

# Prepare for solar development in your community



# Moratoria prevents

- Rushed development
- Inefficient & ill-conceived growth
- Hasty decisions that might result in disadvantages to landowners & the public
- Immediate construction inconsistent with comprehensive plan



# Moratoria duration

- Must be relatively short
  - Not excessively long or unfixed
    - Specify duration
  - Relate closely to actions necessary to address the issues
- Must actively engage in planning or developing regulations
  - Rubin v. McAlevey (see above); and Lake Illyria Corp. v. Tn of Gardiner, 43 A.D.2d 386 (3d Dept. 1974)



# Duration

## Struck Down – Too Long

- 7 years: Comprehensive plan & draft zoning
  - Lakeview Apartments v. Town of Stanford
- 5 years: Local Waterfront Revitalization Plan
  - Duke v. Town of Huntington
- 5 years: Draft new zoning law & master plan
  - Mitchell v. Kemp

## Upheld – Reasonable Duration

- 2 Year: Wind energy projects
  - Variance
    - 90-day extension
    - Highly technical nature
  - Ecogen, LLC v. Town of Italy
- 1 year: Adjust zoning related to big box development
  - Village of Rockville Center

# Establish Clear Goals

- Use community planning process to integrate solar into:
  - Comprehensive plan
  - Agriculture & Farmland Protection Plans
- Clearly define types of solar collectors & identify those desired in your community



# Local regulation of solar systems

- Reduce risk of unwanted or inappropriate development
- Increase project conformity & compatibility with community character
- Increase development opportunity for property owners
  - Residential & commercial



### Clearly define permitting process

- Review existing permit process for inefficiencies & compliance with local & state codes
- Checklist to ensure that systems fall within certain parameters
- Reasonable permitting fee
  - Residential: fixed flat fee or set dollar amount/Watt
  - Commercial: rate for staff time & additional review costs
- NY Unified Solar Permit: currently in revision

### Regulatory Options

### Local planning & zoning authority

- Regulations
  - Zoning
  - Site plan review
  - Special use permit



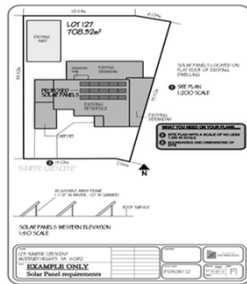
### Zoning

- Regulates use, density, & placement of structures on a parcel
  - Ground-mounted structures may have dimensional restrictions
- Original intent to prevent fire hazards & other threats to health & safety
- Municipalities with zoning must have a zoning board of appeals



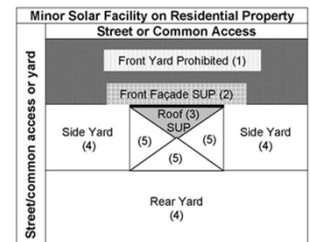
### Site plan review

- Zoning not required
- Does not control for use
- Single parcel of land
- Review elements must be specified
  - Possible solar elements:
    - Casting shadows
    - Blocking view sheds
    - Causing glare
    - Rain run-off



### Special use permit

- Zoning required
- Agricultural Districts
- Uses allowed by zoning
- Subject to review
- Imposition of conditions
- Adverse neighborhood impacts



## Subdivision regulations

- Designed so maximum number of buildings receive direct sunlight sufficient for solar
- Buildings & vegetation sited & maintained so direct sunlight reaches southern exposure of greatest number of buildings
  - Solar azimuths
  - Highest densities south-facing; lower densities north-facing
  - Roads oriented on east-west axis
  - Buildings sited as close to north lot line(s) as possible; tall buildings sited north of shorter ones & buffered from adjacent development

## Neighborhood compatibility

- Avoid adversely impacting adjacent uses
- Visually compatible
  - Potential impacts includes glare or reflection
  - Might be a nuisance to other property owner
  - May impair visibility of motor vehicle drivers
- Context sensitivity in areas containing elements contributing to unique community character
  - Architectural styles, historic structures

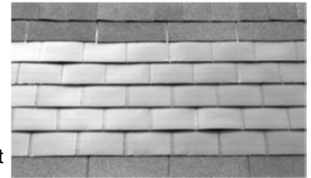
## Historic sites

- Avoid primary facade
- Low-profile panels
- Panels should not alter slope of roof
  - Flush: angle or tilt
- Solar materials should not replace original or historic materials
- Reversible



