

Solar Energy: Can a Nuisance Claim Be Based Solely upon Aesthetic Considerations?



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Supreme Court of Vermont ("Court") addressed in a January 13th Opinion whether:

...Vermont law recognizes a private cause of action for alleged interference with property resting solely upon aesthetic considerations.

See *Myrick v. Peck Electric Company, et al.* 2017 WL 129041.

A group of landowners filed suit against certain solar companies constructing commercial solar arrays adjacent to their properties arguing the structures constituted a private nuisance because they:

...have negatively affected the surrounding area's rural aesthetic, causing properties in their vicinity to lose value.

A Vermont trial court consolidated the different actions.

The trial court cited case law barring nuisance actions based purely on aesthetics and granted summary judgment to the solar companies.

The landowners set forth two arguments on appeal for why the trial court erred in granting summary judgment.

First, they argued that existing Vermont private nuisance law is broad enough to apply to aesthetic harm. Further, they argued that the only Vermont precedent to address this question was "no longer good law" because it was "decided in 1896 and society has since come to recognize the importance of scenic resources in today's economy."

The landowners also argued that aesthetic "injury to the sensibilities and ordinary comfort" of the average person is cognizable as nuisance and compensable by reference to diminution in property value.

As to the first argument, the Court responded that "An unattractive sight – without more – is not a substantial interference as a matter of law because the mere appearance of the property of another does not affect a citizen's ability to use and enjoy his or her neighboring land." The Court cited a California case that held a cell transmission tower was not a nuisance because "the essence of a private nuisance is its interference with the use and enjoyment of land" and unpleasant appearance alone does not interfere. (among other cases)

The Court also stated that a Complaint based solely on aesthetic disapproval cannot be measured using the unreasonableness standard that underpins nuisance law. Aesthetic is differentiated from "traditional bases" for nuisance claims such as noise, light, vibration, odor because they can be quantified. Further,

the Court stated that the propriety of one neighbor's aesthetic preferences cannot be quantified because those preferences are inherently subjective. Also, it expressed concern about the possibility that an aesthetic nuisance would transform this area of the law "into a license to the courts to set neighborhood aesthetic standards."

The Court also rejected the landowners' second argument.

The landowners argued that the *Uni-First* decision could be interpreted to allow recovery because the solar panels allegedly caused their property value to fall. In *Uni-First* a group of home owners had sought damages after state inspectors discovered that a chemical solvent from a dry cleaner had entered the town's drinking water and fear of contamination caused the decline in property values.

The Court distinguished that situation noting not all the plaintiffs whose property value fell could prove that the property was contaminated. Nevertheless, there was deemed to be sufficient evidence of generalized contamination that was causally linked to lowered property values.

The Court therefore rejected the landowners' argument to interpret *Uni-First* as permitting recovery in nuisance "based on diminished property values caused by an adverse public perception, regardless of [the] accuracy" of that perception. It holds that *Uni-First* represents a narrow category of private nuisance claims involving chemical contamination that threatens to or in fact causes an unreasonable interference. Consequently, a simple decrease in property value is not deemed to constitute interference with that property's use – a requisite for a nuisance claim.

The Court further supports this conclusion by stating that a claim of nuisance based solely upon diminution of property values invites "speculation" as property values are affected by many factors; a decrease in market value does not mean there is a nuisance any more than an increase means there is not.

The Court therefore concludes that private nuisance law in Vermont does not encompass a cause of action for aesthetic harm alone. The trial court's granting of summary judgment is upheld.

[A copy of the decision can be downloaded here.](#)