

Court to rehear request to block Shoreham solar farm

August 24, 2015 by MARK HARRINGTON / mark.harrington@newsday.com



A State Supreme Court justice has agreed to rehear a request by Shoreham residents trying to block a 60-acre solar farm based on new commercial solar codes adopted recently by Brookhaven Town.

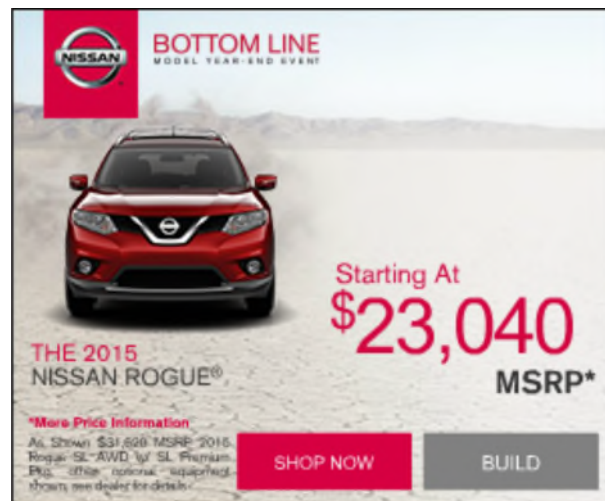
Acting Supreme Court Justice Joseph Farneti in Riverhead dismissed most of the residents' claims against the solar farm approvals this month, largely on technical grounds.

But the residents' attorney, Fred Eisenbud, was granted the request to have his arguments against approvals for the solar farm reheard.

The court denied residents' request for a temporary restraining order blocking construction of the array. Eisenbud will present new arguments at a hearing Sept. 3.

The residents' request was based on Brookhaven's adoption two weeks ago, soon after the court ruling, of a set of guidelines, known as a model code and drawn up by the Suffolk Planning Commission, for large commercial solar projects. The code recommends the projects be built on industrially zoned land and that residential neighborhoods be avoided; that they have buffers of at least 75 feet; and preserve at least 35 percent of their total area, excluding the spaces between panels.

A special "overlay district" in Shoreham in which the solar array is to be built mandates that the project have maximum lot coverage of 53 percent, a requirement met by counting spaces between panels as open space. The overlay was established before the new rules were created. Eisenbud argued that the new code specifically excludes spaces between panels to be counted toward that percentage. A



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lawyer for developer sPower has previously said such a code would "kill" commercial solar projects by making them economically unfeasible.

Construction at the Shoreham site, on a 60-acre sod farm, could begin any day. Lawyers for sPower, of Salt Lake City, said installation of the 50,000-panel array would start "as soon as possible." They did not return a call seeking comment Monday.

Eisenbud's papers assert the project should be governed by terms of the new code.

Application of the new code "means that the solar arrays, batteries, storage cells and other mechanical equipment used to create solar energy be positioned so that no more than 53 percent of the 60 acres be used to locate the solar facility, and the remaining 47 percent of the lot would have to be preserved as contiguous open space," he wrote.

In addition, the project should have a natural buffer of at least 75 feet.

Eisenbud said a change in the solar code means the special permit granted the solar farm should be declared "null and void."

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