

March 11, 2024

Sent Via Email

Hon. Ed Lachterman, Deputy Supervisor
Members of the Yorktown Town Board
Town of Yorktown
363 Underhill Ave.
Yorktown Heights, NY 10598

Re: Large-Scale Solar Energy Systems Moratorium

Dear Deputy Supervisor Lachterman and Members of the Board:

We have recently been retained by IBM in connection with its now substantially constructed solar project, located at 1101 Kitchawan Road, Yorktown Heights, NY (SPL: 69.16-1-1) (“Project”), and more specifically, with regard to the Town’s proposed moratorium on large-scale solar energy systems (“Proposed Moratorium”).

The IBM Project, which consists of a solar canopy constructed over an existing parking lot in the Town’s OB zoning district, received Town approval on February 8, 2021.¹ Following 2.5 years of construction, the Project is now substantially complete. The Project has not yet received a certificate of occupancy and/or completion.

As presently drafted, the Proposed Moratorium states:

[N]o building permits, special permits, *certificates of occupancy* or site plans permitting the construction, establishment and/or operation of any additional or new Large-Scale Solar Energy Systems which are not *currently in existence or operation* at the time of the enactment of this section shall be reviewed or issued by the Town of Yorktown within any zone within the Town of Yorktown, from the effective date of this local law until September 30, 2024.

(Emphasis added).

Arguably, the Proposed Moratorium would be inapplicable to the Project, since it is substantially constructed and is thus “currently in existence.” However, the language is sufficiently

¹ In February 2024, IBM also received approvals for the addition of a 2 MW battery storage system. It is our understanding, however, that the Proposed Moratorium does not pertain to Section 300-81.5 (Battery Energy Storage Systems).

vague as to raise concerns regarding whether the Proposed Moratorium would, in fact, prohibit the review or issuance of a certificate of occupancy for the Project, which IBM intends to apply for just prior to completion. We note that the Planning Board has recommended *against* “including issuance of building permits or certificates of occupancy pursuant to approved projects” in the Proposed Moratorium. (See Memo from Planning Bd. to Town Bd., dated Feb. 27, 2024).

IBM has invested heavily in this Project financially, and it has vested its rights to the Project by substantially constructing the solar canopy in accordance with the approvals and permits that were duly and legally issued by the Town. Postponing the commissioning of the Project for the duration of the Proposed Moratorium would result in negative financial impacts to IBM. It would also unreasonably delay the environmental benefits of the Project that have been expressly acknowledged and touted by the Town.²

Accordingly, in the event that the Moratorium is ultimately adopted, IBM respectfully requests that the Board either: (i) expressly confirm that the Moratorium does not and is not intended to apply to IBM’s substantially constructed Project; or (ii) remove from the Moratorium the prohibition on review and issuance of certificates of occupancy.

If you have any questions or require any additional information in advance of the March 12, 2024 Public Hearing, please do not hesitate to contact us. IBM looks forward to bringing its laudable solar canopy Project online, and to continuing to be a good neighbor to Yorktown as it has always been.

Very truly yours,

ZARIN & STEINMETZ LLP

By:



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cc: (via email)
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² (See, e.g., <https://www.yorktownny.org/solar-canopy-ibm-approved>).