



# COHOCTAH TOWNSHIP BOARD MEETING

February 09, 2023 at 7:00 PM

Township Hall | Fowlerville, Michigan

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*The Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities at the meeting upon 72 hour advance notice by contacting Barb Fear, Township Clerk, by email: [bfearclerk@gmail.com](mailto:bfearclerk@gmail.com), phone: (517) 546-0655, or mail: 10518 N Antcliff Rd Fowlerville MI 48836.*

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## AGENDA

### CALL TO ORDER

### AGENDA APPROVAL

### CONSENT AGENDA

- [1.](#) Minutes 01-12-2023
- [2.](#) Treasurer's Report
- [3.](#) Expenditures

### CALL TO THE PUBLIC

### UNFINISHED BUSINESS

- Road Commission
- Howell Fire Authority
- Hall
- Cemetery
- Parks and Recreation

### NEW BUSINESS

- [4.](#) Foster Swift Engagement Agreement
- [5.](#) Solar/Wind Ordinance Revisions and Moratorium
- [6.](#) FOIA Policy
7. Traffic Cloud Software Reactivation

### REPORTS - WRITTEN REPORTS SUBMITTED

- Zoning Board of Appeals
- Planning Commission
- Violations and Complaints

### CALL TO THE PUBLIC

**NEXT REGULAR MEETING DATE - March 9, 2023**

### ADJOURN



# COHOCTAH TOWNSHIP BOARD MEETING

January 12, 2023 at 7:00 PM

Township Hall | Fowlerville, Michigan

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*The Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities at the meeting upon 72 hour advance notice by contacting Barb Fear, Township Clerk, by email: [bfearclerk@gmail.com](mailto:bfearclerk@gmail.com), phone: (517) 546-0655, or mail: 10518 N Antcliff Rd Fowlerville MI 48836.*

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## MINUTES

### CALL TO ORDER

The meeting was called to order at 7:01pm. with the Pledge of Allegiance.

PRESENT: Barb Fear, Phil Charette, Mark Fosdick, Tami Bock, Mark Torigian and Zoning Administrator Fred Buckner.

### AGENDA APPROVAL

Motion made by Charette, Seconded by Torigian to approve the agenda with the addition of New Business 11. Roadside Cleanup and 12. FOIA Update.

Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

### CONSENT AGENDA

1. Minutes 12-08-2022
2. Treasurer's Report
3. Expenditures

Motion made by Charette, Seconded by Torigian to approve the Consent Agenda as presented. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

### CALL TO THE PUBLIC

Doug Helzerman, County Commissioner, introduced himself and gave an update.

4. Drain Commission Resolutions

Motion made by Torigian, Seconded by Bock to adopt the Resolution for Maintenance on the Lott drain. Voting Yea: Torigian, Bock, Fosdick, Charette, Fear. Nays: None. Motion carried.

Motion made by Torigian, Seconded by Charette to adopt the Resolution for Maintenance on the Wood drain. Voting Yea: Torigian, Bock, Fosdick, Charette, Fear. Nays: None. Motion carried.

### UNFINISHED BUSINESS

5. Trash Refund- Gannon Rd

Resident did not attend meeting.

**Road Commission**

No report.

**Howell Fire Authority**

No report.

**Hall**

No report.

**Cemetery**

6. Cemetery Ordinance

Motion made by Torigian, Seconded by Bock to approve the Resolution to Adopt the Cohoctah Township Cemetery Ordinance with changes to section 4. add F. At the time of purchase from the Township, each cemetery plot shall be assigned the name of the specific person who shall be interred in that cemetery plot upon death. If the owner of a burial right to a cemetery plot desires to effectuate a name change regarding the assigned cemetery plot, the Township may allow an assignment or require that person to sell the burial right to that cemetery plot back to the Township and repurchase in the name of another person. Add G. The Township Board shall have the authority to place a limit on the number of burial rights to cemetery plots sold to a particular person, as well as such person's family and relatives. Furthermore, the Township shall have the absolute right and discretion to determine whether burial rights to particular cemetery plots will be sold to a specific person and where such cemetery plots will be located and within which Township cemetery. Such decisions shall be based upon reasonable factors, including, but not limited to , the number of vacant cemetery plots available and whether family or relatives of the person seeking to purchase burial rights to a cemetery plot are buried adjacent or nearby the cemetery plots requested. Replace section 10 B. If a winter burial cannot occur due to inclement weather, frozen ground or similar conditions, the deceased person may be kept in winter storage provided any arrangements to do so are compliant with all existing laws and by arrangement with the funeral home director. The Township disclaims all liabilities, responsibility and costs associated with any delayed burial. C. No burials shall occur without the prior consent of the Cohoctah Township Sexton or designated Township official in the absence of the Sexton. Move 18 (z) to 11 C. Cremains or ashes of a deceased person shall not be scattered or dispersed except in designated scatter areas. Roll call voting Yea: Fosdick, Bock, Fear, Charette, Torigian. Nays: none. Motion carried.

**Parks and Recreation**

Report given.

**NEW BUSINESS**

7. IRS Mileage Rate

Motion made by Charette, Seconded by Torigian to adopt the 2023 IRS Mileage rate of 65.5 cents per mile. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

8. Board of Review Appointments

Motion made by Fosdick, Seconded by Bock to appoint Jim Armstrong to the Board of Review for a 2 yr. term ending 12/2024. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

Motion made by Fosdick, Seconded by Bock to appoint Chyrel Barton to the Board of Review for a 2 yr. term ending 12/2024. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

Motion made by Fosdick, Seconded by Torigian to appoint Carole Damon to the Board of Review for a 2 yr. term ending 12/2024. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

Motion made by Fosdick, Seconded by Charette to appoint Paul McClorey to the Board of Review as an alternate for a 2 yr. term ending 12/2024. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

9. Quarterly Budget Review

Motion made by Bock, Seconded by Torigian to move \$100,000.00 from Unallocated to Contingencies, \$122,600.00 from Contingencies to Township Board payroll tax expense \$6000.00, Elections supplies \$600.00, Assessor contracted service \$2,000.00, Building and Grounds telephone \$2,500.00, Cemetery burials \$10,000.00, Planning and Zoning wages \$1,000.00, Trash Pick up \$100,000.00, Insurance and Bonds \$500.00. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian, motion carried.

10. Schedule Budget Workshop

The Budget Workshop has been scheduled for February 23, 2023 at 6:00pm.

