CUDDY +FEDER LLP

445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

Michael V. Caruso
mcaruso@cuddyfeder.com

February 3, 2026

VIA EMAIL
Town Board of the Town of Yorktown
363 Underhill Avenue
Yorktown Heights, New York 10598
Attn: Diana Quast, Town Clerk

Re: Comments to Proposed Local Law to Amend Chapter 300 - Solar Power

Dear Mr. Supervisor and
Honorable Members of the Town Board:

I represent the Random Farms Homeowners Association, Inc. ("RFHOA"), a community with 104 private homes. On behalf of RFHOA, please accept these comments in response to the Proposed Local Law to amend Chapter 300 of the Town of Yorktown Code (the "Code") to amend and replace Section 300-81.4 entitled "Solar Power Generation Systems and Facilities" (the "Draft Law").

Random Farms was originally subdivided from the former Millwood Road estate of Lady Gabriel, a noted benefactor of Chappaqua schools, Northern Westchester Hospital, and other civic institutions, and has a unique pastoral and park-like setting,. The community maintains its own homeowner's association and offers shared amenities including a pool, tennis and basketball courts, and a clubhouse, which reflect a carefully planned residential environment whose character and quality are of paramount importance to its residents. Critically, multiple properties and homes within Random Farms, and a substantial number of individual residents, are already directly and adversely affected by certain previously approved solar farm developments in close proximity to the community, including impacts to viewsheds, stormwater flow, land disturbance, and neighborhood character. As a result, the Town's consideration of a sweeping solar ban, combined with selective exemptions for preapproved projects, is a matter of immediate, concrete, and ongoing concern to Random Farms and similarly situated residential communities.

I. The Draft Law is the opposite of what the Comprehensive Plan provides.

The proposed amendment to Chapter 300 of the Town Code governing solar power generation systems would be unlawful, irrational, and fundamentally inconsistent with the Town of Yorktown's Comprehensive Plan (the "Comprehensive Plan"). Although presented as a generally applicable zoning regulation, the law in substance operates as a targeted legislative exemption designed to legalize and entrench the Dell Avenue and Jacob Road solar projects while simultaneously prohibiting the very same use everywhere else in similarly situated residential zoning districts. This is not zoning in furtherance of a comprehensive plan; it is in direct contravention of it.

The Comprehensive Plan is the linchpin of zoning principles. Zoning amendments that

abandon, undermine, or reverse the land-use principles embodied in that plan are invalid as a matter of law. Here, rather than guiding solar development toward appropriate locations such as industrial districts, utility corridors, brownfields, or carefully designed overlay zones, the Town would be choosing to embed isolated, intensified industrial uses directly within residential districts without rezoning, without transitional districts, and without any coherent land-use framework. This approach constitutes a rejection of orderly development and replaces planning and Plan-based zoning controls with exception-making.

II. Comprehensive Plan conflicts

The Draft Law is fundamentally inconsistent with multiple guiding provisions of the Town of Yorktown Comprehensive Plan, undermining both the letter and spirit of the Town's adopted policies. The Plan emphasizes that Yorktown "will continue to be primarily a low-density community of single-family homes, with strong neighborhoods that have a balance of developed areas and open space," and directs that "residential neighborhoods should be preserved and protected from incompatible uses" (Land Use Chapter, p. 2-5).[1] By legalizing large-scale solar projects within residential districts while prohibiting identical uses elsewhere, the Draft Law entrenches industrial-scale development in precisely the areas the Plan designates for preservation, creating isolated "solar islands" that are inconsistent with the Plan's land-use hierarchy and its stated vision for orderly, compatible development.

