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November 14, 2022

Cara Dahill, Town Clerk
Town of Carver
108 Main Street
Carver, MA 02330

RE: Carver Annual Town Meeting of April 12, 2022 - Case # 10526
Warrant Articles # 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 26, and 38 (Zoning)
Warrant Articles # 28 and 29 (General)

Dear Ms. Dahill:

Articles 26 and 38 - Under Article 26, the Town voted to amend the zoning by-laws to add a one-year prohibition on expanding existing or creating new Large-Scale Ground Mounted Solar Photovoltaic Installations (large scale solar). Under Article 38, the Town voted to place an eleven and one-half month prohibition on the use of land in the Town for Battery Storage.[1] Because both prohibitions violate G.L c. 40A, § 3, and are not grounded in articulated evidence of public health, safety or welfare concerns sufficient to justify the prohibition on solar uses, we disapprove them.

This letter briefly describes the by-laws; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we disapprove Articles 26 and 38. Our analysis is substantially influenced by the Supreme Judicial Court's decision in Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 781 (2022) (the determination whether a by-law facially violates Section 3's prohibition against unreasonable regulation of solar installations will turn in part on whether the by-law "restricts rather than promotes the legislative goal of promoting solar energy in the Commonwealth"). [2]

During our review of Articles 26 and 38, we received input urging our Office to disapprove the Articles on various grounds. The correspondence opposing the Articles alleges that they (1) impose unlawful moratoria on solar facilities and related structures; and (2) are inconsistent with G.L. c. 40A, § 3,'s prohibition against unreasonable regulation of solar facilities and related structures. See Letter to Hurley from Mason dated July 18, 2022. We also received input from Town

[1] "Battery Storage" is not defined in Article 38.

[2] In a decision issued on August 11, 2022, we approved Articles 19, 20, 28, and 29; and in a decision issued on September 19, 2022, we approved Articles 10, 11, 12, 13, 14, 15, 16, and 17.

Counsel urging our Office to approve the Articles on the basis that the moratoria are needed to protect the health, safety, and welfare in Carver because the Town has issued nineteen special permits for large scale solar resulting in the removal of trees and other vegetation and reducing the land available for agricultural and other uses. Town Counsel also reports a concern for the impact the solar installations will have on the Town's groundwater supply. See Letter to Hurley from Corbo dated July 15, 2022. Regarding the battery storage prohibition, Town Counsel asserts that a recently permitted battery storage project has prompted resident concerns and the realization that the existing by-law provision for battery storage is ambiguous: "Given the ambiguity in the Town's current bylaw and the potential significant impact that battery storage facilities may have on public health, safety and welfare, a brief pause on such development will allow the Town time to study the issue, determine what regulations are required and then present a bylaw amendment to Town Meeting." See Letter to Hurley from Corbo dated July 28, 2022, p.2. This input has informed our review of the by-law and emphasized the importance of the issues at stake. [3]

We note that our disapproval in no way implies agreement or disagreement with any policy views that may have led to the passage of the moratoria. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

I. Summary of Articles 26 and 38

Under Article 26 the Town amended the zoning by-laws to add to Section 3580.00, "Large-Scale Ground Mounted Solar Photovoltaic Installations," (large scale solar) a new Section 3580.01, "Moratorium," that imposes a one-year prohibition on the issuance of special permits for both new and expansion of existing large scale solar in the Town. The warrant Article states that during the moratorium period the Town, through the Planning Board, Select Board, and other Town officials, will: (1) review Section 3580.00 (the Town's existing solar by-law); (2) review solar by-laws adopted by other towns; (3) undertake a planning process that addresses the potential impacts solar installations have in the Town; (4) consider the long-term objective for solar installations and their impact on health, safety, and welfare of the Town; and (5) review and address the impacts of current, pending, and potential solar installations. Article 26 also states that the Town may develop a plan to mitigate future impacts of solar installations on the health, safety, welfare, and quality of life of the Town's residents, which may include future by-law amendments.