Roadside Cleanup- Motion made by Charette, Seconded by Torigian to accept the bid from Gorski Hauling for Township roadside cleanup in the amount of \$2820.00. Voting Yea: Fear, Charette, Fosdick, Bock, Torigian. motion carried.

FOIA Update- The Township will begin updating the FOIA policy and charging fees.

**REPORTS - WRITTEN REPORTS SUBMITTED**

**Zoning Board of Appeals**

Report given.

**Planning Commission**

Report given.

**Violations and Complaints**

Report given.

**CALL TO THE PUBLIC**

Public comment received.

**NEXT REGULAR MEETING DATE - February 9, 2023 at 7:00pm**

**ADJOURN**

There being no further business the meeting was adjourned at 8:55pm.

<b>TAMI BOCK</b>			
<b>COHOCTAH TOWNSHIP TREASURER</b>			
<b>6153 BYRON ROAD</b>			
<b>HOWELL MI 48855</b>			
<b>517-546-2510</b>			
			Jan 2023
RECEIPTS			
	LAND USE		\$ 225.00
	INTEREST		\$ 15.70
	TRASH PICK UP		\$ 970.00
	ALLOCATED TAX		\$ 11,586.79
	FRANCHISE FEES		\$ 2,837.52
	REVENUE SHARING		\$ 61,369.00
	BURIAL SERVICES		\$ 600.00
	FOIA		\$ 9.00
	PA 105 PAYOUT		\$ 201.21
	<b>RECEIPTS TOTAL</b>		<b>\$ 77,814.22</b>
	CASH ACCOUNT ENDING BALANCE		\$ 772,250.85
	FLAGSTAR CD		\$ 112,731.87
	PNC BANK		\$ 115,015.80
	HUNTINGTON CD		\$ 169,411.76
	GENERAL FUND BALANCE		\$ 1,169,410.28
	TRUST AND AGENCY BALANCE		\$ 7,050.00
	CAPITAL IMPROVEMENT FUND		\$ 222,480.34
	ROAD FUND ENDING BALANCE		\$ 41,478.22
	ARPA FUND		\$ 75,749.69

<b>EXPENDITURES - FEBRUARY 2023</b>			
BERG ASSESSING		\$	3,175.00
VERIZON		\$	234.73
SURF AIR WIRELESS		\$	85.00
LIVINGSTON COUNTY TREASURER		\$	124.17
KNOCK EM OUT PEST CONTROL		\$	150.00
GRANGER		\$	22,493.04
CONSUMERS ENERGY		\$	435.95
FIRE PROTECTION PLUS		\$	151.00
THE GROUNDS CREW		\$	325.00
FOSTER SWIFT		\$	6,164.10
CRADLEPOINT		\$	291.00
CHASE BANK		\$	688.00
LIVINGSTON CO PRESS		\$	290.00
M JOLLIFF		\$	18.93
T BOCK		\$	22.27
B FEAR		\$	55.00
D BURDEN		\$	139.52
<b>SUB TOTAL</b>		<b>\$</b>	<b>34,842.71</b>
T BOCK		\$	1,662.56
D BURDEN		\$	477.97
F BUCKNER		\$	392.49
A HODGE		\$	96.91
K THURNER			\$ 203.17
M JOLLIFF		\$	1,154.77
M FOSDICK		\$	1,533.70
B FEAR		\$	1,700.09
T LITZ		\$	265.96
MISDU		\$	390.50
MERS		\$	1,136.94
W/H		\$	2,537.37
BENEPAY		\$	51.83
<b>SUB TOTAL</b>		<b>\$</b>	<b>11,401.09</b>
<b>TOTAL GENERAL FND</b>		<b>\$</b>	<b>46,243.80</b>
<b>ROAD FUND</b>		<b>\$</b>	<b>-</b>
<b>TOTAL EXPENDITURES</b>		<b>\$</b>	<b>46,243.80</b>

**Lansing**  
313 S. Washington Square  
Lansing MI 48933

**Detroit**  
333 W. Fort Street – Suite 1400  
Detroit MI 48226

Walter S. Foster  
1878-1961  
Richard B. Foster  
1908-1996  
Theodore W. Swift  
1928-2000  
John L. Collins  
1926-2001  
Webb A. Smith - *Retired*

Scott A. Storey  
Charles A. Janssen  
Charles E. Barbieri  
Scott L. Mandel  
Michael D. Sanders

Brent A. Titus  
Brian G. Goodenough  
Matt G. Hrebec  
Deanna Swisher  
Thomas R. Meagher  
Douglas A. Mielock  
Scott A. Chernich  
Paul J. Millenbach  
Dirk H. Beckwith  
Brian J. Renaud  
Lynwood P. VandenBosch  
Lawrence Korolewicz  
James B. Doezema  
Anne M. Seurnyck  
Michael D. Homier  
Scott H. Hogan

**Southfield**  
28411 Northwestern Highway – Suite 500  
Southfield MI 48034

**Holland**  
151 Central Avenue – Suite 260  
Holland MI 49423

Richard C. Kraus  
Benjamin J. Price  
Michael R. Blum  
Jonathan J. David  
Andrew C. Vredenburg  
Julie I. Fershtman  
Todd W. Hoppe  
Jennifer B. Van Regenmorter  
Thomas R. TerMaat  
Frederick D. Dilley  
David R. Russell  
Joel C. Farrar  
Laura J. Genovitch  
Karl W. Butterer, Jr.  
Mindi M. Johnson  
Ray H. Littleton, II

Jack L. Van Coevering  
Anna K. Gibson  
Nicholas M. Oertel  
Alicia W. Birach  
Adam A. Fadly  
Michael J. Liddane  
Ryan E. Lamb  
Clifford L. Hammond  
Matthew S. Fedor  
Andrea Badalucco  
Stefania Gismondi  
Leslie A. Abdo  
Julie L. Hamlet  
Michael C. Zahrt  
Mark T. Koerner  
Warren H. Krueger, III

Taylor A. Gast  
Rachel G. Olney  
Tyler J. Olney  
Mark J. DeLuca  
Stephen W. Smith  
Sarah J. Gabis  
Amanda Afton Martin  
Steven J. Tjapkes  
Jacquelyn A. Dupler  
Daniel S. Zick  
Scott R. Forbush  
Alexander S. Rusek  
Benjamin R. Judd  
Thomas K. Dillon  
Robert A. Hamor  
Michael A. Cassar

