Appeals Court Sides with Solar Proponent in Local Permitting Fight

In a decision this summer, the Massachusetts Appeals Court again reminded towns that their permitting authority is quite constrained by state law when it comes to solar arrays. *Sunpin Energy Services, LLC v. Zoning Board of Appeals of Petersham*, WL 1887337 (July 9, 2025). The Court clarified that a Zoning Board cannot deny a permit based on its preference for the property's use to be something else—especially where the project satisfies the town's existing bylaw. Such actions by local boards conflict with a state law that provides special protections for siting solar and related infrastructure, as well as the Legislature's intent in passing that law: to promote solar energy in the Commonwealth.

Under G. L. c. 40A, § 3, ¶ 9, local zoning bylaws cannot prohibit or unreasonably regulate installation of solar energy systems, "except where necessary to protect the public health, safety, or welfare." In *Sunpin*, Petersham has an overlay district where large-scale ground-mounted solar electric systems are allowed as of right. But installations proposed outside of this overly district, such as the Sunpin location, require a special permit from the ZBA, along with site plan review. When it comes to special permits, the Town imposes additional restrictions, including a limit on clearing of natural vegetation to "what is necessary for the construction, operation and maintenance" of the solar installation.

Sunpin applied for a special permit to build a large-scale ground-mounted solar energy system in the Town of Petersham. The proposed solar array complied with all local zoning requirements, and it involved clearing no more land than what was necessary for operation of the system. The ZBA denied the permit, claiming the extensive tree removal required to build the solar installation was incompatible with the welfare of the town's inhabitants and was not the "most appropriate" use of the land. The ZBA's decision also cited several state policy documents that discourage siting solar projects on forested property.

On appeal, the Appeals Court held that the ZBA exceeded the scope of its discretion in denying the special permit. The Court quickly dismissed the two-state policy documents the Town cited about preserving trees and looked instead to case law (*Tracer Lane II Realty, LLC v. Waltham*, 489 Mass. 775, 781 (2022)) and the Town's bylaw. In doing so, the Court found that neither G. L. c. 40A, § 3, ¶ 9 nor the Town's bylaws provided an avenue for the ZBA to weigh the relative merits of tree cover against solar energy development.

This was particularly the case where the ZBA ignored its own Bylaw addressing the extent of allowable clearing. There was no evidence Sunpin's project would violate the Bylaw by clearing more vegetation than necessary. Moreover, the Court found the Bylaw's existence suggested permit denial was unnecessary to protect public health, safety or welfare on the grounds of tree coverage. The Court noted the ZBA's concern that approval would hasten the fragmentation of natural land through additional development was an "undifferentiated fear of the future," not a reasonably likely impact—and thus an improper consideration. In remanding the decision to the ZBA, the Court prohibited the Town from denying the permit but noted its discretion to impose "reasonable" conditions or safeguards.

This case reminds local boards that, particularly when it comes to solar-related development, departing from concrete standards set forth within bylaws in favor of abstract concerns will not survive legal scrutiny. Massachusetts courts have routinely overruled local zoning decisions that it sees as contrary to the state's solar protections. A town's decision to deny a permit for a solar energy project is more likely to be upheld by a court if the project creates a threat to public health, safety, or welfare that is (1) not addressed by local bylaw standards and (2) can't be mitigated by design or operational changes. When confronted with "two laudable environmental goals [pitted] against one another," the local board cannot go with its preference or what it deems the better use of a property; it must adhere to the state and regulatory frameworks by which it is bound.

Additional Author, Mackay Peltzer, Summer Associate 2025

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