Regarding the Town's zoning for battery storage, the Town has allowed the use of "Battery Storage" since the Town's 2018 Annual Town Meeting when it voted to amend the Use Schedule to allow Battery Storage (a term not defined in the Town's zoning by-laws) by special permit in all the Town's zoning districts. See Use Regulation Schedule (Use Schedule), Section C, "Industrial." [4] Under Article 38 (a citizen-petitioned warrant article) the Town voted to amend the Use Schedule to impose an eleven and one-half month prohibition on new battery storage in the Town. The temporary

[3] None of these public health, safety, or welfare concerns (removal of trees, reduction in available agricultural land, impact on water supply) identified in Town Counsel's letters to the AGO are reflected in the Town Meeting record filed with this Office pursuant to G.L. c. 40, § 32. See pp. 6-7 below.

[4] We approved Article 9 in a decision issued on September 7, 2018, in Case # 8932.

prohibition is "effective immediately upon Town vote" and expires on March 26, 2023. [5] The warrant article states that during the moratorium period, the Town will (1) adopt new zoning by-laws for battery storage; (2) undertake a planning process that addresses the current and future impacts of battery storage facilities on Carver's residents; and (3) consider the long-term objectives for additional battery storage facilities in the Town and their impact on health, safety and welfare of the Town.

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

Our review of the by-law amendments is governed by G.L. c. 40, § 32. Pursuant to 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, 398 Mass. at 795-96. 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). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Articles 26 and 38, as amendments 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) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). 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). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (*quoting* Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, 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. Articles 26 and 38 Violate G.L c. 40A, § 3.

Because Articles 26 and 38 restrict large scale solar and related battery energy storage systems with no articulated evidence of an important municipal interest, grounded in protecting the public health, safety, or welfare, that is sufficient to outweigh the public need for solar energy systems, the moratoria conflict with G.L c. 40A, § 3. See Tracer Lane II Realty, 489 Mass. at 781.

[5] The moratorium could not be "effective immediately upon Town vote" because G.L. c. 40, § 32, requires Attorney General approval before a by-law amendment has lawful effect.

In adopting G.L. c. 40A, § 3, ("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.

Solar energy facilities and related structures have been protected under Section 3 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 codifying solar energy 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 Petrucci 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 recently reaffirmed this principle in Tracer Lane II v. City of Waltham, 489 Mass. 775 (2022). In ruling that Section 3's protections required Waltham to allow an access road to be built in a residential district 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.

Based on this framework, the Court determined that Waltham had unreasonably restricted solar energy systems by excluding large-scale solar arrays from most zoning districts and "in all but one to two percent" of the City's land area. Id. at 782. The Court acknowledged that Waltham's regulation was designed to advance the generally legitimate municipal purpose of preserving each zone's unique characteristics. Id. But the Court explained that Waltham's categorical and extensive limitation on large-scale solar arrays—a critical form of solar energy system—undermined the state policy favoring solar energy and lacked any public health, safety, or welfare justification sufficient to justify the extent of the restriction. Id. at 781-82. The regulation was therefore unreasonable and unlawful. Id. at 782.

Applying this analysis to Carver's proposed moratoria in Articles 26 and 38, we determine that the moratoria on large scale solar and battery storage violate G.L. c. 40A, § 3. The bylaw amendments propose to completely prohibit large-scale solar and battery energy storage systems (albeit for a limited time) in all districts, without any actual evidence of a public health, safety or welfare concern sufficient to justify the impact on protected solar uses.

Regarding the large-scale solar prohibition adopted under Article 26, the warrant article itself does not identify the purpose of the prohibition and there is no Planning Board report (written or verbal) detailing the need for the moratorium.[6] Article 26 states only that during the moratorium period the Town will undertake a planning process that addresses the potential impacts solar installations have in the Town. [7] The only asserted purpose or need for the moratorium is found in the following "Informational Summary" that was appended to the warrant article:

> As there has been an increase in the numbers of large-scale ground mounted solar photovoltaic installations throughout the town in recent years (defined as those with a minimum nameplate capacity of 250 kW or greater or covering 1 acre or more of land), this article would implement a 12-month hold on all new special permits or expansion of existing installations. Additionally, this would give the town officials adequate time to review Carver solar bylaws, policies, and procedures, as well as research bylaws in other communities to address the potential impacts that these solar arrays may have on the health, safety and welfare of the citizens. This moratorium will have no effect on roof mounted solar programs.