**Grand Rapids**  
1700 E. Beltline NE – Suite 200  
Grand Rapids MI 49525

**St. Joseph**  
800 Ship Street – Suite 105  
St. Joseph MI 49085

Hilary J. McDaniel Stafford  
Emily R. Wisniewski  
Amanda J. Dernovshek  
Brandon M. H. Schumacher  
Alaina M. Nelson  
Joseph B. Gale  
Sydney T. Steele  
Kathrine A. Ruttkofsky  
Anthony M. Dalimonte  
Jim W. Scales  
Benjamin C. Dilley  
Toi J. Thomas  
Nicholas J. Stock, II  
Keith T. Brown

**Writer's Direct Phone:** 616.726.2230

**Fax:** 517.367.7120

**Reply To:** Grand Rapids

**Email:** [mhomier@fosterswift.com](mailto:mhomier@fosterswift.com)

January 31, 2023

**Via Email:** [supervisor@cohoctahtownship.org](mailto:supervisor@cohoctahtownship.org)

Mark Fosdick, Supervisor  
Cohoctah Township  
10518 Antcliff Road  
Fowlerville, MI 48836

Re: Engagement Agreement

Dear Mark:

We are pleased Cohoctah Township (the "Township") is considering engaging Foster Swift (the "Firm") to represent the Township's interests. It is customary in the legal profession to initiate a relationship between an attorney and client through an engagement letter. This engagement letter will serve as an agreement about the nature and scope of our relationship with the Township.

Our services to the Township will be billed on the basis of hourly rates for the time incurred. Hourly rates differ between attorneys and subject matter, but are generally in the range of \$200 per hour to \$595 per hour. My standard hourly rate is \$485 per hour. However, we are sensitive to governmental budgets and offer our municipal clients a substantial reduction for public work. Thus, the hourly rate for general municipal services provided to the Township will be capped at \$275 per hour, meaning that regardless of the attorney working on matters, except for those noted below, the Township will never be billed more than \$275 per hour.

Other specialty counsel involving environmental issues, labor or employment issues or negotiations, bond and public finance work, tax and special assessment appeals, public-private partnerships, and condemnation and eminent domain, if the Township has a need for such services, will be billed at different rates and will be discussed prior to commencing any work.



That specialty work may be initiated through a letter agreement, but all of the other terms and conditions of this engagement letter will otherwise be applicable to work initiated under such letter agreement.

The hourly rate for legal services we provide to the Township will remain in effect until December 31, 2023, after which the Firm may adjust its rate annually, but not by more than 5% unless otherwise agreed to by the Township and the Firm. The Township will also be billed for photocopies and other out-of-pocket expenses by the Firm on the Township's behalf. The costs and attorney fees will be billed monthly. Our invoices will be sent by e-mail, unless you direct us to send them in some other fashion. If an invoice is not timely paid, a late charge may be added to any portion not paid within thirty (30) days. The late charge will be computed at the rate of .58% per month (7% annual) starting thirty (30) days after the date of the invoice.

Based on the information you have provided, the Firm believes that its representation of the Township complies with the Michigan Rules of Professional Conduct. However, if we determine that a conflict of interest arises during this engagement, the Firm may take appropriate steps to remedy the conflict, including withdrawal.

Our responsibility in representing the Township is, of course, to do so in a manner that is consistent with the customary professional practices and requirements for handling the Township's legal matters. In turn, we will need the Township's full and timely cooperation. This will likely include providing us with various materials relating to the matters for which the Township is utilizing our services. Further, the Township agrees that our work may be authorized and directed by any individual, officer or agent of the Township, unless the Township advises us to the contrary in writing.

The Firm will pursue the Township's legal matters conscientiously and without delay, but with regard for the Firm's workload and the nature of the legal system. The Firm will keep the Township reasonably informed about the status of this matter and welcomes requests for information.

We intend to establish a mutually rewarding and enduring relationship with the Township as its legal counsel. Nevertheless, the Township is free to terminate our services at any time by written notice to us to that effect. We may also terminate our services to the Township, by written notice to the Township to that effect, if the Township unreasonably fails to cooperate with us, if our monthly statements are not paid in a timely manner, or if we determine that our continued representation of the Township would violate the rules of professional responsibility applicable to lawyers or would otherwise be impractical.

If the Township terminates our representation, the Firm will return to the Township any original materials in the Firm's files that belong to the Township. The Firm will dispose of its files (including the Firm's work product) related to Township matters as it sees fit.

Cohoctah Township  
Page 3 of 5

This engagement letter is intended to govern all of the legal services that we may render to the Township unless and until the Firm and the Township mutually agree in writing to a different arrangement with respect to providing our legal services to the Township.

Should you have any questions, please do not hesitate to call us. If the Township agrees with the above, please execute this engagement letter at the bottom on behalf of the Township. We look forward to serving Cohoctah Township.

Sincerely,

FOSTER SWIFT COLLINS & SMITH PC



Michael D. Homier

MDH:AJZ

AGREED: \_\_\_\_\_  
COHOCTAH TOWNSHIP

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Email Address for Invoices: \_\_\_\_\_

**Additional Terms of Engagement**

**Scope of Engagement:**

Our engagement is on behalf of the parties expressly named in our agreement. As way of example, our representation of an entity does not include a representation of the interests of the individuals that are directors, shareholders, or officers of that entity.

**Cooperation:**

You agree to fully, accurately, and truthfully disclose to us all facts that may be relevant to the matter or that we may otherwise request to keep us apprised of developments relating to the matter. You agree to cooperate fully with us in all matters related to the preparation and presentation of your claims. We will be relying on the completeness and accuracy of the information you provide when we perform our services.

**No Promise or Guarantee of Results:**

You agree that we have made no promises or guarantees regarding the outcome of your case. Either at the beginning or during the course of our representation, we may express our opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any attorney, employee, or agent of our firm is intended to be an expression of opinion only, based on information available to us at the time, and must not be construed by you as a promise or guarantee of any particular result. In addition, the advice and communications we render on your behalf are not intended to be disseminated to or relied on by any other parties without our prior written consent.

**Consultations with Internal and Outside Counsel to the Firm:**

We represent a large number of clients on a wide variety of complex matters. In the course of our representation, we may consult with the firm's internal counsel with expertise in legal ethics issues and in the past have considered such consultations to be attorney-client privileged. Recent court rulings have indicated that in some circumstances such consultations may not be deemed privileged. Our firm believes that expert advice and analysis regarding legal ethics issues would positively benefit our clients.

