Local Regulation of Solar Energy Projects

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Overview

- When local regulation applies
- How local regulation usually occurs
- Key considerations for “smart” local regulation
- State Environmental Quality Review Act (SEQRA)
- NYSERDA Model Solar Law
- RPTL 487 (real property tax) considerations
We’ll use “town” as shorthand for “municipality,” but in general this discussion also applies to cities and villages.

Q&A will follow at the end of the webinar, and we welcome other questions afterward.
Three Categories of Solar Development

- Residential Scale (smallest)
- Commercial Scale – our focus today
- Utility Scale (largest)
Three Categories of Solar Development

- Residential Scale
  - Typically rooftop, building-integrated, or small ground-mounted panel installation
  - Generally not subject to discretionary local regulation (such as site plan approval or a special use permit)
  - Regulated by building codes
Three Categories of Solar Development

- **Commercial Scale**
  - Typically 10 – 100 acre ground-mounted installations
  - At 5 acres per MW = 2 – 20 MW
  - Projects up to 25 MW (roughly 125 acres) can be regulated by local land use/zoning regulations
Three Categories of Solar Development

- **Utility Scale**
  - Typically 125+ acre ground-mounted installations
  - "Section 94-c" review process (formerly "Article 10")
  - 25 MW and above (projects above 20 MW can "opt in")
  - Regulated under New York State’s Office of Renewable Energy Siting; not subject to local land use/zoning regulation
How Local Regulation Occurs

For Commercial Scale Projects

- Dedicated Article/Chapter/Section of existing zoning code or land use laws/regulations
- “Standalone” Local Law
Key Components of Local Solar Laws

- In which zoning districts will solar projects be allowed?
Key Components of Local Solar Laws

- Example of an overlay district
Setbacks (a.k.a. Yard Requirements)

- Common method of preventing conflict between neighboring land uses
- Existing local setback requirements for other uses can be reference points
- Reduce visual impact of an installation, but also limit development area for the project
Nuisance Abatement

Setbacks: Impact on development area

1,000' x 1,000' = 1,000,000 sq ft
(+/-22.96 acres)
Setbacks: Impact on development area

Development Area:
640,000 sq ft
(+/-14.69 acres)

Setback = 36% of land area
Nuisance Abatement

Setbacks: Impact on development area

- **1,000’**
  - **100’ setback**
  - **Development Area:**
    - 640,000 sq ft
    - (+/-14.69 acres)
  - Setback = 36% of land area

- **1,000’**
  - **200’ setback**
  - **Development Area:**
    - 360,000 sq ft
    - (+/-8.26 acres)
  - Setback = 64% of land area
Nuisance Abatement

- Setbacks: Can be customized to protect sensitive adjoining uses

1,000’
100’ setback
200’ setback
Nuisance Abatement

- Setbacks: Can be customized to protect scenic adjoining uses

Diagram showing setback distances of 1,000', 100', and 200'.
Visual Screening

- Aesthetic concerns often drive resistance to solar development
- Goal: Reduce visual impact of installation and fencing
- Expect developers to choose the lowest-cost screening option that meets local requirements
Visual Screening

— “Devil is in the details” with vegetative screening

• **Less Specific:** “landscape buffer” / “vegetated buffer”

• **More Specific:** “…a berm, landscape screen, or other opaque enclosure.”

• **Most Specific:** Requirement for a landscaping plan identifying plant species, spacing distances, minimum size at time of planting, and other details
Protecting Town Resources

Roadway Preservation

– Construction-related traffic can damage local roads, especially in rural areas

– Local law can:
  • Require documenting of road conditions
  • Require bonding/financial assurance for roadway repair
  • Specify routes for project-related traffic

Decommissioning Requirements/Bonding
Administration & Enforcement

- Which town boards and officials will review the application and what approvals will be required?
- SEQRA review
- Post-installation: Periodic inspection
- Enforcement: Civil and criminal penalties
You don’t need to start from scratch...
Solar installations increase real property value, which in turn increases property taxes.

RPTL Section 487 makes the increase in property value attributable to the solar installation tax-exempt for 15 years.

