



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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MAURA HEALEY
ATTORNEY GENERAL

August 22, 2018

Robin Phelan, Town Clerk
Town of Boxford
7A Spofford Road
Boxford, MA 01921

**RE: Boxford Annual Town Meeting of May 8, 2018 - Case # 8950
Warrant Articles # 17, 18, and 19 (Zoning)
Warrant Article # 14 (General)**

Dear Ms. Phelan:

Articles 17, 18, and 19 - We approve Articles 17, 18, and 19, and the maps pertaining to Articles 17 and 19 from the May 8, 2018, Boxford Annual Town Meeting.¹ We will return the approved maps to you by regular mail. Our comments on Article 17 are provided below.

Article 17 - Article 17 makes several changes to the Town's zoning by-laws to allow for the construction and installation of solar energy systems. Specifically, Article 17 adds a new Section 196-22.2, "Solar Overlay District." In the new Overlay District, large scale ground mounted solar photovoltaic installations are allowed subject to site plan review from the Town's Planning Board.

We approve the amendments adopted under Article 17; however, G. L. c. 40A, § 3, protects solar energy systems and the building of structures that facilitate the collection of solar energy, and provides in pertinent part as follows:

No zoning ordinance or 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.

There are no appellate level decisions to guide the Town or this Office in determining what qualifies as an unreasonable regulation of solar uses under G.L. c. 40A, § 3. However, a Land Court decision provides some guidance. In Briggs v. Zoning Board of Appeals of Marion, 2014 WL 471951 * 5 (2014), the Land Court determined that a zoning board of appeals' decision maintaining a division between commercial solar energy and residential accessory solar energy was reasonable and did not violate G.L. c. 40A, 3. In addition, as a general principle, we

¹ In a decision date June 22, 2018, we approved Article 14.

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ROBIN PHELAN
BOXFORD TOWN CLERK

recognize that the Town may utilize its zoning power to impose reasonable regulations on solar uses based upon the community's unique local needs. See Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 116-117 (1955) ("Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions."). The reasonableness of a regulation is a fact-dependent determination that includes a consideration whether a regulation substantively diminishes or detracts from a project's usefulness or imposes an excessive cost that outweighs legitimate municipal concerns. See e.g., Duseau v. Szawlowski Realty Inc., 2015 WL 59500, * 8 (2015) (Land Court determined that a solar project proponent did not demonstrate that restricting a solar energy project to the Town's Industrial Districts was an unreasonable regulation and not necessary to protect the public health and welfare).

The Town should be mindful of G.L. c. 40A, § 3, in applying the amendments adopted under Article 17, and should ensure that the application of Section 196-22.2 does not result in an unreasonable regulation of solar energy systems. The Town should consult closely with Town Counsel on this issue.

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,

MAURA HEALEY
ATTORNEY GENERAL

Kelli E. Gunagan

By: Kelli E. Gunagan
Assistant Attorney General
Municipal Law Unit
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cc: Town Counsel Mark R. Reich

Town Of Boxford

Annual Town Meeting

May 8, 2018

Form 2

Submission #3

Final Version of By-law as Amended

Section _____ Consistent with M.G.L. c. 94G § 3(a)(2), all types of non-medical “marijuana establishments” as defined in M.G.L. c. 94G § 1, including marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited in the Town of Boxford.

A TRUE COPY

Attest Adam Phelan

Town Clerk

Boxford, Massachusetts

Town of Boxford

Annual Town Meeting

May 8, 2018

Form 2

Submission #3

Final Version of By-Law as Amended

Solar Overlay District Section 196-22.2

A. Large Scale Ground Mounted Solar Photovoltaic Installation Overlay District.

- (1) Purpose. The purpose of this bylaw is to permit As-of-Right Siting of Large Scale Ground Mounted Solar Photovoltaic Installations within a designated Solar Overlay District by providing standards for the design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and that provide adequate financial assurance in the event of abandonment or removal of such Installations.

(2) Definitions.

AS-OF-RIGHT SITING - As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary zoning approval.

LARGE SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION (also "Installation") - A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum rated nameplate capacity of 250 kW DC.

SOLAR OVERLAY DISTRICT – as used in this section shall include the following properties:
1) property at Spofford Road designated as Assessor's Map 19, Block 3, Lot 28 and Assessor's Map 15, Block 2, Lot 1; and 2) property designated as Assessor's Map 42, Block 1, Lot 1.

RATED NAMEPLATE CAPACITY- The maximum rated output of electric power production of the photovoltaic system in Direct Current (DC).

(3) General requirements.

