SPECIAL USE PERMITS AND OPERATIONS & MAINTENANCE PLANS

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AGENDA

A. Welcome & Introduction
B. Introduction to Solar Energy & Recent Surge
C. Local Government Role & Regulatory Framework
D. Special Use Permit Application & Review Process
   • Process and Role of the Board
   • Components
E. County Referral Process & Role
F. Operations & Maintenance Plan
   • Purpose and Benefits
   • Common Requirements
G. Special Use Permit Conditions
H. Preconstruction Meeting
INTRODUCTION TO SOLAR ENERGY & RECENT SURGE

✓ NY-Sun initiative was initiated in 2012, with a goal to simulate the marketplace and increase the number of solar systems across NYS.

✓ Goal: To add more than 3 GW of installed solar capacity in the NYS by 2023.

✓ NY-Sun includes incentive programs that support solar projects for commercial and industrial companies, residential properties, commercial businesses, non-profit and municipal buildings.

✓ New York’s Climate Leadership and Community Protection Act (CLCPA)
Local governments play an important role in regulating land use and development of solar energy systems.

- Adoption and administration of local zoning ordinances
  - Legislative Body
  - Code Enforcement Officer
  - Zoning Board of Appeals
  - Planning Boards
  - Town Attorney & Municipal Engineer
  - County Planning Board
- SUP & Site Plan Review Process
- Administration of the New York Uniform Fire Prevention and Building Code
- New York State Environmental Quality Review Act (SEQRA)
ZONING DISTRICTS, USE TYPES & DEVELOPMENT STANDARDS

✓ Well-crafted solar regulations will provide enough flexibility to accommodate demand for solar energy while protecting the community from impacts.

✓ After carefully defining permissible solar energy system types, municipalities typically allow them in residential, agricultural, commercial or industrial districts based on their impact upon surrounding properties.

Because of their nature and varying impacts, solar energy systems are then permissible as one of the following:

1. **Principal Use** – Usually only one principal use allowed on a site. Large scale solar farms with the greatest impacts are usually considered a principal use;

2. **Accessory Use** – These exist on the same lot as the principal use and are subordinate, incidental to, and customarily found in connection with the principal use. Accessory solar energy systems are small scale, roof or ground mounted, and designed to supply energy for a principal use on a residential, commercial or industrial parcel;

3. **Secondary Use** – A secondary use, solar energy system provides energy mostly for onsite uses but sends some offsite. For example, a medium-scale system sited on a commercial or agricultural parcel might be a secondary use if it provides solar energy for onsite, principal use while transferring a significant amount of energy offsite to generate additional revenue;

4. **Special Use** – A principal use that is allowed but conditioned upon compliance with specific requirements that limit negative impacts.
SPECIAL USE PERMIT APPLICATION & REVIEW PROCESS

“The authorization of a particular land use that is permitted in a zoning law subject to specific requirements that are imposed to assure that the proposed use is in harmony with the immediate neighborhood and will not adversely affect surrounding properties”
SPECIAL USE PERMIT APPLICATION & REVIEW PROCESS

The Local Law dictates:

✔ State law authorizes municipalities to use Special Use Permits.
✔ The Local Law must set forth those uses for which the SUP process may be used.

Who Issues the SUP?

Must be designated in the Local Law.
✔ Planning Board or
✔ ZBA or
✔ City Council/Town Board/Village Board of Trustees
REVIEW & APPROVAL BY LOCAL BOARDS

 ✓ Zoning codes generally require more intense review of solar energy systems as impacts associated with specified types increase.

 ✓ Smaller systems with few or no land use impacts (e.g. roof mounted, building integrate, etc.) may be exempted from review or enjoy a streamlined administrative review process with fewer standards.

 ✓ Larger systems often must complete a more rigorous, time consuming, and intense review process.
Public hearings are **required**:  
- Public hearings must be held within 62 days of receiving the application.  
- Public notices within the newspaper 5 days prior to the hearing date.  
- Mail notices to applicants 10 days prior to the public hearing date.  
- Decision within 62 days of concluding the hearing.  
- Public Hearing may be extended by mutual consent.
SPECIAL USE PERMIT APPLICATION & REVIEW PROCESS

✓ Site plans, special use permits and subdivisions can have conditions attached.

✓ Condition: A requirement or qualification that is attached to the approval of a project. Must be satisfied before issuing a building permit or certificate of occupancy or certificate of compliance.

✓ The goal is to balance the applicant’s development interest and to protect the community from adverse impacts.