You agree that if we determine during the course of the representation that it is either necessary or appropriate to consult with our firm's internal counsel or outside counsel to the firm, we have your consent to do so and that our representation of you shall not, thereby, waive any attorney-client privilege.

**E-mail Policy:**

Our firm's attorneys, employees, and agents may utilize e-mail for communications in this matter unless you notify us, in writing, not to use this means of communication. Unless you request in writing that we encrypt out-going e-mail and we have agreed in writing to reasonable and mutually acceptable protocols, documents sent to you by e-mail will not be encrypted.

Our firm expends reasonable efforts to exclude any virus or other defect that might affect any computer or IT system from our e-mails and electronic documents. We do not accept liability for any loss or damage resulting from the use of commercial software, or the receipt or use of electronic communications from us containing a virus or defect that was not created by us.

**Circular 230 Notices:**

Congress has passed legislation imposing reporting requirements and penalties, which the IRS has implemented by amending Circular 230 and setting forth various rules about written tax advice. As a result, you may notice that we will often have a Circular 230 statement on written communications about reliance on what you receive.

**Attorney's Lien:**

All payments by way of recovery, award, judgment, or settlement to you from third parties shall be made jointly payable to you and us. If you obtain a monetary judgment or award, we shall have a lien on the proceeds to the extent of any of our unpaid fees, disbursements, or other charges.

**Relationship Term:**

When we have completed the specific professional legal services agreed to in this engagement, our attorney-client relationship shall end, regardless of the date you are billed or pay for our services.

Any agreement to provide non-professional services (facilities use, file storage, copies of old client files) does not revive the attorney-client relationship. The newsletters, e-mails, or other publications that we may occasionally send to you containing general updates on areas of the law of interest to you do not revive an attorney-client relationship.

**Future Representation:**

If our attorney-client relationship has ended, we have no obligation to represent you in connection with related matters unless we have agreed to do so in writing in our engagement agreement. Regardless of whether we are representing you in other matters, we have no duty to accept new engagements from you unless mutually agreed.



# Livingston County Department of Planning

January 19, 2023

Cohoctah Township Board of Trustees  
c/o Barb Fear, Clerk  
Cohoctah Township Hall  
3530 Gannon Road  
Howell, MI 48855

**Kathleen J. Kline-Hudson**  
AICP, PEM  
Director

**Re: County Planning Commission Review of Zoning Text Amendments  
Z-06-23 Various Sections and Articles:**

- **Utility Scale Solar Energy Systems and Moratorium**

**Robert A. Stanford**  
AICP, PEM  
Principal Planner

Dear Board Members:

The Livingston County Planning Commission met on Wednesday, January 18, 2023, and reviewed the zoning text amendments referenced above. The County Planning Commissioners made the following recommendation:

**Z-06-23 Take No Action, Encourage Further Review.**

Copies of the staff review and Livingston County Planning Commission meeting minutes are enclosed. Please do not hesitate to contact our office should you have any questions regarding county actions.

Sincerely,

*Robert A. Stanford*

Robert Stanford, Principal Planner

Enclosures

c: Robert Beach, Chair, Cohoctah Township Planning Commission  
Mike Homier, Legal Counsel  
Abby Cooper, Municipal Attorney

Meeting minutes and agendas are available at:  
<https://www.livgov.com/plan/econdev/Pages/meetings.aspx>

## Department Information

Administration Building  
304 E. Grand River Avenue  
Suite 206  
Howell, MI 48843-2323

•  
(517) 546-7555  
Fax (517) 552-2347

•  
Web Site  
[co.livingston.mi.us](http://co.livingston.mi.us)







# Livingston County Department of Planning

## MEMORANDUM

Kathleen J. Kline-Hudson  
AICP, PEM  
Director

**TO:** Livingston County Planning Commissioners and the  
Cohoctah Township Board of Trustees

**FROM:** Robert Stanford, Principal Planner

**DATE:** January 6, 2023

**SUBJECT:** Z-06-23 Amendments to Zoning Ordinance Article -

Robert A. Stanford  
AICP, PEM  
Principal Planner

Various Sections and Articles:  
*Utility Scale Solar Energy Systems and Moratorium*

Scott Barb  
PEM  
Principal Planner

During the November 16, 2022 Livingston County Planning Commission meeting, the Commission heard, reviewed and made recommendation on *Livingston County Zoning Case #Z-37-22 (Recommendation: Take No Action, Encourage Further Review)*. With this set of amendments the township proposed to do the following:

- The township proposed to remove the definition of "Solar Farm" from Section 2.02.
- The township proposed to replace references to "Solar farms" to "Utility scale solar energy systems" in Sections 4.03(M), 5.03(L), 6.03(K), 7.03(H), 10.03(G), 11.03(X), and 16.58(C).
- The township proposed to delete Section 13.17 regarding Solar Buildings.
- The township proposed to replace existing section 13.27 in its entirety and revise it with new regulations throughout.

### Department Information

Administration Building  
304 E. Grand River Avenue  
Suite 206  
Howell, MI 48843-2323

• (517) 546-7555  
Fax (517) 552-2347

• Web Site  
[co.livingston.mi.us](http://co.livingston.mi.us)

While it was felt by County Planning Staff that the proposed amendments were very comprehensive and many of them sufficiently addressed many of the elements related to proper planning and zoning related to the issue according to the current establish set of unofficial guidelines developed by the Michigan State University Extension and University of Michigan-Graham Institute of Sustainability entitled: "Planning & Zoning for Solar Energy Systems: A Guide for Michigan Local Governments"<sup>1</sup>, there were many undefined, unclear and vague areas through the proposed amendments that the County Planning Commission recommended that the Township take back the amendments to reevaluate and continue to better clarify these areas of deficiencies in the proposal and perhaps repropose to the County Planning Commission at a near future date a cleaner more refined set of amendments.

<sup>1</sup>(Source: available at:  
<https://www.canr.msu.edu/planning/uploads/files/SES-Sample-Ordinance-final-20211011-single.pdf>)





Subsequent to this action, the Cohoctah Township Planning Commission received the recommendation of the County Planning Commission and has decided to take this current action. In addition, the township has decided to retain new legal counsel specifically to aid and assist in the further development of the township's solar and wind energy ordinance. The proposed amendments as presented in this review are a result of advice provided by the township's new legal counsel.

