

## Double Tax Hits Slows Renewable-Energy Development

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By TIM FAULKNER/ecoRI News staff

**RICHMOND, R.I.** — The town is the latest Rhode Island community struggling with utility-scale solar arrays.

The municipality is one of several in the state taxing both the equipment and the land beneath ground-mounted solar facilities, despite lawsuits and questions from the Office of Energy Resources (OER) about the legitimacy of the double tax.

After new assessments more than doubled the tax valuation of the land anchoring local solar arrays, two property owners filed a lawsuit June 4 against the tax assessor, claiming the tax is illegal. A hearing for the Superior Court case is scheduled for September.

Seth Handy, the Providence-based attorney representing the owners of the land with the solar arrays in the lawsuit, said the tax is both unlawful and discourages developers from building much-needed renewable-energy projects.

“It can be the difference, in some cases, between economic viability or not,” Handy said, echoing the sentiment that other solar developers have shared with ecoRI News about the added tariffs.

The lawsuit argues that the town can’t tax the land for renewable-energy systems that are already being taxed locally. In one instance, the assessed value of a property with a 19-acre solar array increased from \$528,500 to \$1.3 million. The assessed value for an 11-acre property with a solar array increased from \$176,100 to \$317,000.

While OER is taking a wait-and-see approach on the legal challenges to the taxation, it did submit a letter in the case that states that the taxation of renewable-energy projects must be determined by state entities.

“OER is aware that some towns and developers may be disputing the intent and scope of the state law and adopted regulation,” according to a written statement from the state agency. “OER is also aware that some renewable developers may be challenging this matter in state courts regarding local taxation and the 2016 state law. OER will continue to monitor the court situation and any possible decision that comes from those proceedings.”

Taxing utility-scale wind and solar has been controversial since one of the state’s first industrial-scale wind turbines was erected in North Kingstown in 2012. The town tried to assess a property tax on the 413-foot-high turbine, prompting the developer, Mark DePasquale, of Green Development LLC, to sue.

In 2015, Rhode Island Supreme Court ruled in favor of DePasquale, declaring that the wind turbine, assessed at \$1.9 million, was exempt from property taxes. Judge Gilbert Indeglia ruled that the turbine qualified as manufacturing equipment, which was exempt from local taxation.

Despite the favorable ruling, developers and OER anticipated that some form of taxation would be inevitable and worked with municipalities, the General Assembly, and the Division of Taxation in 2016 to enact a [municipal tax on equipment](#) such as solar panels and wind turbines. Known as a tangible tax, the fee is assessed based on the electricity output of a renewable-energy system.

The [law](#) states that cities and towns may tax renewable-energy systems “and associated equipment only pursuant to rules and regulations that will be established by the Office of Energy Resources in consultation with the Division of Taxation.”

But not all communities have adopted the state-mandated tax structure, and OER recommends that they wait until they first establish siting rules.

Yet some towns such as Richmond and Foster are adding taxes on top of the tangible tax. Relying on the advice of consultants, local tax assessors are taxing the land based on an assessed value of about \$40,000 per acre.

That cost is being applied to proposed and existing solar arrays. In Richmond, the assessment increased a property tax value on a solar facility from \$13,200 to \$42,000 per acre.

The town of Foster is taxing solar arrays at the commercial rate of \$40,000 per acre, with the expectation that developers will pay the cost to build in the rural community. The town has approved several large projects, including a 6-megawatt facility and a 20-acre array in a woodland area on Hartford Pike.

After enacting a moratorium on solar development in February, Foster is expected to set new siting rules at a meeting on Aug. 22. Although there are no incentives for building on landfills and brownfields, the new rules require a 200-foot buffer, plus a 20-foot zone with plantings. The sites are also expected to have pollinator-friendly landscaping. The size of the array is proposed to be limited to 40 percent of the entire lot. Had these proposed rules been in place, the 20-acres array would have been limited to 8 acres.

Town planner Jennifer Siciliano said Foster has only one former landfill and no brownfields and therefore the location of a solar project isn't as significant as the size and whether the array can be seen from the road.

The proposed siting rules are intended to satisfy developers, property owners, and advocates for open-space protection, she said.

“You understand both sides,” Siciliano said. “You don't want all the trees chopped down but you want solar energy.”

Some planners and land-use experts believe siting rules should specifically include incentives for building on commercial properties and on less environmentally disruptive locations. They want towns to adhere to comprehensive plans that often call for the protection of open space.

“If you are a city or town you can dictate what kind of project you want in certain locations,” said Erika Niedowski, Rhode Island director and policy advocate for the Providence-based Acadia Center.

Niedowski served as a member of a solar-siting stakeholder group that wrote bills ([S0661](#) and [H5789](#)) requiring municipalities to adopt rules for where they build solar arrays. The group argued for rules that offered incentives for building on previously developed land, such as quarries and brownfields.

Although the legislation didn't pass the General Assembly, other efforts are underway to encourage siting in these preferred areas. OER funded a forthcoming report that will identify suitable renewable-energy locations across the state. New state incentives will be offered for building solar carports. And so-called shared-solar projects that allow nonprofits to collectively buy into solar systems will favor commercial and industrial locations.

Exeter town planner Ashley Hahn-Sweet also served on the stakeholder group and wants to fix the unintended consequences of state solar-incentive programs, such as the [fixed-price feed-in program](#) run by National Grid. Without inducements for building on developed and commercial land, these programs indirectly encourage renewable-energy projects on large tracts of open space and woodlands, she said.

Hahn-Sweet noted that National Grid also doesn't give preference to projects that are built on preferable locations when it runs through its list of renewable-energy projects requiring connection to the electric grid. She said National Grid does a poor job of letting municipalities know the status of interconnection requests. The delay may cause the more environmentally desirable projects to linger and developers to withdraw to better manage their time and investments.

“We may have priorities, but National Grid doesn't see that,” Hahn-Sweet said.

The rural community in western Rhode Island passed siting rules in February that created incentives for smaller solar projects built on land that was previously disturbed or on commercial property. Large projects are prohibited on property zoned for residential development.

“We have natural resources in Exeter that benefit the whole state,” Hahn-Sweet said. “We need to address this holistically.”