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April 22, 2024

Lisa Johnson, Town Clerk
Town of Wareham
54 Marion Road
Wareham, MA 02571

Re: Wareham Annual Town Meeting of October 23, 2023 – Case # 11191
Warrant Articles # 18, 19, 20, 21, 22, 23 and 24 (Zoning)
Warrant Articles # 8 and 27 (General) [1]

Dear Ms. Johnson:

Articles 8, 18, 19, 20, 22, and 23 - We approve Articles 8, 18, 19, 20, 22 and 23 from the October 23, 2023 Wareham Annual Town Meeting. Our comments regarding Article 8 are provided below.

Article 21 - We approve Article 21 except for the text imposing a three-year prohibition on repetitive appeals or applications following an unfavorable decision, that we disapprove because it conflicts with G.L. c. 40A, § 16, as explained below.

Article 24 - We approve Article 24 except for the provisions in Section 597.10, "Purpose," Section 597.20, "Applicability," and Section 320, "Table of Principal Uses," that define battery energy storage systems as those systems "that facilitate the collection of solar energy in connection with Large-Scale Ground-Mounted Solar Photovoltaic Installations," that we disapprove because these provisions result in a complete prohibition on principal use battery energy storage systems or battery energy storage systems that are not in connection with solar installations, as explained below.

Article 8 - Under Article 8 the Town amended the general by-laws, Division XIII, Article 1, "Waterways Rules," to make certain amendments. We approve the amendments adopted under Article 8 and incorporate by reference our previous comments in Case # 10785. As discussed in our decision in Case # 10785, G.L. c. 90B, §§ 11 and 15, authorize towns to adopt by-laws

[1] In a decision issued January 22, 2024, we approved Article 27 and by agreement with Town Counsel as authorized by G.L. c. 40, § 32, we extended the deadline for our review of Articles 8, 18, 19, 20, 21, 22, 23 and 24 for 45-days until March 8, 2024. On March 5, 2024, by agreement with Town Counsel, we extended the deadline for our decision on these articles for an additional 45-days until April 22, 2024.

regulating activities or vessels on town waters only if the by-law does not conflict with the provisions of G.L. c. 90B and the by-law is approved by the Director of Office of Law Enforcement (OLE) within the Executive Office of Energy and Environmental Affairs.[2, 3] The Town should consult with Town Counsel to determine if the amendments adopted under Article 8 require the approval of OLE.

Article 21 - Under Article 21 the Town amended the zoning by-laws, Article 14, "Zoning Administration and Enforcement," to "clarify the administrative process for land use permitting," by adopting new text. Article 14 imposes requirements related to project review fees, performance guarantees; appeals; repetitive applications; project administration including site preparation and site inspections; and enforcement of violations.

We approve Article 21, except for the text in Section 1430.1 imposing a three-year prohibition on repetitive appeals or applications following an unfavorable decision. We disapprove this text because it conflicts with G.L. c. 40A, § 16, that imposes only a two-year prohibition in this circumstance. We approve the remainder of the amendments adopted under Article 21 and offer comments for the Town's consideration on certain of these amendments.

I. Disapproved Text

Section 1430, "Repetitive Appeal or Application - Final Unfavorable Decision," Subsection 1430.1, "Three (3) year restriction," relates to "Land Use Permits," and imposes a three-year waiting period before refiling an appeal, application or petition for a Land Use Permit after unfavorable action unless certain requirements are met, as follows, with emphasis added:

> No appeal, application or petition for a Land Use Permit that has been unfavorably and finally acted upon by the respective Permit Granting Authority shall be acted favorably upon by the respective board for a period of **three (3)** years after the date of the final unfavorable action unless upon a properly noticed public hearing, both of the following two conditions are met:
>
> 1. All but one member of the Permit Granting Authority shall vote their consent to the refiling of the subject appeal, application or petition within the **three (3)** year period
>
> 2. The applicable Permit Granting Authority finds that there are specific and material changes to the conditions upon which the previous unfavorable action was based and describe those changes in its record of the meeting

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[2] Sections 11 and 15 refer to the "director," defined in Section 1 as "the director of the division of law enforcement of the department of fisheries, wildlife and environmental law enforcement." However, the Division of Law Enforcement is now the Office of Law Enforcement within the Executive Office of Energy and Environmental Affairs. See M.G.L. c. 21A, §§ 8, 10A, and Chapter 41 of the Acts of 2003, Section 1(a) (4).