In conversations and public meetings attended by Staff with township planning commissioners, board members and legal counsel, Staff has come to the understanding that the township had indeed implemented a similar moratorium over the past year or so previous, which concluded on or around November-December of 2022. Because of the uncertainty and level of necessary additional work that is required to revise the previously proposed set of amendments (see case #Z-37-22) as well as the new ground swell of concern and activity by the township residents, the Township Planning Commission has decided to initiate this new course of action under the proposed moratorium.

For purposes of this review, proposed additions to existing text are noted in red underline, deletions in ~~strikethrough~~.

**ITEM 1. The Township Planning Commission has initiated this new course of action with the following Resolution, which formulates the basis for the action.**

WHEREAS, Public Act 110 of 2006, MCL 125.3101 et seq., as amended, authorizes a township board to adopt and amend zoning ordinances that regulate the use of land and structures within its zoning jurisdiction to meet the needs for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare; and

WHEREAS, the Planning Commission wishes to consider recommending regulations applicable to Commercial Wind and to Solar Energy Projects in the Township; and

WHEREAS, the Planning Commission finds that it is necessary and reasonable for the Township Board to establish a temporary moratorium upon the issuance of any and all permits, licenses, and approvals for any property in the Township for the establishment and use of Commercial Wind and Solar Energy Projects for a period of 12 months, with the ability to extend said moratorium for up to an additional 12 months by the adoption of a resolution for extension by the Township Board; and

WHEREAS, the Planning Commission finds that adopting such a moratorium is in the best interest of the public health, safety, and welfare to ensure that the Planning Commission and the Township Board have sufficient time and space during which to thoughtfully consider such regulations without the added pressure of pending applications or proposed developments involving Commercial Wind and Solar Energy Projects; and





WHEREAS, the Planning Commission has determined that the following sections of the Township's Zoning Ordinance relating to "solar farms" should be repealed while the Planning Commission considers revised regulations: the definition of "solar energy system" and "solar farm" in section 2.02, section 4.03(M), section 5.03(L), section 6.03(K), section 7.03(H), section 10.03(G), section 11.03(X), section 16.58(C), section 13.27, and any other section that could be construed to permit Commercial Wind and Solar Energy Projects in the Township while the moratorium remains in effect.

NOW, THEREFORE, the Planning Commission of the Township of Cohoctah resolves as follows:

1. The Planning Commission recommends that the Township Board adopt Ordinance No. 2023-\_\_\_, An Ordinance to Amend the Township Zoning Ordinance to Include a Moratorium on the Issuance of Permits, Licenses, or Approvals for, or for Any Construction of, Commercial Wind and Solar Energy Projects, And To Repeal Sections Of The Township Zoning Ordinance Pertaining To "Solar Farms" And "Solar Energy Systems" (the "Ordinance," attached as **Exhibit A**).
2. The Planning Commission shall forward this Resolution and the Ordinance, along with the minutes of the public hearing, to the Livingston County Planning Commission for review and recommendation and to the Township Board for consideration.
3. A copy of the Ordinance shall be available for examination at the office of the Clerk, and copies may be provided for a reasonable charge.
4. Any and all resolutions that are in conflict with this Resolution should be repealed but only to the extent necessary to give this Resolution full force and effect.

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**ITEM 2. The following is a summary of the proposed Ordinance and moratorium text.**

**Section 1. Addition of New Section 13.28 to Township Zoning Ordinance.** This section adds Section 13.28 to the Township Zoning Ordinance. The new Section 13.28 contains the following subsections:

- A. Subsection (A)** defines "Commercial Wind and Solar Energy Project."
- B. Subsection (B)** describes the purpose and findings of the proposed Ordinance, including the need for a moratorium and repeal of sections of the Zoning Ordinance pertaining to "solar farms" and "solar energy systems."
- C. Subsection (C)** imposes a moratorium upon the issuance of any and all permits, licenses, or approvals for any property in the Township for the establishment or use of Commercial Wind and Solar Energy Projects, so long as the Ordinance is in effect.
- D. Subsection (D)** describes the term of the moratorium imposed by the Ordinance stating it will be in effect for 12 months following the effective date of the Ordinance,





and that the Township Board may extend the moratorium by resolution for an additional 12 months.

**Section 2. Validity and Severability.** This section provides that if any portion of the Ordinance is found invalid, such holding will not affect the validity of the remaining portions of the Ordinance.

**Section 3. Repealer.** This section repeals any ordinances or parts of ordinances in conflict with this Ordinance, including but not limited to Ordinance No. 84 adopted on November 9, 2017.

**Section 4. Effective Date.** This section provides that the Ordinance is effective as provided by law.

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**ITEM 3. The Township proposes an ordinance to amend the Township Zoning Ordinance to include a moratorium on the issuance of permits, licenses, or approvals for, or for any construction of, commercial wind and solar projects, and to repeal sections of the township zoning ordinance pertaining to “solar farms” and “solar energy systems”. New Section 13.28 is added to the Township Zoning Ordinance and reads as follows:**

**Section 13.28 Moratorium on Commercial Wind and Solar Projects and Repeal of Sections of the Township Zoning Ordinance Pertaining to “Solar Farms” and “Solar Energy Systems”**

**A: Definition.** A “Commercial Wind and Solar Energy Project” is a utility-scale commercial facility that converts energy into electricity, whether by wind, photovoltaics (PV) or various experimental solar technologies, for the primary purpose of wholesale or retail sales of generated electricity.

**B. Purpose and Findings.** The purpose of this moratorium is to provide sufficient time for the Cohoctah Township Planning Commission and Township Board to fully and thoughtfully explore, analyze, research, and make informed decisions regarding Commercial Wind and Solar Energy Projects. In support of this Ordinance, the Cohoctah Township Planning Commission and Township Board have determined the following:

- 1. The integration of Commercial Wind and Solar Energy Projects within the Township's existing land uses requires suitable regulations and controls to ensure compliance with the Township's Master Plan and for the protection for the health, safety and welfare of all of the Township's residents.**
- 2. The Township wishes to consider whether amendments to its Zoning Ordinance to regulate the establishment and use of Commercial Wind and Solar Energy Projects are necessary in order to better protect the public health, safety, and welfare of Township residents.**
- 3. Imposing a moratorium, on a limited temporary basis, is reasonable and necessary in order to allow the Township time and space to fully and thoughtfully explore, analyze, research and**





develop any proposed zoning amendments regarding potential amendments to the Township's Zoning Ordinance applicable to Commercial Wind and Solar Energy Projects.

