

Solar Energy Project/Municipal Regulation: Massachusetts Land Court Addresses Challenge to Special Permit Requirement



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The Massachusetts Land Court ("Land Court") in a December 24th decision addressed a challenge to the Town of Ware's (the "Town") requirement that PLH LLC ("PLH") obtain a special permit for its proposed ground-mounted solar energy project. See *PLH LLC v. Town of Ware*, 2019 WL 7201712.

PLH claimed that requiring it to apply for a special permit violated Mass. Gen. Laws ch. 40A, § 3, which protects certain land uses from municipal regulation.

The challenged provision of the law 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."

Therefore, the question for the Land Court was whether the special permit requirement was an unreasonable regulation of PLC's solar energy project. Relying on a 1997 Massachusetts appellate court decision, the Land Court held that the special permit requirement was not per se prohibited by Mass. Gen. Laws ch. 40A, § 3.

The Town may require special permits even when the proposed land use is protected by § 3 as long as the requirement is not applied in a way that amounts to an "arbitrary denial or an unwillingness to allow the protected use." In other words, a special permit requirement is allowed when the requirement is reasonable and not pretextual.

The Land Court also cited policy reasons in support of its holding. Namely, striking down the special permit requirement at issue would invalidate special permit requirements for the entire category of solar energy use. The Land Court believed this would leave the Town without any effective regulation for solar energy projects.

Summary judgment was granted in favor of the Town.

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