Solar Panel Array: New Hampshire Supreme Court Addresses Zoning Issue

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The Supreme Court of New Hampshire ("Supreme Court") in an April 9th, 2024 Opinion addressed an issue arising out of a proposal to install a solar panel array. *See Mojalaki Holdings v. City of Franklin*, 2024 N.H. 17 (2024).

Questions considered included:

- whether the site plan application was properly denied due to the solar panel array's utility poles creating an "industrial look and character which is out of place in the neighborhood."
- if the cutting down of mature trees to provide sunlight was in violation of RSA 672:1, III-a, which encourages the use of solar energy and other renewable forms of energy.

Mojalaki Holdings, LLC ("Mojalaki") and GSSG New Hampshire, LLC ("GSSG") applied for site plan approval to construct a solar panel array. The solar panel array required the installation of new utility poles. Further, mature trees would have to be removed so the solar panels could receive sufficient sunlight.

The site for the project was described as encompassing about six and a half acres of the approximately 96 acres of land owned by Mojalaki. The land mostly consisted of open space and was once a golf course.

The City of Franklin held public hearings.

After the public hearings closed, the City Planner drafted two decisions — one to grant the application with 14 conditions and one to deny it. He sent both to the City Planning Board ("Board") for its review and vote.

The Board denied the site plan application by a vote of seven to one. A partial basis of the denial was the two considerations previously referenced.

The trial court upheld the Board's decision.

The City of Franklin did not have an ordinance addressing solar arrays. Instead, the ordinance applied stated:

…Proper regulations encourage energy efficient patterns of development, the use of solar energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare.

See RSA 672:1, III-a (2016).

The Supreme Court agreed that the trial court erred in affirming the Board's decision to deny the plaintiffs' site plan application based solely on applying the purpose provisions of the site plan regulations. Site plan review is designed to ensure that uses permitted by a zoning ordinance are to be developed in a safe and attractive manner and in a way that will not involve danger or injury to the health, safety, or prosperity of abutting property owners or the general public.

Nevertheless, site plan review is limited. A project cannot be denied simply because the Board "does not feel that the proposed use is an appropriate use of the land."

When a planning board adopts site plan regulations, they must, among other things, define the purposes of site plan review and specify the general standards and requirements with which the proposed development shall comply. When an application complies with zoning and the specific technical requirements of the site plan regulations, ad hoc decision making without sufficient evidentiary support cannot justify a denial on the basis of a purpose provision.

The solar panel array developers were also granted a builder's remedy to complete the proposed project. The record revealed that, other than with respect to the purpose provisions relied on by the Board, there was no dispute that the application met the specific, applicable site plan regulations.

A copy of the Opinion can be downloaded here.