

# Solar Energy Facility/Zoning: Massachusetts Appellate Court Addresses Judicial Challenge to Town's Special Permit Requirement



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The Appeals Court of Massachusetts ("Appellate Court") addressed in a December 8th Memorandum and Order ("Memorandum") a judicial challenge to a Town of Ware, Massachusetts, ("Ware") bylaw requiring a special permit for large, ground-mounted solar energy facilities in certain zoning districts. See *PLH, LLC v. Town of Ware*, 2022 WL 17491278.

The Plaintiff, PLH, LLC ("PLH") argued that Ware violated a Massachusetts statutory provision providing that:

. . . no 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.

See G.L.c.40 A § 3.

PLH had sought approval for two large ground-mounted solar energy installations in a rural-residential zoning district in Ware. The Ware zoning law required both a site plan review and a special permit for large solar facilities in a residential zone.

A lower court found that the special permit requirement was valid because the Ware applied it narrowly.

The Appellate Court first addressed PLH's argument that the special permit requirement is unreasonable because it:

. . . addresses no material or legitimate municipal interests beyond those the site plan review already addresses.

The cited paragraph was interpreted to allow a broader scope of regulation. It did not specifically bar special permit requirements as is found in certain other sections of the same statute.

The Appellate Court also rejected PLH's claim that the requirement serves no legitimate municipal interest. The preservation of the character and environment of the zoning district was stated by the Court to be a "legitimate municipal interest." The requirement to consider a limited set of factors was deemed to give Ware an additional opportunity to ensure installations are appropriate for the requested location. This was held to be a legitimate municipal purpose.

Finally, the Appellate Court also rejected the argument that the special permit requirement unreasonably burdens or restricts solar installation. Cited was Ware's solar bylaw allowing large solar installations on more than 72% of its land area (either with a special permit or after cite plan review). Despite acknowledging that the approval process may be extended with additional costs, the Appellate Court found that this was reasonable considering the municipal interest it serves.

The Appellate Court ultimately rejected the challenge to Ware's special permit requirement.

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