The Comprehensive Plan also highlights the protection of neighborhood character and quality of life. Policies within the Housing & Neighborhood Quality of Life section explicitly call for prohibiting or strictly regulating non-residential uses in residential neighborhoods, limiting impervious coverage, and ensuring that new development is compatible with existing scale and density. For example:

> **Policy 5-17**: Prohibit or establish stricter criteria for non-residential uses in residential districts.
>
> **Policy 5-18**: Limit impervious coverage and site disturbance from non-residential uses to preserve neighborhood character and residential quality

[1] Under the "Land Use" goals, the Comprehensive Plan is explicit in its recommendations, which include, but are not limited to:

> • Promote residential development and preserve open space pursuant to Chapter 5, in a manner consistent with community character.
>
> • Promote land uses and development patterns that help implement the conceptual vision established for each hamlet business center in Chapter 4, and encourage a mix of residential, retail, office, civic, and park uses in the hamlet centers.
>
> • Ensure that land uses and development patterns are compatible with the goals and policies in this Comprehensive Plan which have been established to protect natural resources, historic resources, and scenic corridors and vistas.
>
> • Continue to support agricultural uses, including horse farms and the cultivation of fruits, vegetables and nursery stock. *See* Comprehensive Plan at ES-1-2.

of life.

Within Section 7of the Plan (entitled "Natural Resource Conservation"), several of the stated goals directly conflict with the Draft Law; specifically:

> Goal 7-A: Protect the health, safety, and welfare of Yorktown residents by conserving natural resources to the greatest extent possible, including woodlands, water resources, wetlands, threatened and endangered species, and habitat areas for plants and wildlife.
>
> Goal 7-C: Promote sustainable development patterns, which consume less open space and result in less automobile-dependent land uses.
>
> Goal 7-I: Promote biological diversity by protecting open space that serves as habitat and/or breeding grounds for a wide range of species.
>
> Goal 7-J: Preserve open space alongside streams and around water bodies, and maintain trees and other vegetation in those areas, in order to protect water quality, flood zones, habitat, and breeding grounds from encroachment.
>
> Goal 7-K: Improve enforcement of regulations that protect natural resources.

The Draft Law, by contrast, permits up to 50% lot coverage, substantial structural heights for exempt arrays, permanent fencing, and extensive grading within residential districts. These allowances directly conflict with the Plan's intent to safeguard visual character, open space, and neighborhood integrity, and fail to respect the design standards that the Plan promotes for residential zones. These safeguards in the Plan are expressed, for example, in its Scenic and Historic Preservation (Section 6) provisions, that include:

> **Policy 6-20**: Continue to encourage open space, and review all development projects.
>
> • Utilize site plan review as an important tool toward directing where and how development should take place and critical resources protected. Design review for projects can include the control of elements such as signage, overhead utilities, height requirements and vegetative buffers.

Furthermore, the Plan explicitly identifies zoning as the principal tool to implement land-use goals and ensure coherent district-wide development. It directs that zoning should provide "beneficial and convenient relationships among residential, nonresidential and public areas" and cautions against the use of parcel-specific exemptions to achieve policy objectives (Land Use Chapter, p. 2-7). The Draft Law's selective grandfathering of specific projects constitutes *ad hoc*, targeted zoning enactment that undermines these goals, denying similarly situated property owners the ability to pursue comparable uses while concentrating industrial-scale development impacts in established neighborhoods.

Finally, while the Comprehensive Plan recognizes sustainability and renewable energy as important goals, these objectives must be balanced with neighborhood protection, low-density land use, and environmental stewardship. The Draft Law invokes sustainability benefits rhetorically but fails to reconcile them with its own admission that industrial-scale solar is incompatible with residential districts. As such, the law privileges certain projects at the expense of comprehensive land-use planning and neighborhood character, contravening multiple core objectives of the Plan.

In sum, the Draft Law is inconsistent with the Comprehensive Plan's directives regarding land-use compatibility, neighborhood protection, district coherence, and the proper integration of sustainability objectives. This conflict forms a substantive basis for opposition, demonstrating that adoption of the law would undermine established Town policy and expose the Town to potential legal challenge

III. The Town admits residential incompatibility, and then ignores it

The proposed law is internally self-defeating from the outset. It expressly declares that large-scale solar energy systems are incompatible with residential zoning districts and therefore prohibits them outright in such districts. That legislative determination reflects an acknowledgment that industrial-scale solar facilities, by virtue of their size, fencing, grading, vegetation removal, stormwater impacts, visual dominance, and long-term land disturbance, are inconsistent with residential land use and neighborhood character.

