



Top Ten Tips for Towns:

SOLAR ELECTRIC GENERATION FACILITIES

Things to Consider Requesting in CPG Proceedings

When a project developer applies for a §248 Certificate of Public Good to build a solar electric generation facility in your Town, how can you help ensure that the project, if approved, will benefit your community? These tips suggest some items that you might consider requesting be included in any CPG issued for a solar project, or in an MOU with the developer that is entered into the PSB record and included as an enforceable condition of the CPG. Your leverage for successfully negotiating favorable conditions to a CPG is increased if you are prepared to fight the project through the PSB process and on to appeal at the Vermont Supreme Court if agreement is not reached.

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1. Setbacks.

Check the setbacks required by H.40. These are now mandatory ~ but you can also consider waiving them if something about the particular site would make this more appropriate. For example, tucking a project right up against a side property line if the ground drops off steeply there might make the project less visible from a roadway or adjoining residence. Consider what the Town's required setbacks are for the same area, and whether it would be more appropriate to request those. Site plans often do not include GPS coordinates for the proposed project, or the property lines of the parcel. Be sure to request this information as soon as a pre-filing notice comes in so that you can accurately determine on the ground and on Google Earth where the project is proposed to be built, and make an assessment of what setbacks would work best.

2. Screening.

Does your town have a screening bylaw as authorized by H.40? If so, H.40 says that the PSB is supposed to defer to it unless it is unreasonable. If not, does your Town have other clear screening standards in the Town Plan or zoning bylaws that you can request?

3. Agreement with neighbors and payment for landscape architects.

In appropriate circumstances, consider taking the position that the Town will not oppose the project if the developer works out agreement with the project neighbors regarding siting, screening or other mitigating measures. When a Town or neighbors wants better screening options than those presented by the developer, the Town and neighbors are often pressed to come up with their own aesthetic mitigation plan. This means hiring someone with landscaping expertise to devise a siting and screening plan. Consider requesting instead that the project developer be required to pay for a landscape architect to work with the Town and neighbors to devise an appropriate plan that all can agree on.

4. Information, compliance and costs regarding construction.

Although solar electric generation facilities are built swiftly in most cases, don't forget to request information, compliance, and potentially costs and fees regarding construction-related activity. This could include road access permits and driveway upgrades within the Town right-of-way; overweight truck permits; limits on hours of construction work; personnel to direct traffic during construction (especially where the construction access driveway is at a difficult-to-see location).

5. MOU for payment in lieu of taxes, or other economic concessions.

Be sure that you fully and accurately understand the amount of property taxes that the project will generate for the Town. Because of steeply discounted tax rates set by the State, the property taxes paid by solar generation facilities may well be significantly less than you anticipate. Depending on siting, the project may also result in a reduction of surrounding property values and a corresponding drop in property tax revenue to the state. Consider requesting, in MOU discussions, an annual payment in lieu of taxes from the developer, or a one-shot payment to help compensate the Town for the cost of reviewing and addressing the proposed development.

6. Contribution to local firefighters due to the unique fire hazards of solar facilities.

Solar arrays present unique hazards to firefighters. Solar arrays generate power whenever there is a light source ~ including, according to UL, emergency light banks ~ and can not be switched off. This means that when there is a fire, firefighters face a serious risk of electrocution. Consider asking the developer for a contribution towards training or equipment for local fire services.

7. Public education regarding archaeological, historic or environmental resources.

If the project implicates cultural or environmental resources like wetlands, consider asking the project developer to have their related consultants prepare informational or educational materials regarding that resource for display in the local library, town offices or school, or to create a public or school workshop. Some developers may welcome the chance to generate good public relations as well as contributing to local knowledge about Town cultural and environmental resources.