[3] The Director of the OLE's contact information is: Massachusetts Environmental Police Headquarters, 251 Causeway St., Suite 101, Boston, MA 02114.

We disapprove and delete the text imposing a three-year waiting period as shown above in bold and underline, because the three-year period conflicts with G.L. c. 40A, § 16 that imposes a two-year period on repetitive petitions, as follows (with emphasis added):

> No appeal, application or petition which has been unfavorably and finally acted upon by the special permit granting or permit granting authority shall be acted favorably upon within two years after the date of final unfavorable action unless said special permit granting authority or permit granting authority finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the planning board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Because Section 1430.1 of the by-law imposes a three-year waiting period following unfavorable action rather than the two-year waiting period imposed by G.L. c. 40A, § 16, the by-law text conflicts with G.L. c. 40A, § 16 and we disapprove it for that reason. The Town should consult with Town Counsel on the proper application of Section 1430.1 to ensure the remaining approved text is applied consistent with G.L. c. 40A, § 16.

II. Comments on Certain Approved Provisions

1. Section 1412 – Performance Guaranty

Section 1412, "Land Use - Performance Guaranty," authorizes the permit granting authority, as a condition for granting a special permit, approval of site plan, or approval of a subdivision, to require a performance guarantee to ensure satisfactory construction and compliance with any permit or approval conditions. Section 1412.1. The by-law establishes a process for reducing the amount of security and for releasing the security. Sections 1412.3 and 1412.4.

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 performance guaranty funds or 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 1412.

2. Section 1442 – Site Inspection Program

Section 1442 requires that approved land use applications shall be subject to site inspections and states that, as a condition of a permit, the applicant "shall provide the Town with a 'Site Access Certificate' specifying that the Permit Granting Authority and its representatives will have unlimited access to the Applicant's land and property for the purpose of inspecting the sitework." Sections 1442.1 and 1442.2. Section 1442.1 authorizes the Permit Granting Authority to adopt rules and regulations to implement the site inspection program, including fees required to offset the cost of the inspection services charged to the applicant. Any rules or regulations adopted by the Permit Granting Authority must be consistent with state law. See American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006) ("A town may not promulgate a regulation that is inconsistent with State law.") The Town should discuss with Town Counsel any proposed rules and regulations adopted pursuant to Section 1442.1 to ensure that they comply with state law.

Article 24 - Under Article 24 the Town amended the zoning by-laws, Article 5, "Supplemental Regulations," to add a new Section 597, "Battery Energy Storage Systems" (BESS). The by-law provides as its purpose to impose regulations "for the installation and use of battery energy storage systems that facilitate the collection of solar energy in connection with Large-Scale Ground-Mounted Solar Photovoltaic Installations." Section 597.10, "Purpose." In addition, the Town amended Section 320, "Table of Principal Uses" (Table) to add two new rows related to solar and BESS uses.

Sections 597.10, 597.20 and the Table (Section 320) refer to BESS in connection with Large-Scale Ground-Mounted Solar Photovoltaic Installations (large-scale solar installations). We disapprove the provisions (shown below in bold and underline) that define a BESS as only those systems in connection with a large-scale solar installation, because this definition amounts to a complete prohibition on BESS as a principal use or BESS not in connection with a solar installation, and therefore conflicts with the solar protections in G.L. c. 40A, § 3, as analyzed by

the Supreme Judicial Court in Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 779, 781 (2022) (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].") [4]

We emphasize that our decision in no way implies any agreement or disagreement with the policy views that may have led to the passage of the by-law. 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)

In this decision we summarize the by-law amendments; discuss the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explain why, even under that limited standard of review, we disapprove portions of the amendments adopted under Article 24.