Having made that determination, the Town cannot lawfully reverse course and authorize the identical prohibited use on Dell Avenue and Jacob Road by labeling those projects "grandfathered." A use that is incompatible with a zoning district does not become compatible because the Town Board prefers the outcome on a particular parcel. This contradiction, alone, renders the law arbitrary and irrational. The draft law's treatment of existing large-scale solar energy systems is both arbitrary and inadequately justified. It provides, in a single sentence:

> Notwithstanding the prohibition of Large-scale solar energy systems in residential districts, any Large-scale solar energy systems existing within the Town as of January 1, 2025 ('Existing Large-scale solar energy system') ***shall be considered a legal non-conforming use***, and shall be governed by the provisions set forth herein. (emphasis supplied)

Nowhere does the draft law explain why January 1, 2025 was chosen as the cutoff, what qualifies as "existing" for the purposes of grandfathering, or why certain projects merit protection while others do not. There is no discussion of partially constructed projects, permitted-but-not-built systems, or projects merely under application, leaving the provision vague and internally inconsistent. By failing to define the criteria for eligibility, the law invites confusion, inconsistent enforcement, and potentially arbitrary determinations by the Planning Board or Building Inspector.

The draft law also lacks any rationale linking grandfathering to its stated purposes of promoting health, safety, welfare, or environmental sustainability. While Section II.B emphasizes the Town's interest in "reducing fossil fuel emissions" and "increasing resiliency of the energy grid," the single-sentence grandfathering clause does not articulate how protecting certain existing systems furthers these goals, or why new projects should be categorically excluded. This omission makes the provision appear arbitrary, undermining any pretext of reasoned policymaking and

exposing it to legal challenge as both unfair and potentially inconsistent with state law.

Finally, the absence of procedural safeguards (i.e., no requirement for documentation, verification, or review of grandfathered status) leaves property owners with no clear path to assert or defend their rights. A law that singles out existing projects for protection while simultaneously prohibiting all others in residential zones, without explanation or process, constitutes unequal treatment that is legally vulnerable. Courts routinely strike down grandfathering provisions that are untethered to rational policy objectives or arbitrary cut-off dates. In this instance, the draft law fails to provide any meaningful justification for its selective protection of existing large-scale solar energy systems, rendering it both procedurally and substantively flawed

IV. The "Grandfathering" provision reflects favoritism, not zoning.

The so-called grandfathering provision does not apply to categories of land, neutral criteria, or applications pending as of a fixed date. Instead, it expressly names two projects and confers upon them a permanent exemption from a prohibition that applies to all other residential properties in the Town. This is the antithesis of zoning.

By singling out Dell Avenue and Jacob Road for preferential treatment while denying similarly situated properties any opportunity for equal consideration, the Town has engaged in classic illegal spot zoning. Both of these exemptions benefit discrete private interests while imposing the physical, visual, and environmental burdens of those uses on surrounding residential neighborhoods, including the Random Farms community. No planning rationale distinguishes these parcels from any other residentially zoned land, and none is offered.

V. The Draft Law creates industrial "solar islands" and destroys orderly land use development and Plan implementation

Rather than creating districts where intensified solar use is anticipated and regulated comprehensively, the Town has authorized isolated industrial-scale facilities embedded within residential zoning. These facilities function as stand-alone industrial islands, untethered to any zoning classification that contemplates their impacts.

New York courts consistently reject zoning that permits abrupt, isolated intensification without transitional buffering or district-wide planning. The absence of overlay districts, utility zones, or graduated land-use transitions confirms that the law does not reflect a rational land-use strategy. It produces precisely the type of fragmented development pattern zoning is intended to prevent.

VI. The Draft Law increases impacts while claiming to mitigate them

Despite the Town's assertions that the law protects community character, the current iteration authorizes more intensive development impacts than prior versions. It permits substantial lot coverage (up to 50 percent) allows much taller ground-mounted and canopy systems, relaxes screening requirements where mitigation is deemed "not reasonably practicable," and tolerates permanent fencing, access roads, grading, and vegetation loss.

