ANDREA JOY CAMPBELL
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

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

October 30, 2024

Amanda Lynch, Town Clerk
Town of Northfield
69 Main Street
Northfield, MA 01360

Re: Northfield Annual Town Meeting of May 6, 2024 -- Case # 11346
Warrant Articles # 26 and 27 (Zoning)

Dear Ms. Lynch:

Articles 26 and 27 – Under Article 26 the Town voted to add a definition for the term "Battery Energy storage facility" and add a new Section 200-10.4, "Temporary Moratorium" that imposes a moratorium on the use of land or structures for Battery Energy Storage Systems as a principal use through "August, 2025 or the date on which the Town adopts amendments to the Zoning Bylaw concerning Battery Energy Storage Systems as a principal use, whichever occurs earlier." Under Article 27 the Town voted to add a new Section 9.9, "Temporary Moratorium on the Permitting and Construction of Large-Scale Industrial Ground-Mounted Solar Photovoltaic Systems including so called 'Dual-Use Agri-Voltaics," that imposes a moratorium on the issuance of special permits and building permits for the construction of Large-Scale Industrial Ground-Mounted Solar Photovoltaic Systems including Dual-Use Agri-Voltaics ("agrivoltaics") until August 30, 2025.

As explained below, we disapprove Section 200-10.4 and Section 9.9 because both moratoria violate G.L. c. 40A, § 3, and are not grounded in articulated evidence of public health, safety or welfare concerns sufficient to justify the moratoria.[1] However, we approve the remaining portion of Article 26 amending the definitions section of the zoning by-laws to add a new definition of "Battery Energy storage facility."

[1] We have previously disapproved moratoria of solar or BESS uses. See decisions issued to the Towns of: Ware on March 15, 2023 in Case # 10725 and Carver on November 14, 2022 in Case # 10526. In addition, we have disapproved zoning by-laws that prohibit "stand alone" or "independent" BESS. See decisions issued to the Towns of Wareham on April 22, 2024 in Case # 11191; Leyden on April 16, 2024 in Case # 10919; Pelham on December 4, 2023 in Case # 11057; Spencer on May 30, 2023 in Case # 10804; and Wendell on March 1, 2023 in Case # 10721.

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 Section 200-10.4 adopted under Article 26 and Section 9.9 adopted under Article 27.[2]

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"). 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 27

A. Article 26 – Battery Energy Storage System Moratorium

Under Article 26 the Town voted to adopt two amendments to the zoning by-laws. First, to amend the Town's definitions section by adding a new definition for "Battery Energy storage facility" that provides as follows (capitalization in original):

> A series of STRUCTURES or BUILDINGS HOUSING batteries and related equipment designed to store electrical energy for periodic resale to the wholesale energy market. This includes all accessory equipment necessary for energy storage, including, but not limited to, inverters, transformers, cooling equipment, switching gear, metering equipment[.]

Second, the Town adopted a new Section 100-10.4, "Temporary Moratorium," that prohibits the use of land or structures for Battery Energy Storage Systems (BESS) as a principal use through August of 2025, in relevant part as follows (capitalization in original):

> …the Town hereby adopts a temporary moratorium on the use of land or structures for Battery Energy Storage Systems as a principal use. The moratorium shall be in effect through August, 2025, or the date on which the Town adopts amendments to the Zoning Bylaw concerning Battery Energy Storage Systems as a principal use, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to study, review, analyze and address what revisions to the Zoning Bylaw relative to Battery Energy Storage Systems as a principal use are needed or desirable to allow for and regulate such use

[2] During the course of our review we received correspondence from a resident of Northfield and an attorney representing a solar development both urging our disapproval of Article 27. We appreciate this correspondence as it has aided our review.

consistent with protecting the Town's environmental, HISTORICAL AND CULTURAL resources and furthering its planning goals.

Section A, "Temporary Moratorium."

Section 200-10.4, states that the use of independent BESS to store energy produced by solar facilities and non-solar facilities has "recently expanded beyond expectations, and the Town's current bylaw contains no regulation of such facilities when those facilities are not accessory to a permitted solar photovoltaic generating installation." In support of the moratorium, Section 200-10.4 states that independent BESS "raise significant and evolving environmental and planning issues for the Town, thereby creating an urgent need to adopt regulation addressing this use. In addition, the law concerning the ability of municipalities to regulate battery energy storage systems serving solar energy facilities is rapidly evolving." Further, Section 200-10.4 states (capitalization in original):

> The Town needs time to consider and study the future implications and impact of these facilities upon the Town as a whole, and on the Town's current and future planning goals. Imposition of a temporary moratorium on Battery Energy Storage Systems as a principal use will allow sufficient time to assess these issues and amend the Zoning Bylaw to address the impact of these facilities on the Town's environmental, HISTORICAL and CULTURAL resources and its planning goals.