I. Summary of Article 24

Under Article 24 the Town amended the zoning by-laws, Article 5, "Supplemental Regulations," to add a new Section 597, "Battery Energy Storage Systems," that regulates BESS installed in connection with large-scale solar installations.[5] BESS require a special permit with site plan approval. Section 597.40. The new Section 597 imposes requirements on BESS including requirements related to utility connections; signage; lighting; vegetation and tree-cutting; setbacks; fencing; screening and visibility; noise; and decommissioning. Section 597.40. The by-law also imposes requirements related to the site plan application including requirements for a commissioning plan; advance monitoring system; fire safety compliance plan; and emergency operations plan. Section 597.60. Finally, the by-law requires certain safety requirements related to system certifications and site access (Section 597.80); provisions related to abandonment (Section 597.90) and includes definitions of terms used in the by-law (Section 597.95).

Under Article 24, the Town also amended Section 320, "Table of Principal Uses," to add rows for "Large-Scale Ground-Mounted Solar Photovoltaic Installations" and "Battery energy

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[4] This Office has disapproved zoning by-laws in several other Towns that have sought to prohibit BESS as a principal use, including in the Town of Wareham. See the Attorney General's decisions issued to the following Towns: Leyden (issued on April 16, 2024 in Case # 10919); Sherborn (issued on April 4, 2024 in Case # 10899); Hubbardston (issued on December 19, 2023 in Case # 10663); Pelham (issued on December 4, 2023 in Case # 11057); Shutesbury (issued on November 16, 2023 in Case # 10856); Wareham (issued September 19, 2023 in Case # 10603); Spencer (issued on May 30, 2023 in Case # 10804); Medway (issued on May 17, 2023 in Case # 10779); and Wendell (issued on March 1, 2023 in Case # 10721). These decisions can be found at www.mass.gov/ago/munilaw (decision lookup link).

[5] Section 597.95, "Definitions," defines terms used in the by-law but does not include the term "Battery Energy Storage System." The Town should consult with Town Counsel to determine if the by-law should be amended at a future Town Meeting to address this issue.

storage in connection with solar energy facilities zoning" that allows these uses by special permit and site plan review (SPP and SPR) in the Residence 130 (R130), Residence 60 (R60), Strip Commercial (CS), General Commercial (CG), Planned Commercial (CP) and Neighborhood Commercial (CN) districts and prohibits these uses in the remaining districts.

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

Our review of Article 24 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).

Article 24, 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 Protection Granted to Solar Installations and Related Structures by G.L. c. 40A § 3

Solar energy facilities and related structures 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 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 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 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. A Complete Prohibition on Battery Energy Storage Systems Violates G.L. c. 40A, § 3

Sections 597.10 and 597.20 define a BESS in connection with large-scale solar installations, as follows (with emphasis added):

> Section 597.10 Purpose. The purpose of this Section is to advance and protect the public health, safety, welfare, and quality of life by creating regulations for the installation and use of battery energy storage systems **that facilitate the collection of solar energy in connection with Large-Scale Ground-Mounted Solar Photovoltaic Installations. All references to battery energy storage**

systems in this section relate to such systems designed and to be installed in connection with Large-Scale Ground-Mounted Solar Photovoltaic Installation. This section is intended:...

Section 597.20. Applicability

1. The requirements of this bylaw shall apply to battery energy storage systems **at Large-Scale Ground-Mounted Solar Photovoltaic Installation** permitted, installed, decommissioned or modified after the effective date of this bylaw

Section 320, "Table of Principal Uses" adds two new rows under "Utility" related to large-scale solar installations and BESS as follows (with emphasis added):

PRINCIPAL USE	R130	R60	R43	R30	MR30	WV1	WV2	WV1R
Utility								
Large-scale ground-mounted Solar Photovoltaic Installations	SPR, SPP	SPR, SPP	N	N	N	N	N	N
Battery Energy storage **in connection with solar energy** facilities zoning	SPR, SPP	SPR, SPP	N	N	N	N	N	N

