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February 18, 2014

Melanie A. Mangum, Town Clerk
Town of Royalston
P.O. Box 127
Royalston, MA 01368

**RE: Royalston Special Town Meeting of October 25, 2013 – Case # 7002
Warrant Article # 4 (Zoning)**

Dear Ms. Mangum:

Article 4 - We approve the amendments to the Royalston by-laws adopted under Article 4, and the map pertaining to it, at the October 25, 2013, Special Town Meeting.

The amendments adopted under Article 4 make a number of changes to the Town's zoning by-laws pertaining Large-Scale Ground-Mounted Solar Photovoltaic Installations. One change adds a new Section IX, "Large-Scale Ground-Mounted Solar Photovoltaic Installations," to the Town's zoning by-laws. Section IX allows Large-Scale Ground-Mounted Solar Photovoltaic Installations ("Solar Installations") as of right subject to site plan review in the new Solar Overlay District and by special permit in the Town's Residential and Residential/Agricultural Districts. Our comments on Section IX are below.

General Laws Chapter 40A, Section 3, prohibits towns from adopting zoning by-laws 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. General Laws Chapter 40A, Section 3, provides in pertinent part as follows:

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.

Section IX cannot be applied in a manner that prohibits or unreasonably regulates solar energy or the building of structures that facilitate the collection of solar energy systems in violation of G.L. c. 40A, § 3.

In light of the protections granted to solar energy systems in G.L. c. 40A, § 3, we highlight the following provisions in the new Section IX.

A. Section 2 “Definitions.”

Section 2 defines “Large-Scale Ground-Mounted Solar Photovoltaic Installation” as “[a] solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum rated nameplate capacity of 40 kW DC.” The minimum rated nameplate capacity of 40 kW is far more restrictive than the definition of Large Scale Systems set forth in the “Model As-Of Right Zoning Bylaw: Allowing Use of Large-Scale Ground Mounted Solar Photovoltaic Installations” prepared by the Department of Energy Resources (“DOER”), Massachusetts Executive Office of Environmental Affairs, for use by communities in developing such as of right zoning. The DOER Model defines “Large Scale Solar Systems” as those with a minimum capacity of 250 kW DC. Small systems may not warrant the type of special permit review as required in Section IX. If challenged in court based upon a full factual record (which necessarily exceeds the materials available to the Attorney General for the purpose of by-law review pursuant to G.L. c. 40, § 32), the special permit requirement could be found by the court to be an unreasonable regulation in violation of G.L. c. 40A, § 3. We suggest that the Town discuss this issue in more detail with Town Counsel.

B. Section 15 “Financial Surety.”

Section 15 requires the applicant of a Solar Installation to provide a form of surety to cover the cost of removing a Solar Installation and remediating the site in the event the Town must do so. Surety or bond proceeds do not become Town funds unless and until the applicant defaults on the obligation under the by-law. If the Town must use the surety or bond to pay for compliance with the removal or restoration, an appropriation is required before expenditure is made to do the work. General Laws Chapter 44, Section 53, provides that “[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury.” Under Section 53 all moneys received by the Town become a part of the general fund, unless the Legislature has expressly made other provisions that are applicable to such receipt. In the absence of any general or special law to the contrary, performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town’s general fund, pursuant to G.L. c. 44, § 53. The Town must then appropriate the money for the specific purpose of removing a Solar Installation and remediating the site.

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,

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cc: Town Counsel Thomas W. McEnaney