July 18, 2022

SENT BY EMAIL (MARGARET.HURLEY@STATE.MA.US AND AGO@STATE.MA.US)

Margaret J. Hurley
Assistant Attorney General
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Ten Mechanic Street, Suite 301
Worcester, MA 01608

Re: Carver April 12, 2022 Town Meeting Articles 26 and 38 - Case No. 10526

Dear Ms. Hurley:

On behalf of Renewable Energy Development Partners, LLC, Klavens Law Group, P.C. respectfully submits these comments regarding the authority of the Town of Carver (the "Town") to adopt two amendments to the Town of Carver Zoning Bylaw at its April 14, 2022 Town Meeting: (1) an amendment to Section 3580.00 (the "Solar Bylaw Amendment") imposing a moratorium on large-scale ground-mounted solar photovoltaic installations, and (2) an amendment to Section 2230 (the "Battery Storage Bylaw Amendment") imposing a moratorium on battery storage systems. We ask that this Office disapprove the Solar Bylaw Amendment and the Battery Storage Bylaw Amendment on the grounds that the Town's attempted exercise of municipal authority is inconsistent with the laws of the Commonwealth, is arbitrary or unreasonable, and is substantially unrelated to the public health, safety or general welfare.

A zoning moratorium affecting uses protected under G.L. c. 40A, § 3 is invalid if inconsistent with that Section. In the case of a zoning moratorium affecting solar energy systems protected under paragraph 9 of G.L. c. 40A, § 3, the moratorium is invalid if it is not, as required by paragraph 9, "necessary to protect the public health, safety or welfare." The moratoria at issue here are demonstrably not "necessary to protect the public health, safety or welfare."

I. BACKGROUND

A. The Solar Bylaw Amendment

1. Section 3580.00 of the Zoning Bylaw

Section 3580.00 of the Town of Carver Zoning Bylaw is entitled "Large-Scale Ground Mounted Solar Photovoltaic Installations." The stated purposes of Section 3580.00 are "to promote the creation of new large-scale ground-mounted solar photovoltaic installations (LSGMSPI) … by providing *standards* for the placement, design, construction, operation, monitoring, modification and removal of such installations *that address public safety* [and] minimize impacts on scenic, natural and historic resources," and "to provide adequate financial assurance for the eventual decommissioning of such installations" (emphasis added).[1]

Under Sections 2210, 2230 and 3580.00, LSGMSPI are allowed by special permit from the Planning Board in the Town's Residential-Agricultural, Green Business Park, Industrial "A," Industrial "B," Industrial "C" and Airport Districts.[2] In addition, all LSGMSPI must "undergo site plan review prior to construction or modification by the Planning Board, prior to issuance of a building permit to ensure conformity with all applicable bylaws [*sic*]."[3]

Section 3580.00 requires an LSGMSPI proponent to satisfy numerous requirements relating to public health, safety and welfare, including by undertaking the following:

- Submission of "a plan for the operation and maintenance of the LSGMSPI, which shall include *measures for maintaining safe access to the installation* … as well as general procedures for operational maintenance of the installation";[4]
- Submission of "evidence … that the utility company that operates the electrical grid to which the installation is to be connected has been informed of the LSGMSPI owner or operator's intent to install an interconnected customer-owned generator, and *that the electrical grid can safely transmit the proposed power output of the installation*";[5]
- Compliance with Massachusetts Department of Environmental Protection regulations relating to hazardous material use and storage (including, where necessary, "impervious

---

[1] Section 3580.10 (emphasis added). "Large-scale ground-mounted solar photovoltaic installations," or "LSGMSPI," are defined as "those with a minimum nameplate capacity of 250 kW or greater or covering 1 acre or more of land." Id.

[2] Section 2230 (Use Regulation Schedule); Section 2210 (providing that "SP*" in Use Regulation Schedule means "use authorized under special permit from the Planning Board as provided under Section 5300"). Large-scale ground-mounted solar photovoltaic installations are prohibited in all of the Town's other zoning districts. See Section 2230; Section 2210 (providing that use of "N" in Use Regulation Schedule means "excluded or prohibited use").

