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**Date:** November 15, 2021 at 1:24:14 PM EST

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**Subject:** RE: [Due Monday 11/15 - Amherst] FW: question regarding legality of Solar Moratorium Bylaw

Hello Christine:

Joel Bard forwarded me your e-mail and Town Council President Lynn Griesemer's request for a legal opinion. Specifically, the Town Council has requested an opinion as to whether General Laws Chapter 40A, Section 3, renders the proposed Solar Moratorium Bylaw illegal. In my opinion, it does not.

General Laws Chapter 40A, Section 3 extends zoning protections to certain enumerated uses. As it pertains to solar uses, G. L. c. 40A, § 3, ¶ 9 states:

No zoning ordinance or by-law 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.

While Courts have interpreted this provision of Section 3 to prohibit general proscriptions of ground-mounted solar installations, in my opinion, it does not prevent a municipality from adopting temporary zoning restrictions for the purposes of engaging in comprehensive planning studies.

The Supreme Judicial Court in Sturges v. Town of Chilmark, 380 Mass. 246, 252-253 (1980) declared that "[a] Massachusetts city or town has the authority to adopt zoning measures which control orderly growth . . . [and] may 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."

However, "bylaws restraining growth pass constitutional muster only where they specifically contain time limitations or where it is abundantly clear they are temporary." Zuckerman v. Town of Hadley, 442 Mass. 511, 518 n. 16 (2004). The Supreme Judicial Court reasoned that "restrictions of unlimited duration on a municipality's rate of development are in derogation of the general welfare and thus are unconstitutional." Id., at 512.

Here, the proposed Solar Moratorium Bylaw enacts a temporary moratorium on the permitting of large-scale ground mounted solar energy systems with a rated capacity of 250 kW DC or greater for period of less than 2 years. In my opinion, such a temporary rate of development bylaw falls squarely within the Sturges and Zuckerman analysis, and is therefore a constitutional exercise of municipal zoning power.

In fact, the Office of the Attorney General has recently approved similar short-term solar moratorium zoning bylaws in the following communities: West Brookfield (Case # 10048 – July

13, 2021); Spencer (Case # 9979 – March 30, 2021); Athol (Case # 9978 – October 19, 2020); Wendell (Case # 9669 – February 7, 2020); Hampden (Case #9204 – March 14, 2019); Blandford (Case # 9608 – December 10, 2019); Oakham (Case #9568 – November 14, 2019); Ware (Case # 9447 – November 13, 2019); Athol (Case # 9598 – November 4, 2019); Granby (Case # 9393 – August 14, 2019).

Therefore, because the stated purpose of the proposed Solar Moratorium Bylaw is to allow the Town to engage in comprehensive planning studies, and the Bylaw is temporary in nature, it is my opinion that the Bylaw is a proper exercise of municipal zoning power, notwithstanding the zoning restrictions set forth in G. L. c. 40A, § 3.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you,

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