Solar Array/Zoning: Maine Supreme Court Addresses Definition of Public Utility Facility

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The Supreme Judicial Court of Maine ("Supreme Court") addressed in a November 7th Opinion an issue arising out of a Maine town's application of its zoning Ordinance to a proposed solar array project. See *Odiorne Lane Solar, LLC, et al. v. Town of Eliot, et al.*, 2023 WL 7312981.

The question considered was whether the solar array project would constitute a "public utility facility" under the zoning Ordinance.

Odiorne Lane Solar, LLC ("OLS") applied to the Town of Eliot's Planning Board for site-plan review and change-of-use approval to build a large solar array project ("Solar Project") in the Town's Rural District.

The solar project was described as consisting of:

. . . a large array of ground-mounted solar panels capable of generating two megawatts of power.

OLS stated that the "large solar array use" was a permitted use within this district. This was based on the argument that "public utility facilities" are allowed within every district under the Town's zoning Ordinance.

The application was addressed by both the Town's Planning Board and Board of Appeals. The Superior Court (lower court) held that the solar project did constitute a "public utility facility."

The Supreme Court on appeal addressed whether the solar project constituted a "public utility facility" within the meaning of the Town's zoning Ordinance.

The Supreme Court noted that the Board of Appeals' interpretation would be provided substantial deference. Further, in the absence of ambiguity, the review would be de novo.

The Supreme Court concluded that the term "public utility facility" was not defined in the Ordinance. However, the term "public utility" is defined in the Ordinance to include:

. . . any person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation or water to the public.

In addition, to furnish electricity to the public in Maine, the entity must be authorized to do so by the Public Utilities Commission. Solar arrays were authorized to furnish electricity to the public. Therefore, the Supreme Court described the OLS solar project as being properly classified as a non-utility "distributed generation resource" (noting that the definition gives this type of generation certain favorable treatment regarding net billing and other advantages).

OLS responded that the referenced Maine statute was irrelevant because the issue was how the Town of Eliot defined a public utility facility.

The Supreme Court acknowledged that the Town could define a public utility or public utility facility differently than the Maine legislature. However, it stated that the zoning Ordinance:

. . . specifically defines a public utility as an entity "authorized" to furnish electricity to the public.

An applicant may furnish service to the public only if allowed by state law. OLS (like other generators) could not furnish electricity to the public because it is not authorized to do so.

Additional points raised by the Supreme Court included:

- Inclusion of the solar array would lead to an "absurd" result because large industrial biomass, natural gas or nuclear plants could then also be located anywhere in the Town of Eliot (including the Rural District).
- The Ordinance provides that any use not listed is prohibited and the OLS solar project does not fit within that definition.

The Supreme Court reverses the Superior Court and holds that the OLS solar array does not fit within the scope of the term "public utility facility."

A copy of the Opinion can be downloaded here.