- (a) The construction and operation of all Large Scale Ground Mounted Solar Photovoltaic Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of the Installation shall be constructed in accordance with the State Building Code. No Installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
- (b) No Large Scale Ground Mounted Solar Photovoltaic Installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the Installation is to be located has been informed of the Installation and the

owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

- (c) All Large Scale Ground Mounted Solar Photovoltaic Installations shall undergo Site Plan Review by the Planning Board in accordance this Zoning Bylaw prior to construction or modification as provided in this section. The Planning Board may, at the Board's option, hold an informal hearing of which abutters are given notice, in order to solicit comment during the Site Plan Review. The Planning Board may impose reasonable conditions on the project in granting site plan approval. The Planning Board shall act on an application for site plan review and file a written decision of its action with the Town Clerk within 90 days of receipt of a complete Site Plan Review submission unless otherwise agreed by the project proponent.
- (4) Site Plan Review submission requirements. The project proponent shall provide the following documents:
- (a) A Site Plan on one or more sheets. All plans shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. The plans, at a minimum, must include the following:
 - [1] Property lines and physical features, including roads, topography, vegetation, hydrological features, shading from existing structures and zoning map designation of the project site;
 - [2] Proposed changes to the site, including proposed grading, planting or removal of vegetation, lighting, signage and structures;
 - [3] Blueprints or drawings of the solar photovoltaic installation;
 - [4] An electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - [5] Manufacturers specifications, warranties and related documentation for the major system components to be used, including the PV panels, mounting system, and inverter. These may be referenced on the plan to documents provided for the Planning Board file;
 - [6] Name, address, and contact information for the proposed installer of the Installation;
 - [7] Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
 - [8] The name, contact information and signature of any agents representing the project proponent.
 - (b) The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed installation.
 - (c) The project proponent shall submit an Operation and Maintenance Plan for the Large Scale Ground Mounted Solar Photovoltaic Installation which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for operation and maintenance of the Installation.

- (d) Proof of liability insurance naming the Town of Boxford as Additional Insured in the amounts of at least one million dollars current and three million dollars aggregate, or such other amounts as are standard in the Town of Boxford. Such proof will not be required for municipally- or state-owned facilities.
 - (e) Proof of Utility Notification.
 - (f) A designation of a date representing the end of the useful life of the Installation, which date may be extended by the project proponent upon notice to the Planning Board provided no later than 30 days in advance of the designated date. Upon such notice the Planning Board may review the Installation and determine, at its sole discretion, if an application for a modification is required under the terms of this section.
 - (g) A Removal Plan, signed by the project proponent, listing the actions to be taken to remove the Installation and a plan showing the proposed physical characteristics of the site upon completion of the removal.
 - (h) Description of financial surety and cost of removal. The project proponent shall submit a fully inclusive estimate of the costs associated with removal of the Installation, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. Project proponent shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board not to exceed 125% of the estimated cost of removal. Such surety will not be required for municipally- or state-owned facilities.
- (5) Design Standards.
- (a) Dimensional Requirements.
 - [1] Front yard: The front yard depth shall be at least 50 feet;
 - [2] Side yard. Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a Residential-Agricultural district, the side yard shall not be less than 50 feet.
 - [3] Rear yard. The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a Residential-Agricultural district, the rear yard shall not be less than 50 feet.
 - [4] Appurtenant Structures. All appurtenant structures to Large Scale Ground Mounted Solar Photovoltaic Installations shall be subject to applicable regulations, including the dimensional regulations established in this bylaw, concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.
 - (b) Lighting. Lighting of Installations shall be the minimum required by local, state and federal law, or as required for safety and operational purposes, and shall be reasonably shielded from abutting

properties. Where feasible, lighting of the Installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

(c) Signage. Signs shall comply with §196-27 of the Zoning Bylaw. A sign posted in a location visible from a public way shall identify the name and nature of the Installation, the owner and the operator, and provide a 24-hour emergency contact phone number. Signs at Installations shall not be used for displaying advertising.

(d) Utility Connections. All utility connections from the Installation shall be placed underground unless otherwise required by the utility provider.

(6) Safety and Environmental Standards.

(a) Emergency Services. The project proponent shall provide a copy of the Site Plan Review submission documents to the Boxford Fire Department and the Boxford Police Department upon submission of its application for site plan review to the Planning Board. The project proponent shall cooperate with these Departments in developing an Emergency Response and Security Plan. As approved by the Planning Board through site plan review, a copy of the Plan shall be kept on the project site at all times, and shall be placed on file with the Boxford Fire and Police Departments. All means of shutting down the solar photovoltaic installation shall be clearly identified in the Emergency Response and Security Plan, and where practicable, marked in the field.

(b) Land Clearing, Soil Erosion and Habitat Impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the installation or otherwise prescribed by applicable laws, regulations, and bylaws.

(7) Monitoring and Maintenance. The installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Boxford Fire Department. The owner or operator shall be responsible for the cost of maintaining the installation and associated site improvements. The Owner or operator shall be responsible for the cost of maintaining any access road(s) unless the access road is accepted as a public way.