✓ Conditions must be rational, reasonable, and related to the project in question.

✓ Conditions must relate to the “use and not the user” and cannot regulate “details of an operation.”
Application requirements for solar energy systems should include:

✓ Site Plan Set
✓ Pre-development Site Conditions
✓ Construction Schedule
✓ Drainage Mitigation Plan/ SWPPP
✓ Equipment Specification Sheets
✓ Abandonment & Decommissioning Plan/Agreement
✓ Property Operation & Maintenance Plan
✓ Parking & Traffic Analysis
✓ Viewshed/Line Analysis
✓ Noise Study
✓ Community Benefit Agreement
✓ PILOT Program
✓ Road Use Agreement
✓ Additional Environmental Reports
SPECIAL USE PERMIT: STANDARDS

Require applicants to meet specific standards for solar energy systems.

Development standards vary according to system size

- Lot coverage and setbacks
- Height requirements
- Landscaping and buffering
- Fencing and screening
- Noise
- Glare
- Security fencing
- Prime soils & Farmland of Statewide Importance
- Drainage & SWPPP
- Easements
- SEQR
COUNTY REFERRAL PROCESS & ROLE
COUNTY REFERRAL PROCESS & ROLE

Purpose of a County Planning Board is to review actions for their intercommunity and countywide impact

GML Section 239-m and 239-n:

*If a county planning agency exists, application materials for subject properties must be referred before taking final action on the proposal.*

**What is referred:**

- Adoption or amendment of a comprehensive plan
- Adoption or amendment of a zoning ordinance or local law;
- Issuance of special use permits;
- Approval of site plans;
- Granting of use or area variances;
- Other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.
COUNTY REFERRAL PROCESS & ROLE

Geographic triggers – IF within 500’ of:

✔ Municipal boundary;
✔ County/State park or recreation area;
✔ County/State road or right of way;
✔ County stream or drainage channel;
✔ County/State land with public facility;
✔ A farm operation in an Ag District
County Referral Agreements

✓ The county planning agency and referring body may enter into agreement to exempt certain actions from county review.

Examples of exempt items:

• Special use permits for accessory structures on residential lots
• Renewal of Special use permits where there is no change proposed to the use or layout
• Site plan review for a change in tenant where modification of building footprint is less than 10%
• Lot line adjustments
COUNTY REFERRAL PROCESS & ROLE

Full Statement/Complete Application
Municipalities must send a full statement to the County Planning Board in order to start the review period

Referral Timeline

✓ Each County Planning Board has a referral deadline for getting actions onto the agenda. Can be up to 10 days prior to the meeting.

✓ Full statement must be received by this deadline.

✓ Municipality must refer actions to the County Planning Board prior to making a final decision on that action.
COUNTY REFERRAL PROCESS & ROLE

Final Approval
✓ Municipal boards may not take final action until the earlier of the following occurs:
   1. Receipt of county planning agency’s report; or
   2. 30 days after the full statement is received by the county planning agency.

• Two-day exception requires considering even after 30 days have passed, but at least 2 days before meeting where decision is made.

• Time period may be extended if agreed to by both county and municipal board.

• Do not take early votes conditioned on county planning agency’s positive recommendation.

✓ If county recommends disapproval or modification within timeframe allowed then it requires majority plus one vote for the municipality to approve the application without recommended modifications.
CPB & SOLAR

Issue:
Lack of specified solar complaint process & contact info

Contact info & process to CEO prior to construction

Issue:
Piled cut grass under panels during hot, dry weather conditions

CEO construction site visit

Fire Hazard?
Use of O&M Plan and/or NYS Fire Code for enforcement?

Support Local Law Development
- Specific
- Enforceable

Attend Town mtgs

County Planning Board local law review

Training for Planning/Zoning/Town Boards & CEOs

Issue:
Grass not maintained

Use of O&M Plan and/or NYS Fire Code for enforcement?

Issue:
Dead shrubs/trees

CEO communication, on-site support, training

CEO communication & on-site support. ID & Provide for Training on:
- On-site inspections
- Local & State Codes applicable to Solar

Issue:
Birds nesting under panels

Contact info & process to CEO prior to construction

Does O&M Plan identify who replaces, when/how often & who determines need?
OPERATION & MAINTENANCE PLAN
OPERATIONS & MAINTENANCE PLAN

PURPOSE:

✓ Solar operations & maintenance services are technical services required to establish and maintain a specific performance level for a solar energy system.