[3] Section 3580.21.

[4] Section 3580.23 (emphasis added).

[5] Section 3580.24 (emphasis added).

containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater [*sic*]");[6]

- Coordination with the Town Fire Chief and Emergency Management Director regarding the provision of local emergency services to the installation, including the development of an emergency response plan and installation-specific training of local emergency response personnel at the LSGMSPI owner's expense;[7]
- Ensuring that herbicides are used for vegetation control "underneath the LSGMSPI … only … where it can be demonstrated that no danger is posed to groundwater supplies, or to local agricultural activities," and only after approval by the Town's Agricultural Commission and Board of Health;[8]
- Ensuring that "[a]ny and all materials used for maintenance of the LSGMSPI or other structures shall be properly disposed of and no harmful chemicals shall be used";[9] and
- Submission of an Annual Report to the Planning Board "demonstrating and certifying compliance with the Operation and Maintenance Plan and the requirements of this bylaw and [the installation's] approved site plan."[10]

2. The Solar Bylaw Amendment

The Solar Bylaw Amendment adds new Section 3580.01 to existing Section 3580.00. New Section 3580.01 provides as follows:

> **3580.01. Moratorium.** Notwithstanding any other provision of the Town of Carver Zoning Bylaws to the contrary, the Town hereby adopts a temporary

---

[6] Section 3580.26.4.

[7] Section 3580.31. Specifically, this section provides as follows:

> 3580.31. Emergency Services. The LSGMSPI owner or operator shall provide a copy of the project summary, electrical schematic, as built plans, and site plan to the Fire Chief and Emergency Management Director. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the LSGMSPI shall be clearly marked, and training required to allow emergency response personnel to *safely* shut down the LSGMSPI in event of an emergency provided at no cost to the Town as requested by the Town. The owner or operator shall identify a responsible person for public inquires throughout the life of the installation, all changes shall immediately be brought to the attention of the Town. Site access to LSGMSPI shall be conducive to emergency vehicle travel to allow for unimpeded access around the site at all times. Access requirements, not limited to gating, road widths and surfaces, etc. will be reviewed during the site plan review process, with approval being at the discretion of the Fire Chief.

Id. (emphasis added).

[8] Section 3580.33.

[9] Section 3580.34.

[10] Section 3580.43.

> moratorium on the issuance of special permits for the new use of land for Large-Scale Ground-Mounted Solar Photovoltaic Installations (hereinafter referred to as "Installations") or for the expansion of any existing Installations for a period of one (1) year from the effective date of this bylaw, provided that such moratorium shall not apply to the expansion of any existing Installation that does not increase the footprint thereof. During the moratorium period, the Planning Board, Select Board, and other Town officials shall conduct a review of Carver Zoning Bylaw 3580, review solar bylaws in other communities, undertake a planning process that addresses potential impacts of solar photovoltaic installations in Carver, consider the long-term objective for solar photovoltaic installations and their impact on health, safety, and welfare of Carver's citizenry, determine how the Town shall reasonably and thoroughly regulate and approve solar electric installations, shall review and address the impacts of current, impending and potential Installations and they may develop a plan to mitigate future impacts of such Installations on the general health, safety, welfare and quality of life of the residents of the Town of Carver, which shall include but not be limited to the presentation of a suggested bylaw amendments to a future town meeting.[11]

For Town Meeting, the following "Informational Summary" was appended to the Solar Bylaw Amendment, apparently by the Carver Select Board (which sponsored the amendment):

> 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.[12]

This "Informational Summary" constitutes the sole record for the Solar Bylaw Amendment that the Town has submitted to this Office.[13]

---

[11] April 28, 2022 certification of the April 14, 2022 Town Meeting vote on the Solar Bylaw Amendment, signed by Carver Town Clerk Cara L. Dahill (submitted to this Office as part of the Town's G.L. c. 40, § 32 bylaw filing) (the "April 28, 2022 Solar Bylaw Amendment Certification"), at 1.

