

# Solar Energy System/Access Road: Massachusetts Appellate Court Addresses Zoning Issue



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07/01/2022

The Supreme Judicial Court of Massachusetts (“Court”) addressed in a June 2nd Opinion application of the City of Waltham, Massachusetts, (“Waltham”) zoning code to the construction of a solar energy system. See 2022 WL 1789794.

The question involved whether an access road to the system could be built in a residential area even though it was a commercial use.

Tracer Lane II Realty, LLC (“Tracer”) was seeking to construct a solar energy system in Lexington, Massachusetts. The solar energy system would be constructed on property zoned for commercial use. However, a necessary access road would have to be constructed on property zoned for residential use.

Waltham informed Tracer that the access road was a commercial road and therefore could not be built in an area zoned residential.

The question the Court dealt with on appeal was whether the Massachusetts statutory provision found at G. L. c. 40A, § 3, (ninth paragraph) (“40A”) provided Trace the ability to construct the access road. 40A protects solar energy systems from local regulation that is:

. . . not necessary to protect the public health, safety, or welfare . . .

The relevant language from 40A specifically states:

. . . No zoning ordinance or bylaw 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.

Waltham responded that its zoning code expressly permits solar energy systems in industrial zones. The industrial zone encompasses approximately one to two percent of the city’s total area.

In addressing the application of 40A, Waltham argued that the access road (as opposed to the solar energy systems itself) is not encompassed by this state provision.

The Court concluded that Waltham’s zoning code unduly restricts solar energy systems in light of 40A. Its cited concern was Waltham’s limiting large-scale solar energy systems to one to two percent of the city’s land area, noting:

. . . These standalone, large-scale systems, not ancillary to any residential or commercial use, are key to promoting solar energy in the Commonwealth. (Citing the Executive Office of Energy and Environmental Affairs, Massachusetts 2050 Decarbonization Roadmap.)

The Court also concluded that nothing in the record indicated what it described as a “stringent limitation” was necessary to protect the public health, safety or welfare.

The prohibition of large-scale solar energy systems in all but one or two percent of Waltham’s land area was deemed to restrict rather than promote the Massachusetts legislative goal of promoting solar energy in violation of 40A.

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