

Zoning/Solar Panel Farm: Maryland Appellate Court Addresses Preemption Issue



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The Court of Special Appeals (“Court”) of Maryland addressed in a November 15th opinion local governmental authority regarding the placement of a Solar Energy Generating System (“SEGS”) i.e., a solar panel farm). See *Board of County Commissioners of Washington County, et al. v. Perennial Solar, LLC*, 2018 WL 5993859.

The question considered was whether the Maryland Public Service Commission (“MPSC”) had exclusive jurisdiction for approving site location – thereby preempting local zoning authorities.

Perennial Solar, LLC (“Perennial”) filed an application for a special exception and variance to construct a SEGS in Washington County, Maryland. The Washington County Board of Zoning Appeals (“Board”) granted the application.

The Board of County Commissioners of Washington County and several residents (collectively “Appellants”) appealed the Board’s decision to the Circuit Court for Washington County. The Circuit Court held that both it and the Board’s authority was preempted by state law. The state law referenced involved the MPSC and its law codified in the Public Utilities Article of the Maryland Code.

Appellants appealed arguing that MPSC approval of the SEGS at the proposed location would be inconsistent with the local planning and zoning controls of the Washington County zoning ordinance. Further, they attempted to distinguish a prior Maryland appellate decision which held that local governing bodies are impliedly preempted from regulating construction of certain electric power lines. They contended that power lines differ from the location of a SEGS. SEGSs were argued to not present a sufficiently compelling public interest and that the public utilities article laws do not occupy the entire field of SEGSs.

Perennial responded that the type of SEGS involved in this matter is clearly within the purview of the MPSC. The argument was premised on the contention that statutory law and case law were clear. The authority that determined whether and where the SEGS may be built was solely within the scope of authority of the MPSC.

The Court framed the question as to whether PUA § 7-207 (granting the MPSC general regulatory powers over generating stations [including SEGS]) preempts local zoning regulation regarding the location and construction of such generating stations.

The Court undertook analysis of various secondary factors that prior decisions have considered in determining whether a local law is preempted by implication. It applied these factors to the relevant

provisions of the MPSC authorities and the Washington County Zoning Ordinance and Comprehensive Plan.

The Court held that based on the comprehensiveness of § 7-207 that local zoning regulations and comprehensive plans are impliedly preempted by state law for SEGs requiring a CPCN. It further noted that:

The statute grants the PSC brought authority to determine whether and where the SEGs may be constructed and operated. It is even more evident that the Legislature intended to have the state govern SEGs approval by requiring local government input into the state's final decision.

Appellants also had argued that Perennial is not governed by MPSC law because it regulates only solar photovoltaic systems operated by a Public Service Commission. The Court undertook an analysis of the relevant statutory authorities and held that Perennial is a person seeking to construct a generating station in Maryland. Therefore, it was required to get a CPCN through the MPSC. As a result, the Court rejected the appellant's argument that Perennial was not governed by the MPSC law.

A copy of the opinion can be found [here](#).