[12] Id. at 1-2 (emphasis in original).

[13] If the Carver Planning Board prepared or provided a report under G.L. c. 40A, § 5, that report was not included in the Town's G.L. c. 40, § 32 bylaw filing. See G.L. c. 40A, § 5 ("No vote to adopt any such proposed ordinance or bylaw or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report."). In addition, while the "true copy" of the

B. The Battery Storage Bylaw Amendment

1. Section 2230 of the Zoning Bylaw

The Zoning Bylaw provides, in relevant part, that "[n]o structure shall be erected or used or land used *except as set forth in Section 2230, 'Use Regulation Schedule.'*"[14] According to Section 2230, "Battery Storage" is allowed by special permit from the Planning Board in all of the Town's zoning districts.[15] The Zoning Bylaw does not define the term "Battery Storage."

2. The Battery Storage Bylaw Amendment

The Battery Storage Bylaw Amendment amends Section 2230 by adding the following note to the "Battery Storage" line in the Use Regulation Schedule:

> 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.[16]

The Battery Storage Bylaw Amendment did not have an accompanying "Informational Summary" and, as noted above, if the Carver Planning Board prepared or provided a report under G.L. c. 40A, § 5, that report was not included in the Town's G.L. c. 40, § 32 bylaw filing. However, the "true copy" of the Annual Town Meeting warrant submitted as part of the Town's G.L. c. 40, § 32 bylaw filing contains a Planning Board recommendation for "favorable action" on the Battery Storage Bylaw Amendment.[17] This recommendation, which consists of one sentence without any explanation or discussion, constitutes the sole record for the Battery Storage Bylaw Amendment that the Town has submitted to this Office.

Annual Town Meeting warrant submitted to this Office as part of the Town's G.L. c. 40, § 32 bylaw filing contains certain "Planning Board Recommendations for Petition Articles," it does not contain any recommendations from the Planning Board relating to the Solar Bylaw Amendment. See 2022 Annual Town Meeting Warrant, April 12, 2022, at 61.

[14] Section 2210 (emphasis added).

[15] See Sections 2210 and 2230.

[16] April 28, 2022 certification of the April 12, 2022 Town Meeting vote on the Battery Storage Bylaw Amendment, signed by Carver Town Clerk Cara L. Dahill (submitted to this Office as part of the Town's G.L. c. 40, § 32 bylaw filing) (the "April 28, 2022 Battery Storage Bylaw Amendment Certification"), at 1.

[17] See 2022 Annual Town Meeting Warrant, April 12, 2022, at 61 ("Planning Board recommends favorable action on Article 38. 5-0-0") (emphasis in original).

II. STANDARD OF REVIEW.

When reviewing a zoning enactment, the Attorney General must determine whether the enactment "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). See also Amherst v. Attorney General, 398 Mass. 793, 796 (1986) (holding that, in order to disapprove any portion of bylaw, Attorney General must cite inconsistency between bylaw and state constitution or laws). The applicable standard of review is equivalent to that of a court performing a facial review. See, e.g., MLU-9898, at 2 (Feb. 23, 2021); MLU-7444, at 2 (May 29, 2015).

III. THE SOLAR BYLAW AMENDMENT IS INVALID UNDER G.L. C. 40A, § 3, ¶ 9 AND MUST BE DISAPPROVED AND DELETED FROM THE ZONING BYLAW.

