RIW Attorney Michael Rosen Receives Favorable Ruling for Solar Developer in Northbridge, Mass.

By RIW on July 25, 2019

Attorney Michael Rosen and Ruberto, Israel & Weiner are proud to have appeared with Attorney Henry Lane in the matter of Northbridge McQuade LLC v Northbridge ZBA, et. al. On June 17, 2019, the Court issued an **unpublished decision** ruling in favor of a solar developer for a site located in Northbridge, Massachusetts.

In a case involving a unique site, where the portion of the property where the solar project was to be placed complied with zoning, but its access was through a residential zone (where large-scale solar was not allowed), the Court held that MGL Ch. 40A, Section 3 requires the community to conduct an analysis of the site and render its decision based upon a site-specific rather than a town-wide review. The town argued that since it allowed large-scale solar in some portions of the town, it need not grant relief for this specific project. The Court found otherwise. Instead, it recognized that the applicant has the protections afforded all property owners under MGL Ch. 40A, Section 3 (which exempts certain uses from local zoning unless necessary to protect health, safety or welfare). This portion of the ruling clarifies the subtle distinctions between the 2014 Land Court Ruling in Briggs v Zoning Board of Appeals of Marion and the 2015 Land Court Ruling in Duseau v. Szawlowski.

The Court further dealt with the issue of municipalities that have not adopted zoning bylaws that permit the granting of use variances. The Court made clear that where a use is permitted under 40A Section 3, such determination overrides prohibitions on use and renders the need for a use variance moot.

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