4. A moratorium should be imposed upon the issuance of any and all permits, licenses, and approvals for any property in the Township for the establishment and use of Commercial Wind and Solar Energy Projects for 12 months, subject to further extension by resolution adopted by the Township Board.
5. The following sections of the Township's Zoning Ordinance relating to "solar farms" should be repealed while the Planning Commission considers revised regulations: the definition of "solar energy system" and "solar farm" in section 2.02, section 4.03(M), section 5.03(L), section 6.03(K), section 7.03(H), section 10.03(G), section 11.03(X), section 16.58(C), section 13.27, and any other section that could be construed to permit Commercial Wind and Solar Energy Projects in the Township while the moratorium remains in effect.

**C: Moratorium.** A moratorium is hereby imposed upon the issuance of any and all permits, licenses, or approvals for any property in the Township for the establishment and use of Commercial Wind and Solar Energy Projects, so long as this Ordinance is in effect.

**D. Term of Moratorium; Renewal.** The moratorium imposed by this Ordinance remains in effect for 12 months following the effective date of this Ordinance. Before this moratorium expires, the Township Board may, by resolution, extend the moratorium for up to 12 additional months, if in its judgment the Township Board determines additional time is necessary. If an extension is adopted, the Township will publish notice of the resolution of extension.

## **Section 2. Validity and Severability.**

Should any portion of this Ordinance be found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

## **Section 3. Repealer.**

Any ordinances or parts of ordinances in conflict with this Ordinance, including but not limited to Ordinance No. 84 adopted on November 9, 2017, are hereby repealed only to the extent necessary to give this Ordinance full force and effect. Specifically but without limitation, the following sections of the Township Zoning Ordinance pertaining to "solar farms" are repealed: the definition of "solar energy system" and "solar farm" in section 2.02, section 4.03(M), section 5.03(L), section 6.03(K), section 7.03(H), section 10.03(G), section 11.03(X), section 16.58(C), section 13.27, and any other section that could be construed to permit Commercial Wind and Solar Energy Projects in the Township while the moratorium remains in effect.

## **Section 4. Effective Date.**

This Ordinance is effective as provided by law.





**Staff Comments:** Staff understands the Township's desire to make sure the development and implementation of the set of regulations pertaining to commercial wind and solar energy projects are prepared to the best of its ability. The Township recently developed a set of regulations pertaining to utility solar energy systems which was recently reviewed and recommended on by the County Planning Commission (see County Zoning Case Z-37-22). It is Staff's understanding that with this current amendment, that previous submission will be held up and set aside for the time being while this moratorium is in place, to possibly be reintroduced into the Zoning Ordinance at some future date.

Staff would caution the township to limit the length of this proposed moratorium to the absolute least amount of time necessary to properly undergo its desired reexamination of the subject matter and the subsequent redevelopment of utility-scale wind and solar energy land use regulations.

Adopting a moratorium is not without legal risk. A local government must do so with caution and ensure that the municipal attorney is directly involved.

The following excerpt is taken from a Michigan State University Extension article entitled: "A zoning moratorium should only be done with caution"<sup>2</sup>. It provides a great explanation for the need for a local municipality to exercise caution when determining to utilize a moratorium.

<sup>2</sup>(Source: "A zoning moratorium should only be done with caution" written by Brad Neumann, Michigan State University Extension, April 08, 2020, found online at: [https://www.canr.msu.edu/news/zoning\\_moratoriums\\_should\\_only\\_be\\_done\\_with\\_caution](https://www.canr.msu.edu/news/zoning_moratoriums_should_only_be_done_with_caution))

*Local units of government sometimes adopt moratoria to prevent anyone from developing or building something until regulations concerning the activity are developed and adopted. This has occurred in Michigan with medical marijuana dispensaries, signs and billboards, scrapyards, and wind and solar energy generation systems, to name a few.*

*The problem in Michigan is that there is no statutory authority for a local government to adopt a moratorium in the first place. This is a problem because there is no specific procedure or process for enacting a moratorium – leading to questions about how it is done.*

*On the other side of the coin, the U.S. Supreme Court has recognized the legitimate use of moratoria (Tahoe-Sierra, U.S. (2002)), and there are appellate level court cases in Michigan that provide support for the idea that moratoria can be done (e.g. Central Advertising Co. v St. Joseph Township 125 Mich App 548, 554-555 (1983).) In one case, "a moratorium on the issuance of building permits in a particular district of the city for a reasonably limited time" was not voided by the court (Heritage Hill v Grand Rapids, 48 Mich App 765, 768 (1973)). Nor did the Michigan Court of Appeals find it to be legally offensive for a township to declare a "brief moratorium on all sewer connections" (BPA II v Harrison Township, 73 Mich App 731, 733-734 (1977)).*

*While courts have not struck down moratoria in Michigan, there is no appellate court that has upheld a moratorium in Michigan for longer than six months. Moratoria are supposed to be short, tied to a direct threat to the public health, safety and general welfare, given a specific start and end date, and then removed at the end of that date.*



*The serious and important point is that a local government should never enact a moratorium without the direct involvement of the government's corporate attorney, who should be experienced in municipal and land use law. This is particularly important because there may be question over the government's authority to do so. There may also be question on how it is done. Normally, one would find such direction in enabling legislation, but this is lacking in Michigan. Therefore, it is important that a moratorium is enacted in a way that the attorney is comfortable with, because he or she will be the one to stand to defend the local government if challenged.*

*Under the doctrine of legislative equivalency, an ordinance can only be amended/suspended by another ordinance, meaning a moratorium can only be enacted by adoption of an ordinance. While some Michigan communities have attempted to enact a moratorium by resolution, it is well-established case law in Michigan that an ordinance cannot be suspended by resolution as shown in these examples:*