While a zoning moratorium can be permissible for the purpose of enabling a municipality to engage in planning, see, e.g., Zuckerman v. Town of Hadley, 442 Mass. 511, 518 (2004), the Supreme Judicial Court has also made it clear that a moratorium bylaw, just like any zoning bylaw, is subject to the limitations of G.L. c. 40A, § 3.[18] G.L. c. 40A, § 3, ¶ 9 ("Section 3") in particular forbids towns from adopting zoning bylaws that "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." For the reasons outlined below, the Solar Bylaw Amendment violates Section 3's prohibition against the unreasonable regulation of solar uses and is an impermissible moratorium that should be disapproved.

---

[18] In Sturges v. Chilmark, the Court expressly stated that whatever authority a municipality has under G.L. c. 40A to adopt a zoning bylaw that imposes a moratorium, that authority does not override the protection afforded by G.L. c. 40A, § 3:

> A Massachusetts city or town has the authority to adopt zoning measures which control orderly growth. We hold that a municipality may impose reasonable time limitations on and adopted to provide controlled development while the municipality engages in comprehensive planning studies. The purposes of The Zoning Act, inserted by St. 1975, c. 808, support such limitations. A municipality may enact zoning provisions to deal with a variety of matters, including fire safety; density of population and intensity of use; the adequate provision of water, water supply, and sewerage; the conservation of natural resources; and the prevention of pollution of the environment. See St. 1975, c. 808, Section 2A. From the wide scope of the purposes of The Zoning Act, it is apparent that the Legislature intended to permit cities and towns to adopt any and all zoning provisions which are constitutionally permissible, *subject, however, to limitations expressly stated in that act (see, e.g., G. L. c. 40A, Section 3)* or in other controlling legislation.

380 Mass. 246, 252-253 (1980) (emphasis added). See also Zuckerman, 442 Mass. at 515.

Massachusetts courts—including, most significantly, the Supreme Judicial Court in its recent decision in Tracer Lane II Realty, LLC v. City of Waltham ("Tracer Lane")—have determined whether a particular zoning bylaw conforms to or constitutes an invalid solar use regulation in violation of Section 3 by "weighing the burdens that [the] regulation imposes on solar uses against justifications for the regulation based on legitimate municipal objectives grounded in the protection of health, safety, or welfare."[19] The Court's recent Tracer Lane decision emphasizes the two critical aspects of this balancing test. First, according to the Court, "[w]hen interpreting [Section 3]," one must "keep in mind that it was enacted to help promote solar energy generation throughout the Commonwealth."[20] Second, with this "legislative goal of promoting solar energy" in mind, one must review the record in support of the restriction in question in order to ascertain whether the restriction is "necessary to protect the public health, safety or welfare," as required by Section 3.[21]

Here, the Solar Bylaw Amendment cannot pass muster under Section 3. Rather, it amounts to an invalid regulation of solar uses in violation of Section 3 because the record reflects no

---

[19] MLU-10230, at 6 (Mar. 21, 2022). As this Office has noted (id.):

> This understanding of Section 3's solar provision reflects, as the Land Court observed in another case, that "[t]he purpose of the solar energy facility protections of G.L. c. 40A, § 3, is 'to require some 'standing down' by municipalities to encourage and protect solar facilities - a use that might be seen as unwelcome in municipalities at a local level - by abutters, neighbors, and by town government." Northbridge McQuade, LLC v. Northbridge Zoning Bd. of Appeals, Mass. Land Ct., No. 18 Misc 000519 * 2 (June 17, 2019) (Piper, C.J.) (determining that before towns may regulate or prohibit solar installations, there must be an analysis of the need for such prohibition or regulation against the legislatively determined public interest in allowing solar energy installation).

Id. See also Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 779, 781-782 (2022).

[20] 489 Mass. at 779; see also id. at 781 (noting that "standalone, large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth") (quoting Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap (Dec. 2020)); Brief of Amicus Curiae Commonwealth of Massachusetts in Support of Neither Party and Affirmance, Tracer Lane II Realty, LLC v. City of Waltham, No. SJC-13195 (Feb. 14, 2022), at 31-32 (asserting that "[t]he critical backdrop" for a court's "analysis to determine whether a zoning ordinance or bylaw 'unreasonably regulates' solar energy in violation of [Section 3]" is "the Legislature's policy, announced by [St. 1985, c. 637, §§ 7, 8] and refined by other climate and clean energy statutes that have followed it, directing the widespread and equitable development of solar energy across Massachusetts"); id. at 32-36 (explaining how "State Policy Requires Substantial Solar Energy Development Across Massachusetts").

