

From: Stephen Cole [<mailto:stephen.cole@carverma.org>]
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To: Energy, DOER (ENE)
Subject: SMART Incentives Public Comment



TOWN OF CARVER

Office of Planning & Community Development

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Commissioner Judith Judson
Department of Energy Resources
100 Cambridge Street
Suite 1020
Boston, MA 02114

Dear Commissioner Judson:

The Town of Carver is a rural community with strong and proud farming traditions. Carver cranberries are known worldwide and the Carver sand beneath our feet is a highly prized and coveted export commodity. Our community is forward-thinking and progressive on environmental and conservation controls. We balance our values with business friendly economic development policies and innovative solutions to reduce energy consumption and encourage alternative renewable resources.

Being one of the first towns in the Commonwealth to adopt zoning bylaws that allow and regulate solar installations, Carver's transcendent economy prepares our community members for new investment from emerging industries while preserving cultural assets. The Town of Carver shares the state's goal to embrace the continued development of generating units that use solar photovoltaic technology, and lauds state agencies for the leadership and incentives provided to catalyze an important part of the town's economic growth.

Upon reviewing the proposed SMART Program Land Use Guidelines, it seems large-scale solar projects are classified into categories with varying compensation rates. Adhering to certain provisions, such as siting, may inform the category assignment, and thereby impact the rate of compensation. "Subtractors" appear to penalize projects sited on greenfield type properties. Additionally, the guidelines also seem to apply subtractors when a project is located in a community that does not permit solar as-of-right. Carver, like many towns throughout the Commonwealth, prefers to approve solar projects by issuing a special permit. This is a more robust zoning and planning process that oftentimes makes projects better suited to the host neighborhood. This particular *overlay/as-of-right provision* unintentionally penalizes projects and makes communities exercising heightened prudence less competitive to solar developers.

Although “[n]othing in 225 CMR 20.00 should be read as requiring Owners of generating units to participate in this statewide solar incentive program”, the fact remains the state created an incentive program that will likely command the focus of developers until the incentive is exhausted. The narrow focus of the *overlay/as-by-right provision* will have the following impacts:

1. In order to be seriously considered by developers, towns will have to forego an element of control by allowing large scale solar projects as-of-right. Towns that do not create overlay districts or as-of-right zoning will be less competitive when attempting to attract large scale solar development;
2. Since many towns host Town Meeting in spring, it may be too late for many communities to enact zoning changes this year;
3. Since many, if not most, communities permit large solar projects through a discretionary process, such as special permit, the state is limiting the number of jurisdictions, and the amount of land available, in the commonwealth to achieve its goal.

Fairness, transparency, expediency and improvement are all provided for in Carver’s zoning bylaws, and our process is both, informed and reinforced by Chapter 40A, section 9. The Commonwealth recognizes the value in allowing local jurisdictions to determine a suitable planning process, including whether a special permit is necessary. Section 3 already prohibits unreasonable regulations for 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. This is the threshold for a special permit. In order to protect the public health and safety and provide for its general welfare, the state has empowered local jurisdictions to place reasonable restrictions on such projects. The merits of the project are vetted and its impact on the community is discussed during a public hearing; which is also prescribed by state law.

The Commonwealth created a legal framework to make certain a project is properly scrutinized during the permitting process; a process that is designed to be flexible and reflexive of the host community. The Land Use Guidelines, as they are presently written, takes away a town’s ability to review and reasonably restrict projects. In turn, the Guidelines, if passed, will limit a local jurisdiction’s ability to protect public health and safety, while remaining economically competitive.

The thoughtfulness of the statute includes section 8, which provides the legal mechanism to file an appeal to the Special Permit Granting Authority and receive relief from zoning. This mechanism provides an opportunity for the community to reconsider the merits of a project, and for an Owner to reconsider how the proposed project is impacting the host community. The dialogue and civil discourse moderated by the SPGA and appellate board make the project better. The proposed Land Use Guidelines appear to restrict the most meaningful elements of community planning and minimize the community’s ability to provide for the public’s health, safety and welfare.

Furthermore, section 9B protects the interests of the Owner seeking to install solar systems and additionally prescribes protections over solar access as provided for in a special permit. As a use, solar is already protected and embraced in the Commonwealth; the industry does not need as-of-right development rights in many places. The intent of zoning is to segregate uses that are thought to be incompatible. The *overlay/as-of-right provisions* in the incentive program ultimately undermines the intent of the Zoning Act put in place by the state to protect quality of life.

The Town of Carver appreciates and supports the state's SMART Incentive Program. To strengthen the program the state may consider removing the *overlay/as-of-right provision*. As an alternative, the state may consider clarifying the guideline to allow an exemption from the subtractors if the host community's land use regulations and zoning bylaws explicitly addresses large scale solar installations. If you or your staff have any questions regarding the contents of this submission, please do not hesitate to contact me directly at Stephen.Cole@carverma.org or 508-866-3400 ext. 1020.

Thank you for the opportunity to submit these comments.

Sincerely,

Stephen Cole
Director

cc: Commissioner Judson, DOER
Director Judge, DOER
Secretary Beaton, EOEEA
Commissioner Lebeaux, Department of Agricultural Resources
Specialist Palano, Department of Agricultural Resources
Michael Milanowski, Town Administrator
Bruce Maki, Chairman Carver Planning Board