8. Contribution to land conservation efforts.

Consider asking the project developer to mitigate negative project impacts by contributing to land conservation efforts. This could involve buying a conservation easement for a buffer area around the project, or contributing to the Town purchase of parkland at another location to make up for the loss of open space. There can be room for creativity where the landowner of the parcel underlying the project may be able to take a tax credit for donating a conservation easement to the Town which can help offset the income from the lease or sale of the property to the developer.

9. Agreement that there will be no additional projects by this developer.

Solar projects have a troubling tendency to experience ‘mission creep’: a small one goes in, then another right next door, then another 50 yards away, then another by the same developer on the next parcel over. Consider requesting in MOU negotiations that the developer agree that there will be no further expansion of the proposed project, and no additional solar development by that developer (be sure to include all their related personnel, LLCs and other entities) within the Town.

10. Decommissioning and site restoration.

Decommissioning solar electric generation facilities is being given short shrift in most PSB solar proceedings. At present, there are no solar panel recycling facilities, and it is quite unclear how solar panels ~ which contain a number of toxic and hazardous materials ~ will be disposed of. Since most solar facilities are built and owned by single-purpose LLCs created to take advantage of tax breaks, it is also unclear who will even own the array by the time it reaches the end of its useful life or if panels malfunction. Request a clear, enforceable, and amply capitalized decommissioning fund along with strong guarantees that the site will be restored to its prior condition. Think about whether the construction access should be removed or remain in place. Consider requesting a provision in the CPG mandating that the parcel not be used for subsequent commercial and industrial development; this may help prevent bootstrapping, where a developer proposes a new use for the parcel based on the fact that it’s been in industrial energy production for some time.

FAQs

What can the Town do to help project neighbors participate in the application process?

Neighbors' interests and Town interests often diverge - one may want to negotiate a settlement, perhaps involving landscaping or other screening, or moving an access driveway to another location, which may be at odds with the position of the other. That said, however, there is much a Town can do to assist project neighbors. The Town to facilitate a public informational meeting where neighbors can ask the applicant questions about the project and the process. The Town can incorporate the comments or concerns of project neighbors into Town comments on the project. Towns and neighbors can share expert witness costs and coordinate litigation strategy if the project goes to a PSB hearing.

If the Town opposes a project, what's the best way to get a hearing?

Be sure that your comments are clear, thorough, and tied substantively to specific §248 review criteria. Be sure to clearly state, perhaps even in a separately filed document, that you are requesting hearing. The PSB rules do not clearly state what type of evidence must be submitted to support a request for a hearing, but you can strengthen your comments by submitting affidavits, exhibits, or even formal prefiled testimony.

Do we need an attorney?

Not necessarily, but there are times when it makes a lot of sense to be represented by counsel. If your Town has ample knowledgeable officials or staff available to respond to solar facility applications, and if you don't have too many of them at once, and if you simply want to submit comments but are not actively opposing a project or requesting a hearing, then there's no particular reason why the Town can't meaningfully participate by submitting comments without an attorney.

When you are facing several solar project applications at once, or one that is large or has complex issues, the assistance of legal counsel can help to ensure that all steps and deadlines are met in order, and all issues are addressed in a timely fashion. When a project is contentious, an attorney can provide a bit of a buffer between disputatious parties, which can help reduce the anxiety of participating in a complex legal process. And finally, when a Town is strongly requesting a hearing and actively opposing a project, an attorney can help ensure that a proper legal record is created for appeal, that testimony is submitted in an appropriate admissible fashion, and that legal issues are thoroughly briefed.

What other resources might help?

-Read the Citizen's Guide to the Vermont Public Service Board's Section 248 Process, available free on the PSB website. Print it out and share it with project neighbors and Town staff.

-Talk to your Regional Planning Commission. Their staff may be able to help you negotiate aesthetic mitigation like landscaping plans, as well as provide guidance for drafting town plan and screening bylaw language.

-Reach out to other Towns that have been involved in numerous solar cases. Most will share copies of their filings and other materials that you can use as guidance to build your own responses.