Article 26 was proposed by the Select Board (see Attorney General's By-law Submission Form 7, line 1) and according to the warrant "the Planning Board voted unanimously in favor to recommend this article to Town Meeting." The Town's by-law submission filing did not provide any additional information to this Office regarding Article 26.

B. Article 27 – Large-Scale Industrial Ground-Mounted Solar Photovoltaic Systems (including agrivoltaics) Moratorium

Under Article 27 the Town voted to amend the zoning by-laws by adding a new Article 9.9, "Temporary Moratorium on the Permitting and Construction of Large-Scale Industrial Ground-Mounted Solar Photovoltaic Systems including so called 'Dual-Use/Agri-Voltaics,'" ("large-scale solar") that prohibits the issuance of a special permit or building permit for the construction of large-scale solar, including agrivoltaics, through August 30, 2025, in relevant part as follows (capitalization in original):

> No Special Permits or Building Permits shall be issued for the construction of Large Scale Industrial Ground-Mounted Solar Photovoltaic Systems including 'Dual-use/Agri-Voltaics' until the date of August 30, 2025. Solar voltaic projects exempt from this moratorium shall include any project that is allowed by right in the existing solar overlay district; or solar projects for farms, the farming activities and the attached residential structures, commercial properties, businesses, municipal properties, residential properties, churches and nonprofits equal to or less than 200% of the documented average annual use, provided that no ground mounted solar project be sited in lands protected by the Massachusetts

> Wetlands Protection Act, or located in BioMap 3 Critical Natural Landscape, Core Habitat, Important Habitat, or Priority Habitat, or protected open space, or Native American cultural areas as INSTRUCTED BY THE MARCH 21, 2024 ADVISORY COUNCIL ON HISTORIC PRESERVATION DIRECTIVE.

Section C, "Moratorium."

Section 9.9 (B), "Definitions," defines the term "Large-Scale Industrial Ground-Mounted Solar" for purposes of the by-law, as follows:

> Shall mean a solar photovoltaic system producing more than 200% of the documented average annual demand for all uses on a property that is structurally mounted on the ground and is not building mounted, including associated infrastructure as well as energy capturing storage systems called Battery Energy Storage Systems (BESS).

Section A, "Purpose," states that the Town has extensive open space and rural undeveloped areas and is a Right to Farm Community and therefore, the Town has "cherished its prime agricultural land." Further, Section A states that the Town and residents are "being approached by developers to site Industrial scale solar development IN residential agricultural neighborhoods outside of our Solar Overlay District." In support of the moratorium, Section A states that:

> There is an identifiable community need to establish thoughtful, appropriate zoning regulations to ensure that Industrial Scale Solar uses and development will be consistent with the Town's Master Plan, Open Space and Recreation Plan and long-term planning interests therefore it is crucial that the Town establish a temporary moratorium on the granting of Permits and use of land for the construction of Large-Scale Industrial Ground-Mounted Solar Photovoltaic Systems and related structures. The average size of a solar system to provide electricity for residential use in Massachusetts is 6.5 kW or up to 40kW for a barn or sugarhouse and this moratorium relates only to systems greater than 200% (up to 80 Kw) of the documented average use (i.e. power generation rather than accessory to a home or other use.)

Article 27 was sponsored by citizen petition (see Attorney General's By-law Submission Form 7, line 1) and according to the warrant "the Planning Board voted unanimously in favor to recommend this article to Town Meeting." The Town's by-law submission filing did not provide any additional information to this Office regarding Article 27.

II. Attorney General's Standard of Review of Zoning Bylaws

Our review of Articles 26 and 27 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986). 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.") "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). "

Articles 26 and 27, 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.'" Id. 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. Section 200-10.4 of Article 26 and Section 9.9 of Article 27 Violate G.L c. 40A, § 3

Because Section 200-10.4 of Article 26 and Section 9.9 of Article 27 restrict BESS as a principal use and restrict large-scale solar uses (including agrivoltaics), respectively, 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 and we disapprove them. See Tracer Lane II Realty, 489 Mass. at 781.

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.

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."[3] See also NextSun Energy LLC v. Fernandes, No. 19 MISC 000230 (RBF), 2023 WL

[3] 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

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 this analysis to Northfield's proposed moratoria adopted under Articles 26 and 27, we determine that Article 26's moratorium on the use of land or structures for BESS as a principal use and Article 27's moratorium on the issuance of a special permit or building permit for the construction of large-scale solar including agrivoltaics, violates G.L. c. 40A, § 3. The bylaw amendments propose to completely prohibit all BESS as a principal use in all districts (until August 2025) and prohibit the issuance of any special permit or building permit for any large-scale solar uses in any district outside of the solar overlay district (until August 30, 2025), without any actual evidence of a public health, safety or welfare concern sufficient to justify the impact on these protected uses.