✓ Activities to ensure system performs as planned, optimize production, reduce risks, protect values and comply with rules and regulations.

✓ An effective Operation & Maintenance Plan (O&M) Plan enhances the likelihood that a system will perform at or above its projected productions rate and cost over time.

✓ Historically, O&M practices and approaches have not been standardized, and instead, they were implemented in various proprietary methods.
OPERATIONS & MAINTENANCE PLAN

✓ Solar energy systems will need optimal monitoring, inspection, warranties, insurance and the O&M Plan should detail the maintenance philosophy:

- **Preventive Maintenance** – Measures are planned and performed on equipment with the purpose of ensuring that failures do not occur and to lessen the consequences of breakdowns. A preventive maintenance plan is ideal when a maintenance manager can prevent any malfunction of their equipment or can predict and plan for this failure so it has the least possible impact.

- **Corrective Maintenance** – Is only performed after equipment and site features failures or breakdowns are reported, it is the technical activity carried out after a failure has occurred and its purpose is to repair an asset to a condition in which it can perform its intended function.

- **Predictive Maintenance** – Is maintenance that monitors the performance and condition of equipment during normal operation to reduce the likelihood of failures. It predicts when equipment failures might occur and to prevent the occurrence of the failure by performing maintenance.

*O&M Plans are the only surviving operational plan that contains the complete history of the system in its archive. Therefore, it is critical to ensure that the O&M Plan is well documented and safely archived.*
OPERATIONS & MAINTENANCE PLAN

COMPONENTS:

✓ Staffing Levels
✓ 24-Hour Staffing
✓ Outside Hiring
✓ Warranty/Contingency Plan
✓ Annual/ Routine Scheduled Maintenance & Equipment Testing Plan
✓ Unscheduled Maintenance
✓ Security Plan
✓ Safety Protocols
✓ Emergency Procedures & Contacts
✓ Local Authorities
✓ Stakeholders
✓ Project/Site Specific Plan
OPERATIONS & MAINTENANCE PLAN

Examples:

• Maintain the facility condition as required including:
  a) Weed Maintenance / Vegetation Management - Ensure that vegetation is keep at a level that does not impact generation and or personnel ability to traverse the site (at least twice a year). Ensure that identified trees and landscaping in need of replacement are replaced by the following growing season.

  b) Screening - Site production data is reviewed periodically to ensure performance. Also, the onsite camera is used to inspect overall condition of the site.

  c) Road maintenance - Condition of the road is inspected (at least once a year) by service tech when on site for corrective or preventative maintenance. Remediation will be performed when discrepancies are noted.

  d) Perform all scheduled and unscheduled inspection and maintenance of stormwater structures
CONDITIONS & PRE-CONSTRUCTION REQUIREMENTS
TYPICAL CONDITIONS

☑ Obtaining a Building Permit within a time period from receiving approvals or the approvals shall automatically terminate and be deemed null and void.

☑ Staff comments and approvals (i.e. Engineers, Highway Departments, Attorneys, etc.)

☑ Site Plan Approval

☑ Operations & Maintenance Plan

☑ Decommissioning Plan/ Agreement

☑ Stormwater Pollution Prevention Plan (SWPPP)/ Drainage Plan/ Agreements

☑ Prior to obtaining a building permit, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable) for the removal/decommissioning of the Solar Energy System

☑ The Decommissioning bond or surety shall provide for an increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal

☑ Prior to issuance of a permit the applicant shall enter into a contract with for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a).

☑ Preconstruction Meeting
PRE-CONSTRUCTION MEETING

✓ Prior to issuing Building Permits/ construction beginning
✓ Scheduled by the Code Enforcement Officer
✓ Attended by:
  • Staff (Engineers, Highway Department, Attorney, etc.)
  • Outside Agencies where needed (DYSDOT, NYSDEC, County, etc.)
  • Applicant
  • Contractors
✓ Meeting Minutes
PRE-CONSTRUCTION MEETING

TYPICAL AGENDA

✓ Contacts
✓ Approvals/ Agreements/ Permits
✓ Conditions of Approval/ Requirements
✓ Surety/ Payment Applications
✓ Project Schedule
✓ Erosion & Sediment Control/ SWPPP Requirements
✓ Project Safety Requirements
✓ Observation/ Inspection Requirements
✓ Testing Requirements
✓ Cleanup
✓ Closeout
A GOOD TIME FOR YOUR QUESTIONS...
Thank You

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