## Minimize visibility

- Panels & mechanical equipment should be as unobtrusive as possible from public thoroughfare
- Compatible in color to established roof materials
- Aim for below & behind parapet walls, dormers, or on rear-facing roofs



## Decommissioning

- Some municipalities address abandonment, decommissioning or "cessation of activity" within their regulations
- For example, "Must ensure site will be restored to useful, nonhazardous condition, including completion time frame for complete removal of collectors, mounts and other associated equipment and facilities"
- Some require decommissioning plans, especially for commercial scale projects

## Decommissioning

Town of Tonawanda §215-182 Abandonment or Decommissioning

- Unsafe, inoperable, and/or abandoned** solar energy systems and solar energy systems **for which a special use permit has expired shall be removed by the owner.** A solar energy system shall be **deemed abandoned when it fails to produce energy for at least one (1) year.**
- For all utility-scale solar energy systems,** the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The **decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its pre-existing condition,** and estimated decommissioning costs, including any salvage value.

## Removal of unsafe structures

- Town Law §130. Town ordinances.
  - 16. Unsafe buildings and collapsed structures.
    - Providing for the removal or repair of buildings in business, industrial and residential sections that, from any cause, may now be or shall hereafter become dangerous or unsafe to the public.
    - g. For the assessment of all costs and expense incurred by the town in connection with the proceedings to remove or secure, including the cost of actually removing said building or structure, against the land on which said buildings or structures are located.
- Attractive nuisances
  - A landowner may be held liable for injuries to children trespassing on the land if the injury is caused by an object on the land that is likely to attract children.

## Performance bonds

- NYS Enabling statutes: authorization
  - Town Law:
    - §277 Subdivision review; approval of plats; additional requisites
    - §274 a Site plan review
  - Village Law
    - § 7-730 Subdivision review; approval of plats; additional requisites
    - §7-725a Site plan review
  - General City Law
    - §33 Subdivision review; approval of plats; additional requisites
    - §27 a Site plan review

## Performance bonds

- As a general rule, municipalities cannot require a performance or maintenance bond for a permitted project without expresses statutory authorization.
  - Recommend following the statutory requirements
- Case Law
  - Mount Florence Group v. City of Peekskill, 235 A.D.2d 787, 652 N.Y.S.2d 814 (3d Dept. 1997)
  - Case involved a subdivision
  - Addressed duration of initial terms
    - Statutory durational limit of three years

## Performance bonds

- Town Law §277 Subdivision review; approval of plats; additional requisites
  - 9. Performance bond or other security.
    - d. Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the planning board, but in no case for a longer term than three years, provided, however, that the term of such performance bond or security agreement may be extended by the planning board with consent of the parties thereto.*

## NYS real property tax exemptions

- NYS has a real property tax exemption. Following link is to NYS Department of Taxation & Finance Form RP 487: [http://www.tax.ny.gov/pdf/current\\_forms/orpts/rp487\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/orpts/rp487_fill_in.pdf)
- Local governments & school districts may opt out & include the PV system in the assesment. Following link is to list those opting out: <http://www.tax.ny.gov/research/property/legal/localop/487opt.htm>

## PV Trainers Network

- Home: <https://training.ny-sun.ny.gov/>
- Calendar: <https://training.ny-sun.ny.gov/training-events-calendar/range.listevents/->
- Resources: <https://training.ny-sun.ny.gov/resources>
- "Ask the expert:" <https://training.ny-sun.ny.gov/technical-assistance/ask-the-expert?view=ticket&layout=open>

## Contact information

### NYS Energy Research & Development Authority

- (518) 862-1090
- Email: [info@nyserda.ny.gov](mailto:info@nyserda.ny.gov)
- Website: [www.nyserda.ny.gov/](http://www.nyserda.ny.gov/)

## Contact information

### NYS Department of State

- (518) 473-3355 Training Unit
- (518) 474-6740 Counsel's Office
- Email: [localgov@dos.ny.gov](mailto:localgov@dos.ny.gov)
- Website: [www.dos.ny.gov](http://www.dos.ny.gov)  
[www.dos.ny.gov/lg/lut/index.html](http://www.dos.ny.gov/lg/lut/index.html)