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Part 3 of our Clean Energy Transition Insights: Protecting Solar Development from Municipal Zoning

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Two significant developments this summer solidified and expanded the protection of solar development from municipal zoning in the Commonwealth: *Tracer Lane II Realty, LLC v. City of Waltham*, [1] and the recently signed Act Driving Clean Energy and Offshore Wind ("2022 Climate Act").

Tracer Lane II Realty

Massachusetts municipalities enjoy considerable discretion to set local zoning regulations under Massachusetts law, but one statute—generally referred to as the "Dover Amendment"—limits local control over certain protected uses. One specific clause within the Dover Amendment states that municipalities may not "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." The Supreme Judicial Court interpreted this clause for the first time in *Tracer Lane II Realty* and rejected Waltham's zoning ordinance that restricted solar facilities to industrial zones, which encompassed only one to two percent of Waltham's total area. The Court reasoned that Waltham's ban on large-scale solar facilities to all but one to two percent of a municipality's land area "restricts rather than promotes the legislative goal of promoting solar energy," and is contrary to the Commonwealth's 2050 Decarbonization Roadmap. The Court found that such restrictive zoning for solar facilities lacks a reasonable basis grounded in public health, safety, or welfare and is accordingly invalid under the Dover Amendment.

While this case is a significant win for this solar project, its precedential value may be limited by the extreme facts of the case. As noted, Waltham's zoning only permitted utility-scale solar systems in one to two percent of the land in the city, and the solar facility in question will not even be located in Waltham. Rather, Waltham opposed the project because a construction access and maintenance road would be constructed through a residential zone—the solar plant itself will be constructed in a neighboring town.

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Municipalities that take greater care to allow for more solar facilities in their zoning and focus any regulation on health, safety, and welfare concerns are likely to prevail in future litigation.

2022 Climate Act

One provision of the 2022 Climate Act also expands the protections from municipal zoning for solar power and other renewable energy. The Dover Amendment has long protected agricultural uses from overly restrictive zoning regulations, and since 1985, agricultural parcels could also host solar energy systems to serve their own needs regardless of local zoning. The 2022 Climate Act expands and extends these protections. Farms will be able to participate in the Commonwealth's solar incentive program for the agricultural sector while still enjoying the protections for agricultural land under the Dover Amendment. As a result, farms will potentially be able to host much larger solar installations, so long as they continue agricultural operations.

Moreover, the 2022 Climate Act encourages many forms of renewable energy generation on farms, not just solar. If the land remains primarily and directly used for agriculture, renewable energy systems will also be protected from local zoning regulations under the Dover Amendment. This section carries the possibility of much looser local regulation of non-solar renewable energy, such as geothermal.

Anyone with questions about solar development can contact Rich May, P.C. attorneys [Danielle Justo](#), [Eric Krathwohl](#), [David Lyons](#), or [Joe Dorfler](#).

[1] 489 Mass. 775, 187 N.E.3d 1007 (2022).