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By Meg Sheehan

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## OF NUCLEAR INTEREST: Using local zoning for local control over nuclear waste

The Pilgrim Nuclear Power Station in Plymouth is storing more than 40 years worth of lethal radioactive waste in a "short term" storage pool built in 1974. Pilgrim is owned by Louisiana-based Entergy Corporation, the second largest power producer in the U.S. In order to keep running Pilgrim, in 2012 Entergy started building a new storage facility for the nuclear waste. Before construction, Entergy failed to apply for zoning approval from the town of Plymouth for the new, long-term nuclear waste storage facility. Once this failure was exposed by local residents, a permit was issued but the residents claim it violates local zoning.

Plymouth has a comprehensive system of zoning for land uses throughout the town. Zoning is a way for a community to ensure that land uses are conducted in a way that does not harm public health, safety and welfare, including the value of real estate. This way, local communities retain and exercise control over development and other activities carried out within their borders. Plymouth's zoning laws are carefully crafted and are intended to ensure that large developments and industrial uses are allowed only under certain conditions set forth in the zoning law's "special permit" provisions. The special permit laws give the public the right to participate in the zoning process by requiring a public hearing and the opportunity for zoning officials to impose conditions on the proposed use.

Local residents claim that Entergy's new nuclear waste storage facility needs a "special permit" under Plymouth's zoning laws. They claim that the 2013 decision by the building inspector to issue a zoning permit "as of right" without a special permit was wrong. When the citizens' appeal of that permit to the Zoning Board of Appeals was rejected, they went to court.

The goal of the citizens' lawsuit over Entergy's nuclear waste storage facility is not to stop the project. Instead, they say Entergy should apply for a special permit, which would result in a better project. They say the public and local officials should have the chance to thoroughly review the plans, including siting plans, and a public hearing should be held. The special-permit process requires the Zoning Board of Appeals to impose conditions to protect public health, safety and welfare, and gives the public a chance to suggest conditions that the Zoning Board of Appeals may adopt.

Entergy asked the court to dismiss the citizen lawsuit, claiming the 18 local residents who are plaintiffs did not have standing. That is, Entergy said the plaintiffs did not make an adequate claim that they would be harmed by the project, so the case should be dismissed. On Aug. 14, the Land Court judge rejected Entergy's attempt to dismiss the entire case. The court found that Entergy's nuclear waste storage facility may harm the economic value of those citizen plaintiffs residing within two miles of Pilgrim. This means these plaintiffs now proceed to trial on this and other issues.

Pilgrim's nuclear waste has nowhere to go but Plymouth. It is likely to remain here forever. While this problem may seem too big to comprehend, enforcing local zoning laws meant to protect our health, safety and welfare is an important tool for local residents to use. Local laws, enforced by local officials for the benefit of local communities, give Plymouth the power and control it deserves in this situation.

Meg Sheehan is a public interest attorney who grew up in Plymouth. She is co-counsel on the zoning appeal lawsuit.



This Sept. 5, 2014, photo shows Entergy's dry cask storage for high-level radioactive waste is under construction. See the construction to the right of the main reactor building. Photo courtesy of Paul Rifkin.

<http://plymouth.wickedlocal.com/article/20140912/NEWS/140919877>

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