Towns can “opt out” of the exemption by:

- Passing a local law, ordinance, or resolution; and
- Filing a copy with the NYS Department of Taxation and Finance and the NYS Energy Research and Development Authority (NYSERDA)
### Real Property Tax Law - Section 487

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Solar Projects of 25 or more MW – The 94-c Process

- Large scale solar projects (25 MW or more) are governed by the State 94-c process.

- Applications require “proof of consultation with the municipality . . . where the project is proposed to be located . . . prior to the submission of an application to the [Office of Renewable Energy Siting], related to procedural and substantive requirements of local law.”

- When a municipality receives notice of the filing of an application, the municipality must submit a “statement to the [Office of Renewable Energy Siting] indicating whether the proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations, if any, concerning the environment, or public health and safety.”
Applies whenever a local governmental agency must approve or fund a project (or directly undertakes an action)

The solar project may be a Type I, Type II, or unlisted action under SEQRA

- Type I actions are projects that are likely to have at least one significant adverse environmental impact
- Type II actions are actions that “have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review” under applicable State law
- Unlisted actions are all actions that are not specifically identified as a Type I or Type II
Examples of Type I actions:

- Projects that involve the physical alteration of 10 or more acres (but see certain specified Type II actions)
- Adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district
- Additional actions may be identified by a local agency as a Type I action

Examples of Type II actions:

- Installation of solar energy arrays on most existing structures (subject to certain limitations)
- Installation of solar energy arrays where such installation involves 25 acres or less of physical alteration at certain sites such as:
  - Closed landfills
  - Parking lots or garages
Model Solar Energy Local Law

For local governments to utilize when drafting local laws and regulations for solar development.

NYSERDA Model Local Law – Section Overview

- Authority
- Statement of Purpose
- Definitions
- Applicability – Note that projects subject to the 94-c process are subject to the state siting process
- Permitting Requirements – the Model Law separates solar projects into three tiers:
  - building-mounted
  - ground-mounted systems used primarily for on-site consumption
  - all others (e.g., larger scale ground-mounted systems for on- and off-site consumption)
- Permit time frame/abandonment and decommissioning
- Enforcement
Statement of Purpose


A. Purpose. The purpose of solar energy systems is to advance of the use a safe, abundant, and renewable energy resource while protecting the public health, safety, and welfare of Auburn, New York.


A. Purpose and intent.

(1) Solar energy is a renewable and nonpolluting energy resource that can reduce fossil fuel emissions and reduce a municipality's energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.

(2) This article aims to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and convenience of access necessary therefor, and to balance the potential impact on neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar energy systems without excess regulation.

- City of Auburn Zoning Code
- Town of Alden Zoning Code
Applicability

- Compliance with applicable codes, regulations, and industry standards as referenced in NYS Uniform Fire Prevention and Building Code, the NYS Energy Conservation Code, and local code.

- Review local zoning code for any conflicts (e.g., consider whether code prevents accessory use from existing on accessory structure)
Permitting Requirements

- Roof-mounted systems (design, glare, height requirements)
  - Glare – requirement for panels to contain anti-reflective coating

- Ground-mounted systems for primarily on-site consumption
  - Location
  - Height limitations
  - Screening
  - Lot size

- All other systems (e.g., larger ground-mounted systems (for on- and off-site consumption))
  - Application Procedure
  - Site plan application requirements
  - Property Operation and Maintenance Plan (upkeep, mowing, etc.)
  - Glare, Setback, Height
  - Screening & visibility
  - Lot size
  - Signage and lighting
  - Tree-cutting
  - Decommissioning
Review and Enforcement

- **Review and Approvals.**
  - Consider what board is responsible for review. For example, local code may authorize different boards to issue special use permits and site plan approvals. May consider designating one board to have primary responsibility to oversee and approve actions related to solar projects.
  - Notifications regarding change in system ownership.

- **Enforcement.**
  - Model law provides for any violation of the Local Law to be subject to the same enforcement requirements as provided for in local zoning or land use regulations
  - Review local policies to see who will be responsible for enforcement
Examples:

- NYSERDA model
- Local codes available online
- Search the NY Department of State Local Law Database for recent examples
Solar Projects and Municipal-Owned Land

- Benefits and Structure of Agreement
- Selection of Site
- Procedural Considerations