These impacts directly and adversely affect neighboring residential zoning districts,

particularly downhill and adjacent properties within the Dell Avenue viewshed. The Random Farms Homeowners Association and its residents bear the visual, environmental, and quality-of-life consequences of these intensified uses. A law that increases industrial impacts on residential neighbors cannot plausibly be defended as protective zoning.

VII. The Draft Law imparts a *de facto* moratorium for all, except the favored few

In operation, the law functions as an outright ban on future large-scale solar development in residential districts while permanently insulating preselected projects from that prohibition. This creates a rolling moratorium for all future applicants coupled with a permanent legislative carve-out for favored projects.

The Draft Law provides no findings explaining why these projects warrant exemption, why their impacts are acceptable while others are not, or why similarly situated property owners are categorically excluded from equal treatment. This absence of a rational basis renders the law arbitrary, discriminatory, and indefensible.

VIII. Sustainability rhetoric cannot save the Planning and Zoning conflicts the Draft Law creates

Invocations of renewable energy, sustainability, and general welfare do not save a zoning enactment that contradicts the Comprehensive Plan, targets specific parcels for preferential treatment, and imposes intensified industrial impacts on residential communities without district-wide justification. Courts look to substance, not good intentions. The cumulative defects of this law--comprehensive plan conflict, internal contradiction, project-specific exemptions, intensified impacts, and lack of rational land-use structure--demonstrate that it serves no legitimate zoning purpose.

The Draft Law would be unlawful and contrary to established zoning principles. At a minimum, any lawful solar regulation must eliminate all project-specific exemptions, align permitted uses with properly designated zoning districts, respect the Comprehensive Plan's land-use hierarchy, and protect residential neighborhoods from incompatible industrial-scale development. Absent those corrections, adoption of the law will constitute illegal spot zoning and will expose the Town to immediate judicial challenge with a substantial likelihood of annulment.

IX. The Draft Law is arbitrary

Apart from paying lip service to preserving the existing character of the Town's landscapes and the environment, the Draft Law has no meaningful connection to the specific harms that it seeks to alleviate. The Draft Law does not recite specific land-use practices that have been studied, cited, or determined to be detrimental to the Town and its natural resources. Instead, the Draft Law outright bans excavation and site disturbances above a certain threshold unless they pass through an arbitrary and vague special permit process imposed by an agency that is typically not responsible, and thus not qualified, for reviewing such potential impacts.

The arbitrariness of the Draft Law is readily apparent from its complete lack of study and fact-finding in the administrative record. An administrative agency like the Town Board must make findings to support an ultimate decision. Findings memorialize the process the administrative

board undertakes when it decides. *See* Salkin, *N.Y. Zoning Law & Practice* § 28:32. Here, there is nothing in the record to support the Town Board considering and weighing evidence for or against the Draft Law and then correlating any applicable legal standard to its decision. Courts apply a substantial evidence test to determine whether a determination made by an administrative agency should be set aside. Where there is no rational basis in the record, it must be annulled. The utter lack of such a record here offers no support for the Draft Law, mandating that it be vacated and annulled if adopted.

XI. The Draft Law is a prohibited form of *ad hoc* zoning

As developed above, the Draft Law targets specific projects and parcels and is not part of a well-considered and comprehensive plan calculated to serve the general welfare of the community. Its essential purpose is to eliminate specific projects rather than advance coherent land-use policy. This form of *ad hoc*, reactionary spot zoning, is illegal.

XII. Conclusion

The Town Board should not adopt the Draft Law in any form, and certainly should not adopt it in its current form. We respectfully request that, if consideration continues, the public hearing be reopened to cure procedural and substantive defects, allow additional public input, and explore lawful alternatives consistent with SEQRA and the Comprehensive Plan.

Our client reserves all rights with respect to the Draft Law and its application. This submission is not exhaustive. We appreciate the Town's attention to these comments. Please do not hesitate to contact me should you have questions.

Very truly yours,

/s/ Michael V. Caruso
Michael V. Caruso

cc: Adam Rodriguez, Esq. (*via email*)
Town of New Castle
c/o Christina Papes, Town Clerk (*via email*)