

Revity Energy v. Hopkinton Zoning Board of Review, C.A. No. WC-2021-526 (November 21, 2022) <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorDecisions/21-526.pdf>

Holding:

Rhode Island Superior Court reversed the decision of the Hopkinton Zoning Board of Review (sitting as the board of appeals).

The Town of Hopkinton’s Planning Board approved Revity Energy LLC’s solar application for Development Plan Review with 26 conditions. Revity Energy LLC appealed two of the conditions of approval to the Town of Hopkinton Zoning Board: Condition Five (no vegetation within the hundred feet setback area could be removed) and Condition Twenty-Six (all site work shall be performed between Monday through Friday between the hours of 8 AM and 5 PM). The Zoning Board upheld the Planning Board’s Decision. Superior Court reversed the Zoning Board’s decision because the Court found the Planning Board lacked the legal authority under the State Enabling Act and the Town’s Zoning Ordinance to impose such conditions.

Key Takeaways:

1. The Court found the Town of Hopkinton did not have the legal authority to enforce two conditions of approval of a solar development application.
2. **Condition 5** (no clearing existing vegetation within setbacks) The Zoning Board failed to provide the Court with any explanation of legislative intent to prohibit all clearing in setback areas for all projects. The Zoning Board did not specify any findings or ecological considerations, soil erosion, or storm water control to justify the condition to prohibit land clearing within the setback area.
3. **Condition 26** (all sitework to be performed only Monday through Friday between 8 AM and 5 PM) R.I. Gen. Laws § 45-24-49 enables municipal zoning ordinances to permit development plan review (DPR) of development applications for uses allowed by right, but the “*review shall only be based on specific and objective guidelines which must be stated in the zoning ordinance*”. The Hopkinton Zoning Ordinance did not address construction hours or limitations, and therefore the condition was not justified. – “*a condition justified only as necessary for general welfare is not specific and therefore runs afoul of § 45-24-49(b).*”

Facts:

Revity Energy LLC filed an application for Development Plan Review (DPR) proposing to construct a photovoltaic solar energy system located at 15 Frontier Road in Hopkinton, RI. The proposal was a permitted use on the parcel.

The Hopkinton Planning Board approved the applicant’s DPR application subject to 26 conditions. Two conditions were challenged by the applicant. Condition 5 states: “The existing vegetation within the hundred feet setback area along Maxson Hill Road will remain in place and be supplemented with additional planting of evergreen trees of a minimum of six feet of height at the time of planting, as set forth in the approved landscape plan.”

Condition 26 states: “all site work shall be performed Monday through Friday, between the hours of 8 a.m. and 5 p.m., eastern standard time.”

The applicant appealed the Planning Board’s decision to the Zoning Board, arguing condition 5 was based on a flawed interpretation of the city’s zoning ordinance and condition 26 was imposed without legal authority.

The Zoning Board unanimously upheld the conditions 5 and 26. Applicants then appealed to Superior Court.

Analysis:

1. Legal Authority to Impose No Clearing in Setback Area

The Hopkinton Zoning Ordinance states that when a parcel is rezoned for the purpose of accommodating solar, clearing any existing vegetation on the subject parcel shall be limited to 40% of the parcel. The ordinance also states that clearing any existing vegetation within the front, rear and side yard setback areas of the parcel is prohibited, unless explicitly approved by the Planning Board.

The Appellant argued that because their parcel did not need to be rezoned, it did not require the clearing of existing vegetation within setback areas to be approved by the Planning Board. The Town disagreed, arguing that the restrictions on clearing land applies to all solar developments, and not just to developments being rezoned for solar.

The Court decided that due to the uncertainty of the language of the ordinance, it must give effect to the plain meaning of the language, and as a result, the Court determined the language in the Hopkinton Ordinance prohibiting the clearing of vegetation in setback areas, unless explicitly approved by the Planning Board, was only applicable to those parcels being rezoned.

The Court found no evidence that the legislative intent of the Zoning Ordinance was to prevent all types of vegetation clearing from all projects: “*the Zoning Board has failed to provide the Court with any explanation of legislative intent to prohibit all clearing in setback areas for all projects.*” The decision further stated, “*Thus, absent specific findings of necessity—e.g., due to ecological considerations, soil erosion, or storm water control—the mere recitation of the language of §§ 13.5-75 and 76 is inadequate to show an intent to prohibit all clearing.*”

For these reasons, the Court determined the language in Hopkinton’s solar ordinance did not provide the Hopkinton Planning Board the authority to impose condition 26.

2. Legal Authority of Construction Hours Restriction

Appellant argued the Planning Board limited the site work hours of the solar project without any legal authority. The Town argued it was a reasonable restriction on construction and development.

The Court agreed with Appellant, stating the Planning Board can't impose merely "reasonable" restrictions on construction and development. The court found the restrictions must also be based on "*specific and objective guidelines which must be stated in the zoning ordinance.*" The Court found the Town Zoning Ordinance did not address construction hours or construction limitations, specifically or generally. The Court stated "*By definition, a condition justified only as necessary for general welfare is not specific and therefore runs afoul of § 45-24-49(b).*"

The Court concluded "*not only did the Planning Board lack the legal authority under the Zoning Ordinance to limit construction hours, it also lacked a sufficient evidentiary basis to impose such a restriction. Section 45-23-71(c)(5)*"

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