

September 23, 2018

Durham Planning Board
c/o Michael Behrendt
Town of Durham
8 Newmarket Road
Durham, NH 03824

Dear Planning Board members,

I am writing to you to encourage you to take an expansive approach to the proposed Solar Ordinance, in which property owners in Town are provided the opportunity to install solar energy systems (electric and thermal, inclusive of storage systems) on their private property with minimal restrictions, as mandated by state law:

RSA 362-F (2007) It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.

Chapter 674:17 Purposes of Zoning Ordinances. –

I. Every zoning ordinance shall be adopted in accordance with the requirements of RSA 674:18. Zoning ordinances shall be designed:

...

- (h) To assure proper use of natural resources and other public requirements;
- (i) To encourage the preservation of agricultural lands and buildings and the agricultural operations described in RSA 21:34-a supporting the agricultural lands and buildings; and
- (j) To **encourage the installation and use of solar**, wind, or other renewable energy systems and **protect access to energy sources** by the regulation of orientation of streets, lots, and buildings; establishment of maximum building height, minimum set back requirements, and limitations on type, height, and placement of vegetation; and encouragement of the use of solar skyspace easements under RSA 477. Zoning ordinances may establish buffer zones or additional districts which overlap existing districts and may further regulate the planting and trimming of vegetation on public and private property **to protect access to renewable energy systems.**

(Emphasis added)

I am employed at an investor-owned electric and gas utility, am vice chair of Durham's Energy Committee, a member and former board member of the NH Sustainable Energy Association, and a former staff member at the State's Office of Energy and Planning (now the Office of Strategic Initiatives) where I was instrumental in bringing federal dollars to New Hampshire that led to the adoption of the current Energy Efficiency Resource Standard. In 2010, I earned a master's degree from UNH in Resource Administration and Management and wrote my thesis on the willingness of homeowners to invest in renewable energy systems. The opinions in this letter are my own and do not necessarily reflect the position of any of the entities with which I am, or have been, associated.

The Town of Durham rightly prides itself as ahead of the curve when it comes to understanding the critical role of public policy in managing the generation and use of energy inside its borders. Those engaged in local energy policy have embraced the cause of adapting to climate change and building resiliency in the face of rising temperatures, increased levels of moisture in our atmosphere, more intense storm surges and permanently rising seas. In addition to having adopted a building code that prioritizes high efficiency buildings, and investing in the generation of solar energy to offset the

Among the recommendations of the Climate Adaptation Chapter were to “encourage development and expansion of emerging energy technologies”, which was subsequently adopted by Durham’s Planning Board and Town Council in the Energy Chapter of the Town Master Plan. Of course, the terms “encourage” and “expansion” are open to interpretation, which is the task currently before the Planning Board members as they consider adoption of zoning regulations for the installation of solar generating equipment in Town.

Having participated in the development of the draft solar ordinance as a member of the Durham Energy Committee, prior to its being given to the Planning Board for further review and refinement, I am generally supportive of the draft that was considered at the Planning Board’s public hearing on September 12. Although I personally am more tolerant and even welcoming of solar panels along our roadways and otherwise in public view than many residents in town, I am willing to accept the use and placement restrictions that appeared in that 9/12 draft regarding setbacks of free-standing and enterprise systems.

However, I believe that it would be unfair, inappropriate and counter to State Law to further restrict where solar installations can be sited in Town, as is being advocated by several of the speakers who participated in the public hearing on 9/12. State law is intended to *protect* not unduly *restrict* access to renewable energy sources, yet undue restrictions would in fact result were the suggestions of these residents actually included in the ordinance. The common refrain of ‘Not in My Back Yard’ seems to have evolved in this case to ‘Not in *Your Front Yard*’, imposing restrictions upon property owners that might open the Town up to legal challenges. An apt comparison are certain condominium association rules that restrict, through covenant, what can and cannot be installed or displayed by individual condo owners and members. Political signs, flags, clotheslines, trash receptacles and solar panels have all been subject to restriction within condo associations; yet because condominiums are necessarily owned in common, such restrictions are permissible and each owner signs a covenant agreeing to these restrictions when they purchase their property. Similar restrictions on privately owned property, even when said installations may not be visible to neighbors, are onerous, unfair and could run afoul of state law.

To disallow the installation of solar along certain road fronts or gateways, or near historic properties on the grounds that the panels might mar the view for those traveling in vehicles into or through the town is to ignore the deleterious impact of such vehicles on the environment and those same viewscapes. It also sidesteps the very reason we have a public policy of promoting renewable energy generation, which is to forestall (if not prevent outright) the horrific impact of climate change, worsening storms, and sea level rise. I would argue that these climate-change induced effects are far more ominous threats to the aesthetic enjoyment of Durham’s gateways and low-lying rural farmlands, to our historic properties and our cultural heritage than are ground-mounted solar panels or trackers.

I find it disheartening that we might allow the aesthetic preferences of a vocal group of residents offended by the sudden appearance of a single solar tracking system in their neighborhood to permanently restrict the deployment of carbon-neutral energy technology that is, by their own acknowledgement, one of the best levers we have to prevent the worst impacts of climate change. If not now, when? If not us, who?

In the aftermath of the Trump Administration’s unilateral decision in August of 2017 to withdraw from the Paris Climate Accords, the Durham Energy Committee proposed to the Town Council that Durham sign on to the Global Covenant of Mayors for Climate and Energy, and by doing so, join hundreds of towns and cities around the world that pledged to follow through on the Paris Climate

Accord, in spite of the shortsightedness of federal decision makers (November 20, 2017 Town Council meeting packet page 64 of 108 - https://www.ci.durham.nh.us/sites/default/files/fileattachments/town_council/meeting/packets/50791/november_20_2017_council_packet.pdf).

In response, the DEC was advised to develop an actionable plan for achieving the ambitious renewable energy goals at the local level and bring it back to the Town Council. As we consider an appropriate and achievable low or no-carbon goal for the Town, I would suggest that an unequivocal commitment to promote the installation, utilization and sharing of solar energy in town through land use regulation is needed in order to even approach 80%-100% on-site renewable energy by 2050. I don't think Durham wants to discourage residents and business owners from installing solar by saying 'no' without further consideration to installations that happen to be in a certain zone, along certain roadways, or in front of a home rather than in the back yard. And I don't think we want to throw up barriers and expensive conditions for those whose front or side yard is the optimal place to site a ground mounted or tracking solar system.

But if we do, then I respectfully suggest that we need to reconsider our Town Master Plan's commitment to energy resiliency and independence, and we certainly need to reconsider whether we can realistically commit to a 100% renewable energy goal by 2050, or ever.

Sincerely,

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