(8) Modifications. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Planning Board in accordance with this bylaw. The Planning Board may waive any requirements of the Site Plan Review submission requirements deemed by the Board to be not relevant to the proposed modification.

(9) Abandonment, Decommissioning or Removal

(a) Abandonment. Absent written notice provided by the owner or operator to the Planning Board of extenuating circumstances, the Installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board.

(b) Decommissioning. The owner or operator shall, upon 30 days advance notice to the Planning Board, identify a date for decommissioning the Installation. If the owner or operator of the Installation fails to remove the Installation in accordance with the requirements of this section within 150 days of the decommissioning date, the town may, to the extent it is otherwise authorized by law, enter the property and physically remove the Installation, and apply any financial surety provided by the project proponent towards the cost of removal.

(c) Removal. Any installation which has reached the end of its useful life, or been abandoned, or reached a decommissioning date, shall be removed within 150 days. Removal shall consist of the following:

[1] Physical removal of all installation structures, equipment, security barriers and transmission lines from the site.

[2] Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

[3] Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

(10) Severability. The provisions of this section are severable, and the invalidity of any section, subdivision, paragraph, or other part of this section shall not affect the validity of the remainder of this section.

§ 196-30 Site plans.

[Amended 5-14-1986 ATM, Art. 38; 5-11-1999 ATM, Art. 39]

A.

For the purpose of reasonably protecting the legitimate interests of adjoining property owners and occupants, ensuring the most advantageous use of all properties and administering the provisions of this bylaw relating to parking and loading spaces, no permit shall be issued for any new building or structure in a Business, Manufacturing, Industrial, Official or Open Space District; nor for an addition to or alteration of an existing building for commercial use in any district; nor for any new building or structure in an Elderly Housing District until a site plan, prepared by a professional architect, engineer or landscape architect, has been approved for a special permit by the Board of Appeals, with the exception of Large Scale Ground Mounted Solar Photovoltaic Installations approved pursuant to §196-18C. Prior to the grant of any such special permit, the Board of Appeals shall refer such plans to the Inspector of Buildings and to the Planning Board for their respective review and recommendation

Town of Boxford

Annual Town Meeting

May 8, 2018

Form 2

Submission #2

Town Meeting Action

ARTICLE 19. I move to amend the Zoning Map of the Town of Boxford by rezoning from R-A Residence-Agricultural District to E-H Elderly Housing District a certain parcel of land consisting of 117.62 acres located on the north side of Willow Road, between Pine Plain Road and Whittier Terrace, as shown on a plan entitled "Plan of Land on Willow Road in Boxford, Massachusetts," dated March 1, 2018, prepared for Price Family LLC by Christiansen & Sergi, Inc. on file with the Town Clerk.

This article passed by a greater than two-thirds hand count of 148 yes to 69 no.

Town of Boxford

Annual Town Meeting

May 8, 2018

Form 2

Submission #3

Final Version of By-Law as Amended

§ 196-20 Elderly Housing District.

[Added 5-9-1984 ATM, Art. 24]

A.

In an Elderly Housing District, no building or land shall be used and no building shall be erected or converted except:

(1)

To provide housing for the elderly, such housing to be owned and operated by a for-profit or nonprofit organization. A "private nonprofit organization" shall mean a corporation, foundation or other organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which has been organized pursuant to MGL c. 180, as amended.

(2)

For any of the uses permitted in the R-A Residence-Agricultural District with the development regulations applicable to the R-A Residence-Agricultural District outlined in Article VI governing.

B.

Accessory uses permitted in the Elderly Housing District shall include:

(1)

Accessory uses customarily incidental to any main permitted use on the same premises, including but not limited to private garages, a pool, and other such accessory uses customarily incidental to an age-restricted, active adult community.

(2)

One separate building, not exceeding one story in height, to house snow removal and mowing machines, garden and other tools and equipment required to maintain and service housing for the elderly, as well as separate structures to house any water or sewer utility and/or centralized mailbox facility or residents.

(3)

One building which may be used as a common building by the residents of the District, which building may include central kitchen and dining facilities providing meals to residents thereof and their guests and may also provide lounge and meeting rooms for the common use of the residents and their guests.

C.

Design Guidelines. In addition to the standards for Site Plans under § 196-30, a proposal within the Elderly Housing District shall be consistent with the following design guidelines:

- (1) All proposed buildings and structures shall be compatible with other quality buildings of similar village-style architecture, building materials and colors;
- (2) The compatibility of such buildings and structures shall be analyzed in terms of the following factors: size and bulk; orientation to the street; distance from the street; height and roof-line articulation; the pattern of window, door, and other building openings; architectural styles; and exterior building materials and colors; and,
- (3) The Applicant shall submit a separate landscaping plan, prepared by a registered landscape architect, that provides for intensive high-quality landscaping of all open areas, including areas adjacent to paths, driveways and parking lots, and, where appropriate for screening purposes, dense buffers of trees and shrubs.