See 2022 Annual Town Meeting Warrant. Thus, at the time of the Town Meeting vote, the only articulated reason for the prohibition was the need to put a "hold" on new solar facilities because of the increase in the number of installations in the Town to identify potential impacts on health, safety, and welfare.

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[6] The Planning Board did hold the required public hearing on the proposed article and voted to recommend its adoption, but there is no written or verbal report stating the reasoning of the Planning Board. See AGO Form 7 for Article 26 with attachments and Town Meeting Minutes.

[7] It appears the Town has begun that planning process through at least four meetings of the "Solar and Battery Energy Storage Moratoria Committee" since September 13, 2022. See https://www.carverma.gov/home/solarbattery-storage-moratorium-study-committee (last visited Nov. 11, 2022).

With respect to the battery storage prohibition adopted under Article 38, the record similarly lacks any evidence regarding its purpose. As with Article 26, the warrant article itself does not identify the purpose of the prohibition, and there is no written or verbal Planning Board report to support the need for the moratorium. The warrant article contains no "Informational Summary;" the only evidence of its purpose is the text of the warrant article itself:

> The Town hereby adopts a temporary 11 ½ month moratorium to March 26, 2023, on the new use of land for Battery Storage effective immediately upon Town vote. During the moratorium period, the Town shall adopt new zoning bylaws for battery storage and undertake a planning process that addresses the current and future impacts of battery storage facilities on Carver's residents, consider the long-term objectives for additional battery storage facilities in the town and their impact on health, safety, and welfare of the town.

Given the strong statutory protections for solar installations and related structures in G.L. c. 40A, § 3, and the Tracer Lane II Court's recognition that "large-scale systems…are key to promoting solar energy in the Commonwealth," Tracer Lane II, 489 Mass at 782, it is unlikely that putting a stop (even a temporary one) on "an increase in the numbers of large-scale ground mounted solar photovoltaic installations throughout the town" would be sanctioned as a legitimate public health, safety, or welfare concern to justify the moratorium. Just as the Tracer Lane II court found Waltham's "outright ban of large-scale solar energy systems in all but one to two percent of [Waltham's] land area…is impermissible under [G.L. c. 40A, § 3, ¶ 9]," id. at 782, so too is the Town's proposed complete ban on large-scale solar and battery energy storage systems in all districts – even for a limited time – because the record reflects no evidence of public health, safety or welfare concerns sufficient to justify the bans. See also Kearsarge Walpole, LLC v. Lee, 2022 WL 4938498 (Smith, J. Oct. 4, 2022) at *6 ("[A]bsent a finding of a significant detriment to the interests of public health, safety or welfare, the town cannot prohibit a large-scale ground-mounted solar facility in a Rural Residential zone.") [8]

We recognize that Town Counsel's letters to this Office assert several public health, safety, or welfare concerns to justify the moratoria. However, even if the asserted concerns (removal of vegetation, reduction in available agricultural land, impact on water supply) are sufficient public health, safety, or welfare concerns to justify the prohibitions,[9] these concerns are not articulated or substantiated in the Town Meeting record filed with this Office. The record reflects only that the Town was concerned about the *potential* impacts of several previously permitted projects but includes

[8] Even though the term "battery storage" is not defined in the existing by-law or the proposed moratoria, battery energy storage systems qualify as "structures that facilitate the collection of solar energy" under G.L. c. 40A, § 3. G.L.c. 164, § 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." The development of energy storage systems is critical to the promotion of solar and other clean energy uses. On August 9, 2018, An Act to Advance Clean Energy, Chapter 227 of the Acts of 2018 ("Act"), was signed into law by Governor Baker. Section 20 of the Act established a 1,000 MWh energy storage target to be achieved by December 31, 2025. https://www.mass.gov/info-details/esi-goals-storage-target (last visited November 11, 2022).

[9] We make no conclusion whether these impacts, if substantial, would so qualify as sufficient public health, safety, or welfare impacts to justify the prohibitions.

no evidence of the required public health, safety, or welfare impacts sufficient to justify the prohibitions.