Article 26 states that a moratorium on the use of all land or structures for BESS as a principal use is needed because the use has "recently expanded beyond expectations, and the Town's current bylaw contains no regulation of such facilities…" Further, Article 26 states that BESS as a principal use raises "significant and evolving environmental and planning issues for the Town, thereby creating an urgent need to adopt regulation addressing this use." The Town states that it needs "time to consider and study the future implications and impact of these facilities upon the Town as a whole, and on the Town's current and future planning goals" and that the moratorium will allow the Town "sufficient time to assess these issues and amend the Zoning Bylaw to address" impacts from BESS as a principal use on the Town's environmental, historical and cultural resources and planning goals. The only information provided as a basis for the moratorium is that included in the text of Article 26.

Article 27 states that a moratorium on the issuance of all special permits and building permits for the construction of large-scale solar (including agrivoltaics) is needed because the Town has "extensive open space, and rural undeveloped areas" as well as "cherished…prime agricultural land" and developers have been approaching the Town and residents to site industrial scale solar in "residential agricultural neighborhoods outside of our Solar Overlay District." Section 9.9 (A). Section 9.9 (A) further states that there is an "identifiable community need to establish thoughtful, appropriate zoning regulations to ensure that large-scale solar uses and development "will be consistent with the Town's Master Plan, Open Space and Recreation Plan and long-term planning interests." For these reasons, Section 9.9 (A) states that it is "crucial that the Town establish a temporary moratorium on the granting of Permits and use of land for the construction of" large-scale solar and related structures.

We appreciate the Town's explanation in Articles 26 and 27 that the Town needs time to establish appropriate zoning regulations for these uses. However, the only information provided as a basis for the moratoria is the text of Articles 26 and 27 (quoted above). But this text does not provide any information regarding what the Town intends to do during the moratoria period nor does it articulate evidence of an important municipal interest, grounded in protecting the public

visited September 25, 2024).

health, safety, or welfare, necessary to justify the moratoria. Given the strong statutory protections for solar installations and related structures such as BESS, including BESS as a principal use, 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) to BESS as a principal use or large-scale solar installations (including agrivoltaics) while the Town decides how to further regulate these uses, would be sanctioned as a legitimate public health, safety, or welfare concern to justify the moratoria.

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 are the Town's proposed complete ban on the use of land or structures for BESS as a principal use and the prohibition on the issuance of any special permit or building permit for large-scale solar uses in all zoning districts outside the Solar Overlay District – 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.").

We recognize that text of Article 26 asserts concerns related to the impact on BESS as a principal use on the Town's environmental, historical and cultural resources as well as the Town's planning goals; and the text of Article 27 asserts concerns related to the Town's open space, rural undeveloped areas and prime agricultural land, to justify the moratoria. However, even if the asserted concerns are sufficient public health, safety, or welfare concerns to justify the prohibitions,[4] these concerns are not articulated or substantiated in the Town Meeting record filed with this Office. The record reflects only that the Town is generally concerned about the *potential* impacts of BESS as a principal use and large-scale solar uses in districts other than the Solar Overlay District, but includes no evidence of the required public health, safety, or welfare impacts sufficient to justify the prohibitions.

As the Land 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). The Town Meeting record here reflects no evidence of such extraordinary circumstances.

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

IV. Articles 26 and 27 Impose Unlawful Moratoria on BESS as a Principal Use and Large-Scale Solar Installations

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 decision on a land use moratorium, Zuckerman v. Hadley, 442 Mass. 511, 520-21 (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 520-21 (citing Sturges, 380 Mass. at 257). [5]

In the solar context (including BESS uses), the Tracer Lane II decision further clarifies the record evidence necessary to uphold any prohibitions or restriction on solar uses and BESS 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. Indeed, the only information is that contained in Articles 26 and 27 themselves that indicates that the temporary moratoria of these protected uses is needed to give the Town time to consider zoning regulations for these uses. While courts in other contexts have upheld temporary 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 or to consider zoning regulations -- absent any evidence of an actual project impact prompting

[5] 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 such as BESS that enjoy the protections of G.L. c. 40A, § 3.

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. Conclusion

In the circumstances presented here, we conclude that the proposed moratoria on the construction of BESS as a principal use and the issuance of special permits or building permits for large-scale solar installations sited anywhere outside of the Solar Overlay District, violate G.L. c. 40A, § 3's prohibition against unreasonable regulation of solar and related 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.

For these reasons, we disapprove and delete Section 200-10.4, "Temporary Moratorium" [on BESS as a principal use] and Section 9.9, "Temporary Moratorium on the Permitting and Construction of Large-Scale Industrial Ground-Mounted Solar Photovoltaic Systems including so called 'Dual-Use/Agri-Voltaics." We approve the remaining portion of Article 26 adding to the Town's "Definitional Section," a definition of "Battery Energy storage facility."

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

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL
Nicole B. Caprioli
By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4418

cc: Town Counsel Jeffrey T. Blake