov/sites/g/files/vyhlf4221/f/minutes/pb_meeting_minutes_3.31.22.pdf

Discussion

Given the number of Solar Installations already permitted in the Town, Town officials believe that this is an appropriate time for a brief pause on further development. During this time, the Town intends to undertake a comprehensive study of the issues to determine whether the current bylaws appropriately balance the Town's interests in promoting the development of solar energy with its interests in protecting public health, safety and the environment.

Municipalities are permitted to enact regulations on the use of land for Solar Installations for the promotion of public health, safety and welfare as long as those regulations do not prohibit or unreasonably regulate such installations. G.L. c. 40A, §3. In evaluating the reasonableness of such regulations, courts will balance the interests to be advanced by the proposed regulation and the impact of the proposed regulation on the development of solar energy facilities. Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775 (2022).

In this matter, the proposed moratorium strikes the appropriate balance. The Town has already permitted nineteen Solar Installations and there are a number of smaller and roof-top installations already in existence. These smaller installations will not be subject to the moratorium and will continue to be allowed. In the meantime, the Town is seeking a temporary pause on the construction of new large-scale facilities so that it has the opportunity to study the effects of such facilities on public health, safety and the environment. These are important concerns, particularly for a community that is so heavily dependent on land in agricultural use. For this and other reasons, the proposed moratorium was supported by a large majority of those voting at Town Meeting, with a passing vote of 114 in favor and 34 opposed.

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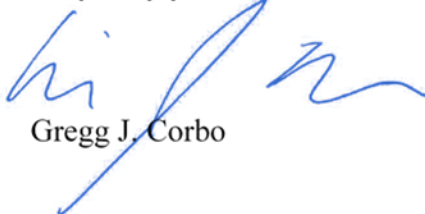
Conclusion

For the foregoing reasons, the Town of Carver respectfully requests that you approve the zoning bylaw amendment adopted pursuant to Article 26 at the April 12, 2022 Annual Town Meeting.

If you have any questions or need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "hij n", is written over the printed name "Gregg J. Corbo".

Gregg J. Corbo