PRINCIPAL USE	OV1	OV2	CS	CG	CP	CN	MAR	INS	IND
Utility									
Large-scale ground-mounted Solar Photovoltaic Installations	N	N	SPR, SPP	SPR, SPP	SPR, SPP	SPR, SPP	N	N	N
Battery Energy storage **in connection with solar energy** facilities zoning	N	N	SPR, SPP	SPR, SPP	SPR, SPP	SPR, SPP	N	N	N

We disapprove the text in Sections 597.10, 597.20 and 320 (Table), shown above in bold and underline, that defines a BESS as only those systems used in connection with a large-scale solar installation, because these provisions amount to a complete prohibition of BESS as a principal use or BESS not in connection with large-scale solar installations, and therefore violates G.L. 40A, § 3.[6] See Tracer Lane II, 489 Mass. at 782 (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].")

[6] The Town previously attempted to limit BESS to only those accessory to a solar installation and this Office disapproved that provision because it resulted in a prohibition of BESS as a principal use. See Decision issued to the Town on September 19, 2023 in Case # 10603 (disapproving the limitation on battery energy storage systems in Section 595.1 (15) that provided "Battery storage systems may be included in a project only when accessory to the PV array collection system utilized for solar power generated as part of the approved project" because that provision amounted to a complete ban on principal use BESS in all districts.)

By statute, 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."[7] 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).

Applying the G.L. c. 40A, § 3 analysis to the by-law amendments adopted under Article 24, we determine that the prohibition of the principal use of BESS (or BESS not in connection with a solar installation) in every zoning district violates G.L. c. 40A, § 3. The Town provides no justification for these prohibitions. Given the strong statutory protections for solar installations and related structures such as BESS in G.L. c. 40A, § 3, and the Tracer Lane II court's recognition that large-scale solar and related structures "are key to promoting solar energy in the Commonwealth," Tracer Lane II, 489 Mass at 782, an outright ban on principal use BESS (or BESS not in connection with a solar installation) in all districts is impermissible without record evidence of a legitimate public health, safety, or welfare concern necessary to justify the prohibition.

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 ban on principal use BESS or BESS not in connection with a solar installation in all districts because the record reflects no evidence of public health, safety or welfare concerns that can only be satisfied by this extreme limitation. See 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.")

Section 597 regulates BESS including requiring a special permit with site plan approval and imposing extensive requirements related to setbacks, fencing, decommissioning, and fire safety. However, the Town provides no justification for defining (and therefore limiting) a BESS to only those in connection with large-scale solar installations or explain why these extensive regulations cannot be applied to all BESS. In short, the by-law does not articulate any evidence of public health, safety or welfare concerns that can only be satisfied by a complete prohibition on BESS as a principal use or BESS not in connection with a large-scale solar installation. As the Land

[7] We note that 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. The Act also required DOER to set targets for electric companies to procure energy dispatched from battery energy storage systems. https://www.mass.gov/info-details/esi-goals-storage-target (last visited November 28, 2023).

Court 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). Because the prohibition on principal use BESS or BESS not in connection with a large-scale solar installation in Sections 597.10, 597.20 and the Table (Section 320), conflicts with the solar protections in Section 3, we disapprove these provisions, as shown above in bold and underline.

We approve the remaining provisions in Section 597 regulating BESS. However, the Town must ensure that the by-law is applied consistent with the protections granted to solar uses and related structures (including BESS) in G.L. c. 40A, § 3. If the by-law provisions are used to deny a BESS, 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. See Tracer Lane II, 489 Mass. at 781 (Waltham's prohibition on solar energy systems in all but one to two percent of its land area violates the solar energy provisions of G.L. c. 40A, § 3.)

V. Conclusion

We approve the amendments adopted under Article 24 except for the portion of the provisions in Sections 597.10, 597.20 and the Table (Section 320), shown above in bold and underline, that we disapprove because they conflict with G.L. c. 40A, § 3. The Town should consult with Town Counsel with any questions.

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,

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cc: Town Counsel Richard Bowen