[21] Id. at 781-782. In Tracer Lane, the Court analyzed the legality of an effort by the City of Waltham to restrict large-scale ground-mounted solar energy systems. It determined that there was "[n]othing in the record" to indicate that the restriction advanced by Waltham was "'necessary to protect the public health, safety or welfare.'" As a result, it concluded that "[i]n the absence of a reasonable basis grounded in public health, safety, or welfare," the restriction was "impermissible" under Section 3. Id.

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.[22] The only "evidence" submitted in support of the Solar Bylaw Amendment in the Town's G.L. c. 40, § 32 bylaw filing is the Informational Summary's bald statement that "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)."[23] This, without more, is insufficient to meet Section 3's requirement that a municipality demonstrate, by providing clear and legitimate justifications, that its regulation of solar energy systems is "necessary to protect the public health, safety or welfare."[24]

Moreover, the Solar Bylaw Amendment is an invalid solar use regulation in violation of Section 3 because the imposition of a one-year prohibition on special permits for LSGMPSIs in order to allow the review of an existing zoning bylaw that already comprehensively regulates solar energy systems cannot possibly be "necessary" to advancing public health, safety or welfare objectives under Tracer Lane. As noted in Section I.A.1 of this letter, prior to the adoption of the Solar Bylaw Amendment, Section 3580.00 already required LSGMSPI proponents to meet a broad range of requirements designed to protect public health, safety and welfare. In light of this, it is unclear why a one-year hold on all new LSGMPSI is "necessary" to protect the health, safety or welfare of the Town.

We recognize that this Office has approved temporary moratoria on solar energy facilities in several cases. However, the bylaw filing records in those cases were qualitatively different than the record is here. Specifically, those records (1) expressly stated that the town's existing zoning bylaw had "proved inadequate for … mitigating [the] negative effects" of solar energy facilities; (2) expressly stated that the "rapid growth" of, or "unexpected high demand" for, solar energy facilities in the town had "created *novel* legal, planning, economic, and public safety issues" and "*new* and complex land use issues" that required the "review the Town's current regulations for this type of solar use"; (3) clearly identified a number of specific issues and concerns to be addressed during the proposed planning process; or (4) included an G.L. c. 40A, § 5 Planning

---

[22] See MLU-10230, at 3; see also Tracer Lane, 489 Mass. at 779, 781-782.

[23] April 28, 2022 Solar Bylaw Amendment Certification, at 1.

[24] The Informational Summary further states that "[a]dditionally, this [Solar Bylaw Amendment] 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." To the extent that this statement is intended as evidence that the Solar Bylaw Amendment is "necessary to protect the public health, safety or welfare" (we would contend that it is not so intended), it improperly puts the cart before the horse—it relies on the fact that the Solar Bylaw Amendment will give the Town time to review its existing zoning bylaw instead of, as Section 3 requires, first specifically identifying the public health, safety and welfare needs that could authorize the adoption of the Solar Bylaw Amendment in order to enable such a review.

Board report that did the foregoing.[25] The record for the Solar Bylaw Amendment is simply the Informational Summary statement—unadorned with any of the explanations or additional detail or discussion described in (1) through (3) above—that "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 is not sufficient to meet the standards for imposing a valid moratorium on a non-Section 3-protected use, let alone to satisfy Section 3.[26]

In addition, we note that this Office approved these temporary solar moratoria before the Supreme Judicial Court's recent decision in Tracer Lane. Now, after Tracer Lane, even this Office has expressly acknowledged that a municipality may not have the authority to impose a zoning moratorium on a land use protected under G.L. c. 40A, § 3, and in particular, under Section 3.[27] Based on the foregoing, we contend that at least in this case, where there is an all but nonexistent record regarding whether the solar restriction in question is "necessary to protect the public health, safety or welfare," and where there is an existing zoning bylaw that already comprehensively regulates solar energy systems, the Solar Bylaw Amendment is an unreasonable regulation of solar uses in violation of Section 3.

