Solar Energy System/Tree Removal: Massachusetts Appellate Court Addresses Zoning Issue



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The Appeals Court of Massachusetts ("Court") addressed in a July 9th Opinion an issue arising out of the siting of a governmental solar energy system. *See Sunpin Energy Servs., LLC v. Zoning Bd. of Appeals of Petersham*, 105 Mass. App. Ct. 641 (2025).

The decision involved a dispute between Sunpin Energy Services, LLC, a California limited liability company, and Ralph P. Lapinkas, Jr., ("Plaintiffs") against the Zoning Board of Appeals of Petersham, Massachusetts ("the Board").

The Plaintiffs sought to build and operate a large-scale ground-mounted solar energy system on rural private property owned by Lapinkas in Petersham. The project would sell electricity to the National Grid. Construction of the project would require the clearing of approximately fourteen acres of vegetation and trees on a twenty-four-acre parcel. Sunpin was required to obtain a special permit and site plan review from the Zoning Board of Appeals.

A unanimous vote from its three members was required for approval. Two members voted in favor, but one member voted against. Therefore, the application was denied

Petersham is zoned residential-agricultural. The zoning scheme included a solar electric overlay district ("SEOD") allowing large-scale solar installations as of right. However, installations outside the SEOD, like the proposed project, require a special permit. The project site is on undeveloped forest and wetlands. Residential lots and the Harvard Forest's Riceville Pond site abut the project site.

The solar array includes a 4.3-megawatt photovoltaic generation and 2.0-megawatt energy storage system. A ground-mounted solar array and battery racks would be constructed. Approximately 12,090 panels, enclosed by a seven-foot-high chain link fence would be included. Sunpin obtained an order of conditions from the Town conservation commission under the Wetlands Protection Act before submitting its application.

A public hearing on the application was held in 2021. Two board members voted to approve the application with conditions. These included maintaining vegetative screening for abutting properties. The dissenting member, Reynolds, opposed the project. The opposition was based on:

- state energy policy documents that discourage significant tree cutting for solar projects.
- impact on the Town's natural resources and property values.

The plaintiffs challenged the board's decision in the Land Court. They argued that the dissenting member's decision was not based on statutory or zoning bylaw prohibitions. It was argued to have instead been based on subjective beliefs about the project's compatibility with the Town's general welfare and state energy policy. The Land Court judge granted summary judgment in favor of the board. The Court concluded that the dissenting member's reliance on the bylaw standards was proper.

The Appeals Court of Massachusetts reached a different conclusion. It found that the Board's decision exceeded its discretionary power of denial because the proposed use was protected by G. L. c. 40A, § 3, ninth paragraph, which provides that:

…[n]o zoning ordinance or by-law shall 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 Town had not adopted any regulations prohibiting projects requiring tree removal. Therefore, the denial was contrary to the legislative goal of promoting solar energy. The Court vacated the judgment in favor of the board.

The Court noted that “standalone, large-scale [solar energy] systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth” and the Legislature has protected such installations from unreasonable local regulation. It found that the Board's decision was based on a preference for maintaining forest land rather than on public health, safety, or welfare concerns, which exceeded its discretionary powers. The Town's bylaw allows clearing of natural vegetation necessary for solar installations. Further, there was no evidence that Sunpin would clear more than necessary.

The Court concluded that the Board's decision was unreasonable and not supported by the bylaw's standards. It vacated the judgment and remanded the case to the Board to issue the special permit, allowing for reasonable conditions if warranted.

A copy of the Opinion can be downloaded here.