



MARTHA COAKLEY
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

December 10, 2012

Marjorie Batorski, Town Clerk
188 Skyline Trail - P.O. Box 265
Middlefield, MA 01243

RE: Middlefield Annual Town Meeting of May 7, 2011 — Case # 6084
Warrant Article # 34 (General)
Warrant Articles # 28 and 29 (Zoning)

Dear Ms. Batorski:

Articles 28, 29, and 34 – We approve the amendments adopted under these Articles on the warrant for the Middlefield Annual Town Meeting that convened on May 7, 2011, and the map pertaining to Article 28.

On October 18, 2011, we placed the Town's by-law submission packet from the May 7, 2011, Annual Town Meeting on "hold" pending receipt of required information requested in that letter. On November 26, 2012, we received all the necessary information. Thus, our 90-day review period began on November 26, 2012. Our comments on Article 28 are provided below.

Article 28 - The amendments adopted under Article 28 add to the Town's zoning by-laws a new Section 4.9, "Large-Scale Ground-Mounted Solar Photovoltaic Installations," that allows large-scale ground mounted solar photovoltaic installations as of right on municipally owned land in the Town.

We approve the proposed by-law, but caution the Town regarding the provisions of G.L. c. 40A, § 3, which protect solar energy systems and the building of structures that facilitate the collection of solar energy. 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.

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. We caution the Town that the proposed by-law amendments adopted under Article 28 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. We suggest that the Town consult with Town Counsel to ensure that the application of the proposed by-law amendments are in compliance with G.L. c. 40A, § 3. Our comments on specific sections of the proposed by-law are provided in more detail below.

1. Section 4.9.2 “Site Plan Review”.

Subsection 4.9.2.2.1 C requires plans of the solar photovoltaic installation and appurtenant structures be signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

We approve Subsection 4.9.2.2.1 C, but caution the Town that Subsection 4.9.2.2.1 C must be applied in a manner consistent with G.L. c. 112, § 81R. General Laws Chapter 112, Section 81R, provides in pertinent part as follows:

Nothing in said sections shall be construed to prevent or to affect: –

* * *

(l) the performance of engineering work and services by a person, firm or corporation subject to the jurisdiction of the department of public utilities or the department of telecommunications and cable which work and services are performed as part of their employment and for the benefit of such person, firm, or corporation;

General Laws Chapter 112, Section 81R, exempts entities that are subject to the jurisdiction of DPU or DTC from the requirement of using a licensed professional engineer or registered engineer. *See New England Telephone & Telegraph Co. v. City of Lowell*, 369 Mass. 831 (1976) (city ordinance requiring use of registered engineers and land surveyors in projects involving city ways was inconsistent with and preempted by G.L. c. 112, § 81R(l)). Therefore, the Town must apply Subsection 4.9.2.2.1 C’s requirements of utilizing licensed professional engineers in a manner consistent with Section 81R. We suggest that the Town discuss the application of Subsection 4.9.2.2.1 C with Town Counsel.

2. Section 4.9.3 “General Requirements for all Large Scale Solar Photovoltaic Installations”.

Subsection 4.9.3.3 captioned, “Compliance with Laws, Ordinances, and Regulations” requires compliance with applicable local, state, and federal laws, ordinances, and regulations. The proposed by-law uses the word “ordinance”. We caution the Town that towns enact “by-laws” and cities enact “ordinances.” The Town may wish delete the word “ordinance” from the title of Subsection 4.9.3.3 and insert the word “by-law” at a future Town Meeting.