As the Land Court recently determined in Summit Farm Solar v. Planning Board for Town of New Braintree, 2022 WL 522438 (Speicher, J., Feb. 18, 2022), "the better, and correct view of the limits of local regulation of solar energy facilities allowed by G.L. c. 40A, § 3, is that such local regulation may not extend to prohibition except under the most extraordinary circumstances." Id. at * 10 (rejecting visual impact of solar array as a legitimate public health, safety, or welfare concern). The Town Meeting record here reflects no evidence of such extraordinary circumstances.

IV. Articles 26 and 38 Impose Unlawful Moratoria on Solar Facilities and Related Structures

In general, a town has the authority to "impose reasonable time limitations on development, at least where those restrictions are temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies." Sturges v. Chilmark, 380 Mass. 246, 252-253 (1980). At least in the context of land uses not protected by G.L. c. 40, § 3, and in the appropriate circumstances, a town's expressed need for time to undertake a planning process can qualify as a legitimate zoning purpose for a temporary moratorium. W.R. Grace, 56 Mass. App. Ct. at 569 (City's temporary moratorium on building permits in two districts was within City's authority to zone for public purposes).

But the Supreme Judicial Court's most recent decision on a land use moratorium, Zuckerman v. Hadley, 442 Mass. 511, 520-521 (2004), made clear that a municipality's authority to adopt a moratorium is limited: "Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically, as determined by the specific circumstances of each case, such [moratorium] zoning ordinances do not serve a permissible public purpose, and are therefore unconstitutional." Id., at 520-521 (citing Sturges, 380 Mass. at 257). [10]

In the solar context, the Tracer Lane II decision further clarifies the record evidence necessary to uphold any prohibitions or restriction on solar uses (including, presumably, a temporary prohibition as proposed here): "In the absence of a reasonable basis grounded in public health, safety, or welfare, such a prohibition [or restriction] is impermissible under [G.L. c. 40A, § 3]." Id. at 782.

As discussed above in Section III, the Town Meeting record filed with this Office reflects no reasonable need for the moratoria that is grounded in public health, safety, or welfare. The warrant article and Informational Summary for the solar moratorium reflect only that the moratorium was necessary to put a "hold" on new solar projects while the Town conducts a study. See 2022 Annual Town Meeting Warrant. The warrant article for the battery storage moratorium similarly points to time for study as the need for the one-year ban. While courts in other contexts have upheld temporary

[10] We have approved such temporary moratoria on a variety of land uses only where the record reflects that the proposed moratorium is for a limited period necessary for a town to conduct a legitimate planning process, as required by Sturges. However, there are no appellate level decisions analyzing whether the Sturges/Zuckerman test is the appropriate one to determine a municipality's power to adopt a temporary moratorium on solar uses and related structures that enjoy the protections of G.L. c. 40A, § 3.

moratoria on non-protected land uses based on the municipality's need for "study, reflection and decision on a subject matter of [some] complexity [,]" W.R. Grace, 56 Mass. App. Ct. at 569, Tracer Lane II makes clear that any regulation that "restricts rather than promotes the legislative goal of promoting solar energy" must have "a reasonable basis grounded in public health, safety, or welfare." Tracer Lane II, 489 Mass at 782. Here, the Town did not articulate, in the Town Meeting record, any concrete evidence why these moratoria are necessary "for purposes of growth planning generally, or resource problem solving specifically." Zuckerman, 442 Mass. at 520-21. The general stated need to put a hold on new projects simply to study potential impacts—absent any evidence of an actual project impact prompting the need for study —does not by itself qualify as "a reasonable basis grounded in public health, safety, or welfare." Tracer Lane II, 489 Mass. at 782.

V. Proper Application of Future Zoning By-laws that Regulate Battery Storage in the Town to Pending Projects Under the Energy Facilities Siting Board's Review and Future State Building Code Amendments

Although we disapprove Article 38's Battery Storage moratorium, we offer the following comments for the Town's consideration if it adopts future zoning amendments regulating Battery Storage.

