

LEGAL ASPECTS OF GRID SCALE SOLAR APPLICATIONS

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Statutory Amendments:

MLUL was amended by

- P.L. 2009, c. 35, section 1, effective March 31, 2009,
- Renewable energy facilities permitted use in industrial districts
- 20 or more contiguous acres that are owned by the same person or entity

- P.L. 2009, c. 146, section 1, effective November 20, 2009,
- Defines “inherently beneficial use”
- Include wind, solar as inherently beneficial

Result:

Grid scale solar facilities are permitted as of right in all industrial zones.

In all other zones, grid scale solar facilities are an inherently beneficial use.

“Positive criteria” of a use variance is satisfied as a matter of law.

Case Law: Inherently Beneficial Uses

Burden of proof is significantly less than other commercial uses.

Sica v. Wall Township Board of Adjustment, 127 N.J. 152 (1992).

- Inherently beneficial” means the use promotes the general welfare.
- There is no requirement that the site be particularly suitable
- “Negative criteria” must still be satisfied.

Negative criteria: no *substantial* detriment to the public good

No substantial impairing the intent and purpose of the zone plan and zoning ordinance.

Sica Test

1. Identify and determine how compelling the public interest at stake
2. Identify detrimental effects
3. Impose reasonable conditions
4. Balance the positive and negative criteria

Test 1: How compelling is the public interest at stake?

Some inherently beneficial uses are more compelling than others.

How do grid scale solar uses compare?

Is solar the least compelling of inherently beneficial uses?

Municipal Examples: Greenwich Township & Upper Pittsgrove

Compelling Test:

- Solar will not effectively reduce our state's and country's dependence on oil/fossil fuels.
- Solar does reduce NJ reliance on expensive imported electricity during peak demand.
- Clean renewable fuel.
- Healthcare, education, childcare, shelter for disabled persons far more compelling and directly beneficial. Solar is indirectly beneficial.
- NJ Legislature: child care centers permitted in all zones and group homes permitted in all residential districts.
- Solar facilities only permitted in industrial zones.

Other Impacts

Grid scale solar very consumptive of prime agricultural lands

- Condition: prohibit grid scale solar on > 75% prime agricultural soils, and adjacent to preserved farmland.

Scenic and Historic Impacts

- Buffering does not solve the impairment of scenic vistas, expansive views, or panoramas. Condition: prohibit grid scale solar in scenic/historic areas. (define these)

Conditions

Visual Impact – Landscape Buffer

- Landscape Architect site walk before and after construction
- Deed restriction to maintain the existing hedgerows
- Landscaping 30-year maintenance guaranty

Future Agricultural Impact

- No concrete footings
- No grading (cut and fill) on the property
- Long term decommissioning plan and guaranty

Environmental Impact/ Habitat

- Habitat management and maintenance plan
- Grassland /Pollinator habitat design (NRCS/ Twp. LA)

Safety Impact

- No hazmats, require MSDS sheets
- Emergency plan and training: Fire Department, Police Department

Noise Impact

Inverters: no acoustical impact at the property line