- *City of Saginaw v Consumers' Power Co., 213 Mich 460, 469 (1921) ("[A]n ordinance may not be repealed or amended without action of equal dignity to that required in its enactment.")*
- *Lee v City of Taylor, 63 Mich App 221, 223 (1975) ("It is settled that a municipal corporation may only repeal an ordinance by an act of equal dignity and formality.")*
- *McCarthy v Village of Marcellus, 32 Mich App 679, 688-89 (1971) ("An ordinance or resolution cannot be amended, repealed, or suspended by another act by a council of less dignity than the ordinance or resolution itself.")*
- *Lorencz v Brookfield Twp., Mich App (No. 319235, Apr. 28, 2015, Unpublished) ("[A]n ordinance may only be repealed by an act of equal dignity, which requires the township to repeal by ordinance and not resolution.")*

*It is important that the text of the moratorium ordinance include specific content on:*

- *The narrow subject to which the moratorium applies*
- *An explanation as to how the moratorium is addressing a direct and immediate threat to public health, safety and general welfare.*
- *Findings of fact that support the public health, safety and welfare threat.*
- *A specific starting date.*
- *A specific ending date.*
- *Anything else the local government's attorney believes is important to convey.*

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**Township Recommendation: Approval.** The Cohoctah Township Planning Commission recommended Approval of this zoning amendment at its January 6, 2023, public hearing. There were several public comments regarding this amendment noted in the minutes.

**Staff Recommendation: Approval With Conditions.** Following the November 2022 County Planning Commission meeting, the Planning Commission recommended "Take No Action,





Encourage Further Review", on Livingston County Zoning Case #Z-37-22, as there were many areas of concern with the amendments as proposed and a great deal of increased effort was seen as needed by Cohoctah Township to properly address these concerns and greatly improve the set of regulations going forward.

This, coupled with the fact that the township has retained new legal counsel in its efforts to reassess the current situation and move forward in this planning process under their guidance may necessitate an additional previously unforeseen time commitment in order to effectively and efficiently develop a set of guidelines regulating utility-scale solar that best addresses the health, safety and well-being of the residents of the community and best serves the community as a whole.

Therefore, it is recommended that the township continue to remain diligent in finding a well-conceived and reasonable final resolution to this land use issue as expeditiously as possible, including repeal of regulations as proposed if the township feels this is necessary, relying on the advice of its legal counsel as it progresses through this new course of action. However, the recommendation would also be that these steps are taken without implementation of the moratorium as proposed by the amendments, which constitute the conditions of this Approval.

It is believed that undertaking a further continuation of a previous moratorium period is an unnecessary step and that the tasks necessary to improve the previously proposed set of regulations (as provided in the Staff review for the case) can be completed through the normal course of action utilized in the past by the township whenever any further revisions or refinements that are suggested or recommended to proposed amendments by the County Planning Commission are subsequently implemented by the township.

**EXHIBIT A**

**COHOCTAH TOWNSHIP  
TOWNSHIP BOARD  
PROPOSED ORDINANCE NO. 2023-\_\_\_**

**AN ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE TO INCLUDE A MORATORIUM ON THE ISSUANCE OF PERMITS, LICENSES, OR APPROVALS FOR, OR FOR ANY CONSTRUCTION OF, COMMERCIAL WIND AND SOLAR PROJECTS, AND TO REPEAL SECTIONS OF THE TOWNSHIP ZONING ORDINANCE PERTAINING TO “SOLAR FARMS” AND “SOLAR ENERGY SYSTEMS”**

**COHOCTAH TOWNSHIP ORDAINS:**

**Section 1. Addition of New Section 13.28 to Township Zoning Ordinance**

New Section 13.28 is added to the Zoning Ordinance and reads as follows:

**Section 13.28 Moratorium on Commercial Wind and Solar Projects and Repeal of Sections of the Township Zoning Ordinance Pertaining to “Solar Farms” and “Solar Energy Systems”**

- A: Definition.** A “Commercial Wind and Solar Energy Project” is a utility-scale commercial facility that converts energy into electricity, whether by wind, photovoltaics (PV) or various experimental solar technologies, for the primary purpose of wholesale or retail sales of generated electricity.
- B. Purpose and Findings.** The purpose of this moratorium is to provide sufficient time for the Cohoctah Township Planning Commission and Township Board to fully and thoughtfully explore, analyze, research, and make informed decisions regarding Commercial Wind and Solar Energy Projects. In support of this Ordinance, the Cohoctah Township Planning Commission and Township Board have determined the following:
1. The integration of Commercial Wind and Solar Energy Projects within the Township's existing land uses requires suitable regulations and controls to ensure compliance with the Township’s Master Plan and for the protection for the health, safety and welfare of all of the Township’s residents.
  2. The Township wishes to consider whether amendments to its Zoning Ordinance to regulate the establishment and use of Commercial Wind and Solar Energy Projects are necessary in order to better protect the public health, safety, and welfare of Township residents.

3. Imposing a moratorium, on a limited temporary basis, is reasonable and necessary in order to allow the Township time and space to fully and thoughtfully explore, analyze, research and develop any proposed zoning amendments regarding potential amendments to the Township's Zoning Ordinance applicable to Commercial Wind and Solar Energy Projects.
4. A moratorium should be imposed upon the issuance of any and all permits, licenses, and approvals for any property in the Township for the establishment and use of Commercial Wind and Solar Energy Projects for 12 months, subject to further extension by resolution adopted by the Township Board.
5. The following sections of the Township's Zoning Ordinance relating to "solar farms" should be repealed while the Planning Commission considers revised regulations: the definition of "solar energy system" and "solar farm" in section 2.02, section 4.03(M), section 5.03(L), section 6.03(K), section 7.03(H), section 10.03(G), section 11.03(X), section 16.58(C), section 13.27, and any other section that could be construed to permit Commercial Wind and Solar Energy Projects in the Township while the moratorium remains in effect. .

**C: Moratorium.** A moratorium is hereby imposed upon the issuance of any and all permits, licenses, or approvals for any property in the Township for the establishment and use of Commercial Wind and Solar Energy Projects, so long as this Ordinance is in effect.

**D. Term of Moratorium; Renewal.** The moratorium imposed by this Ordinance remains in effect for 12 months following the effective date of this Ordinance. Before this moratorium expires, the Township Board may, by resolution, extend the moratorium for up to 12 additional months, if in its judgment the Township Board determines additional time is necessary. If an extension is adopted, the Township will publish notice of the resolution of extension.