A. Energy Facilities Siting Board (EFSB) Jurisdiction

There is a pending application by Cranberry Point Energy Storage (Cranberry Point) to the EFSB pursuant to G.L. c. 164, § 69J ¼, to construct a proposed 150-megawatt, 300 megawatt-hour battery energy storage system and ancillary electrical equipment to be located on a six-acre parcel of land in the Town. (See Cranberry Point Energy Storage | Mass.gov, last visited July 13, 2022). Cranberry Point received site plan review approval and a special permit from the Town that is valid through March 31, 2023. (See pb_3.26.19.pdf (carverma.gov), last visited July 14, 2022). In addition, Cranberry Point filed for a comprehensive zoning exemption from the Department of Public Utilities (DPU), indicating that pursuant to G.L. c. 40A, § 6, Cranberry Point would be required to conform with subsequent amendments of zoning bylaws unless its construction commences in 12 months. The EFSB has consolidated the zoning exemption request with EFSB's review of the project. If the Town adopts future amendments regulating Battery Storage, the Town must not apply them in a way that interferes with the jurisdiction of the EFSB to review the Cranberry Point project or any other proposed large energy facilities that are within the EFSB jurisdiction. (See https://www.mass.gov/orgs/energy-facilities-siting-board, last visited July 13, 2022).

B. Future Amendments to State Building Code

The Town should consult with Town Counsel regarding imminent amendments to the State Building Code (Building Code) that may well preempt municipal regulation of Battery Storage.

During our review of Article 38, we consulted with the state Board of Building Regulations and Standards (BBRS) and the state Division of Occupational Licensure (DOL). The BBRS and DOL confirmed that battery storage systems are regulated in the 2021 edition of the International Energy Conservation Code (IECC) which the BBRS is statutorily obligated to adopt. See e.g., Section CE262 AS and subsection CB103.7 of the International Energy Conservation Code (2021 ed.). General Laws Chapter 143, Section 94 (o) mandates the BBRS to update the Building Code in light of these IECC provisions by directing the BBRS:

> To adopt and fully integrate the latest International Energy Conservation Code and any more stringent amendments thereto as part of the state building code, in consultation with the department of energy resources. The energy provisions of the state building code shall be updated within 1 year of any revision to the International Energy Conservation Code.

Battery Storage is also regulated in Section R328.1 of the 2021 edition of the International Residential Code (IRC), which the BBRS has voted will be a core component of the next edition of the Building Code.

In October 2022, the BBRS voted to approve the 10th Edition of the Building Code (780 CMR). These amendments may be viewed at https://www.mass.gov/handbook/unofficial-tenth-edition-base-code-draft-780-cmr. There are additional steps that must be taken, including a public hearing, before 780 CMR is promulgated and published. To the extent that the Building Code is so updated to reflect the IECC and IRC provisions regarding battery storage systems, the Building Code will preempt municipal regulation in areas covered by the updated Building Code. The Legislature has charged the BBRS—not any city or town—with determining what construction methods and materials should and should not be allowed to ensure "[u]niform standards and requirements for construction and construction materials...." G.L. c. 143, § 95 (a). "In authorizing the development of the [C]ode, the Legislature has expressly stated its intention: to ensure '[u]niform standards and requirements for construction and construction materials." St. George Greek Orthodox Cathedral of Western Mass. Inc v. Fire Dept. of Springfield, 462 Mass. 120, 126 (2012) (citing G.L. c. 143, § 95(c), to invalidate Springfield ordinance that required certain type of fire protective signaling equipment where the Building Code presented four different options for such systems). Based on this express legislative goal of uniformity, the St. George court found "the Legislature [had] demonstrate[d] its express intention to preempt local action." Id. at 129. As such, the Building Code occupies the field and considering the broad preemptive scope of the Building Code, the Town should ensure any future zoning by-law is not preempted by the updated Building Code provisions to be published in the near future.

VI. Conclusion

In the circumstances presented here, we conclude that the proposed moratoria on large scale solar and battery energy storage violate G.L c. 40A, § 3,'s prohibition against unreasonable regulations of solar uses because they lack any articulated public health, safety, or welfare justification sufficient to justify the prohibitions. See Tracer Lane II, 489 Mass. at 781-82.

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. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

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cc: Town Counsel Gregg J. Corbo