Boylan Code
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January 9, 2019

Town of Farmington Planning Board
Town of Farmington Code Enforcement Officer
Town of Farmington Director of Development

Via Email Only

Dear Members of the Planning Board, Town Code Enforcement Officer and Town Director of Development:

I write on behalf of our client, Delaware River Solar ("DRS"), who has made application to the Town of Farmington to develop three community solar facilities that will generate, in the aggregate, approximately 7 MW of clean and "green" electricity to be distributed over the existing electrical grid (the "Project").

On several occasions during public hearings for the Project, comments were made to the effect that since the parcel proposed for the Project contains farmland, the Farmington Solar Law requires that the applicants show that the subject parcel can be used for no other feasible "use." However, this position is overly restrictive and contrary to the plain language and meaning of the Solar Law.

The subject Solar Law provision, Section 8(1)[b](3), in fact provides that "**solar PV systems located upon Farmland** . . . **shall be allowed** on soils classified as Class 1 through 4 . . . once it can be determined, by the Planning Board, that there is no feasible alternative" (emphasis added). Thus, the phrase "alternative use," despite its repeated usage in the public hearings, is simply not present.

Were the phrase "alternative use" included in that provision (which it is not), it would effectively prohibit Large-Scale solar on farmland. That is because the Planning Board could simply and routinely conclude that farmland parcels virtually always have a feasible alternative use to solar – they may simply to remain as a farmland use. If the intent were thusly to prohibit solar on farmland, instead of requiring the aforementioned circular reasoning to come to such a conclusion the Code simply would have provided that Large-Scale Solar is prohibited on farmland.[1] However, the Code does not prohibit Solar on farmland and it does not require that Large-Scale Solar proposals show that no alternative feasible use is available for farmland.[2] Instead, the Code goes on to provide almost seven pages of details about how **solar is, in fact, permitted on farmland.**

The Solar Law is clear that solar is permitted on parcels comprising farmland where a showing is made that there are no feasible alternatives for the subject parcel(s) which would limit solar located ***"on** the soils classified as Class 1 through 4."* Thus, the subject Solar Law provision deals with **where** the solar PV systems are laid out within specific parcels of

[1] Alternatively, if the intent were to allow solar on farmland, but only in the case that the subject farmland is not viable for farming despite favorable soils, the Code could simply have provided as much, but it does not.

[2] Moreover, any interpretation requiring alternative parcels or sites to be explored that are not controlled by the applicant would be inconsistent with the Code, since it is not *feasible* to require an applicant to make a proposal on a site that it does not own or otherwise control.

land identified on the Farmland Map. Accordingly, the provision requires an alternatives analysis to explore alternative site layouts that may more effectively limit development on the classified soils within the farmland parcels.

To the extent the Town feels that the Code is unclear as to such alternatives analysis, the law is well settled that, as a constitutional matter, any ambiguity or vagueness in local zoning legislation must be construed in favor of the applicant.[3] This well settled law has been established by the highest Court in New York and has been the law of the land for decades. For example, the Court of Appeals in the Matter of Allen v. Adami clearly provides that "Since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them." The Court further provides that "the language used in such regulations must be resolved in favor of the property owner."[4]

In keeping with the Solar Law requirements discussed herein, DRS has provided under separate cover an analysis, including a detailed Soils Worksheet analysis, which assesses why an alternative site layout would not be a feasible alternative to development of the Projects as proposed, satisfying Section 8(1)[b](3) of the Solar Law.

Truly Yours,

Boylan Code, LLP
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[3] *See, e.g.,* Falco Realty vs. the Town of Poughkeepsie ZBA, 40 AD3d 635 (2d Dept. 2007); Saratoga County Economic Opp. Council v. Village of Ballston Spa ZBA, 977 NYS2d 419 (3d Dept. 2013).
[4] 39 NY2d 275 (1976).