---

[25] See MLU-9979 (Mar. 30, 2021) (Spencer) (existing zoning bylaw inadequate; number of specific issues and concerns identified); MLU-9608, at 4-5 (Dec, 10, 2019) (Blandford) (existing zoning bylaw inadequate; "unexpected high demand" for solar energy facilities created "novel legal, planning and economic issues"); MLU-9598, at 4 (Nov. 4, 2019) (Athol) ("rapid growth" of solar energy facilities in town "created novel legal, planning, economic, and public safety issues" and "new and complex land use issues") (emphasis added); MLU-9568, at 3 (Nov. 14, 2019) (Oakham) (G.L. c. 40A, § 5 Planning Board report; novel legal, planning, economic, and public safety issues"; number of specific issues and concerns identified); MLU-9447, at 3 (Nov. 13, 2019) (Ware) ("new and complex land use issues").

[26] A town may adopt a moratorium or other time-based restriction on a non-Section 3-protected use as long as (1) the moratorium or restriction is "'temporary and adopted to provide controlled development while the municipality engages in comprehensive planning studies,'" and (2) the supporting record sufficiently "reflects that the moratorium is for a limited period necessary for a town to conduct a legitimate planning process, as required by Sturges." MLU-10230, at 7 (quoting Sturges, 380 Mass. at 252-253). Here, the record in support of the Solar Bylaw Amendment is grossly insufficient to serve this required purpose.

[27] See MLU-10409, at 6 (May 17, 2022) (finding that "whatever a municipality's authority may be to adopt a temporary moratorium affecting a Section 3 protected use," temporary moratorium on all battery energy storage systems "has a legitimate sweep separate and apart from any impact on protected solar uses"); see also id. at 5 (determining that "the Town cannot apply the moratorium in a way that could interfere with any of the potentially applicable protections in G.L. c. 40A, § 3").

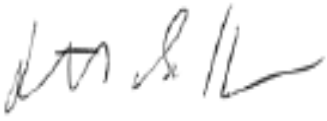
IV. THE BATTERY STORAGE BYLAW AMENDMENT IS INVALID UNDER SECTION 3 TO THE EXTENT IT OPERATES AS A MORATORIUM ON SOLAR ENERGY SYSTEMS, AND MUST BE DISAPPROVED AND DELETED FROM THE ZONING BYLAW.

Solar energy systems are protected by Section 3 regardless of whether those systems include one set of components or another. For example, a solar energy system may include fixed tilt or solar tracking panels, and conventional racking systems or special racking systems designed for agrivoltaic projects. Such a system may similarly include or not include components that allow for storage and delayed discharge of solar energy. To the extent that the Battery Storage Bylaw Amendment applies to solar energy systems that include battery storage components, it is an unreasonable regulation of solar uses in violation of Section 3 and must be disapproved.[28] More egregious is that it is impossible to know whether the Battery Storage Bylaw Amendment is intended to apply to solar plus storage facilities, because the Zoning Bylaw lacked a definition of "Battery Storage" prior to its adoption, and the Amendment does not provide one.

For the reasons discussed herein, the Solar Bylaw Amendment and the Battery Storage Bylaw Amendment are each procedurally defective, inconsistent with the laws or Constitution of the Commonwealth, arbitrary or unreasonable, and substantially unrelated to the public health, safety or general welfare. We therefore respectfully request that you disapprove and delete each of them.

Thank you for your attention to these comments.

Elizabeth F. Mason



Jonathan S. Klavens

[28] Id. at 5.