## **Section 2. Validity and Severability.**

Should any portion of this Ordinance be found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

## **Section 3. Repealer.**

Any ordinances or parts of ordinances in conflict with this Ordinance, including but not limited to Ordinance No. 84 adopted on November 9, 2017, are hereby repealed only to the extent necessary to give this Ordinance full force and effect. Specifically but without limitation, the following sections of the Township Zoning Ordinance pertaining to "solar farms" are repealed: the definition of "solar energy system" and "solar farm" in section 2.02, section 4.03(M), section 5.03(L), section 6.03(K), section 7.03(H), section 10.03(G), section 11.03(X), section 16.58(C), section 13.27, and any other section that could be construed to permit Commercial Wind and Solar Energy Projects in the Township while the moratorium remains in effect.



**Section 4. Effective Date.**

This Ordinance is effective as provided by law.

**COHOCTAH TOWNSHIP  
TOWNSHIP BOARD**

**NOTICE OF PROPOSED ORDINANCE:  
AN ORDINANCE TO AMEND THE TOWNSHIP ZONING ORDINANCE TO INCLUDE  
A MORATORIUM ON THE ISSUANCE OF PERMITS, LICENSES, OR APPROVALS  
FOR, OR FOR ANY CONSTRUCTION OF, SOLAR FARMS, AND TO REPEAL  
SECTIONS OF THE TOWNSHIP ZONING ORDINANCE PERTAINING TO “SOLAR  
FARMS” AND “SOLAR ENERGY SYSTEMS”**

On \_\_\_\_\_, 2023, Cohoctah Township (the “Township”) adopted Ordinance No. \_\_\_\_, An Ordinance to Amend the Township Zoning Ordinance to Include a Moratorium on the Issuance of Permits, Licenses, or Approvals for, or for Any Construction of, Commercial Wind and Solar Energy Projects (the “Ordinance”). The following is a summary of the Ordinance. A true copy of the Ordinance is available at the Township Hall, 10518 Antcliff Rd., Fowlerville, MI 48836.

**Section 1. Addition of New Section 13.28 to Township Zoning Ordinance.** This section adds Section 13.28 to the Township Zoning Ordinance. The new Section 13.28 contains the following subsections:

- A. Subsection (A) defines “Commercial Wind and Solar Energy Project.”
- B. Subsection (B) describes the purpose and findings of the proposed Ordinance, including the need for a moratorium and repeal of sections of the Zoning Ordinance pertaining to “solar farms” and “solar energy systems.”
- C. Subsection(C) imposes a moratorium upon the issuance of any and all permits, licenses, or approvals for any property in the Township for the establishment or use of Commercial Wind and Solar Energy Projects, so long as the Ordinance is in effect.
- D. Subsection (D) describes the term of the moratorium imposed by the Ordinance stating it will be in effect for 12 months following the effective date of the Ordinance, and that the Township Board may extend the moratorium by resolution for an additional 12 months.

**Section 2. Validity and Severability.** This section provides that if any portion of the Ordinance is found invalid, such holding will not affect the validity of the remaining portions of the Ordinance.

**Section 3. Repealer.** This section repeals any ordinances or parts of ordinances in conflict with this Ordinance, including but not limited to Ordinance No. 84 adopted on November 9, 2017.

**Section 4. Effective Date.** This section provides that the Ordinance is effective as provided by law.

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**COHOCTAH TOWNSHIP**

**RESOLUTION TO APPROVE FOIA PROCEDURES AND GUIDELINES,  
A WRITTEN PUBLIC SUMMARY AND DETAILED ITEMIZATION**

At a regular meeting of the Township Board of Cohoctah Township (the "Township"), Livingston County, Michigan, held at the Township on the \_\_\_\_ day of February, 2023 at 7:00 p.m.

PRESENT: \_\_\_\_\_

\_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_

The following Resolution was offered by \_\_\_\_\_ and seconded by \_\_\_\_\_.

WHEREAS, the Township is a public body as defined by the Michigan Freedom of Information Act, 1976 PA 442, as amended ("FOIA");

WHEREAS, in the performance of its function as trustees for the Township, it is necessary and appropriate for the Township Board to establish and adopt policies for the operation of the Township;

WHEREAS, pursuant to Section 4(4) of the FOIA, the Township shall establish procedures and guidelines to implement the FOIA and shall create a written public summary regarding how to submit written requests to the Township and explaining how to understand the Township's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal;

WHEREAS, Section 4(4) of the FOIA also requires that the Township's procedures and guidelines include the use of a standard form for detailed itemization of any fee amount in its response to a written request;

WHEREAS, pursuant to 2018 PA 523 ("Act 523"), the Legislature amended the FOIA to require certain contact information from the requester and to clarify when a FOIA is considered abandoned if a requester has not paid a deposit;

WHEREAS, in the interests and the health, safety and welfare of the Township, the Township Board desires to approve procedures and guidelines, a written public summary and a detailed itemization so that it is in compliance with the FOIA and may charge the fees permitted under the FOIA.

NOW THEREFORE, the Township Board of Cohoctah Township, Livingston County, resolves as follows:

1. The Township hereby adopts and approves the Township Procedures and Guidelines (attached as Exhibit A to this Resolution) in compliance with the FOIA.
2. The Township also adopts and approves the Written Public Summary (attached as Exhibit B to this Resolution).
3. The Township also adopts and approves the Detailed Itemization Sheet (attached as Exhibit C to this Resolution). The Township also authorizes the FOIA Coordinator to modify the Detailed Itemization if such modifications are in the best interest of the Township and do not conflict with the FOIA.
4. The Township shall make the Procedures and Guidelines publicly available by providing free copies of the Procedures and Guidelines and its Written Public Summary both in the Township's response to a written request (or may include the website link to the documents in lieu of providing paper copies in its response to a written request) and upon request by visitors at the Township.
5. The Township shall post and maintain the Procedures and Guidelines and Written Public Summary on its website.
6. All resolutions, motions, policies, including any previously adopted Freedom of Information Act policies, or any parts thereof that are in conflict with this Resolution are hereby repealed to the extent of such conflict.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF LIVINGSTON )

I, the undersigned, the duly qualified and acting Clerk of Cohoctah Township, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Township Board of said Township at a meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2023, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required under the Open Meetings Act.

\_\_\_\_\_  
Barb Fear, Cohoctah Township Clerk

# **Exhibit A**

## **FOIA – Procedures and Guidelines**

**COHOCTAH TOWNSHIP**  
**FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES**

**I. PURPOSE.**

Cohoctah Township (the “Township”) adopts the public policy set forth in the Michigan Freedom of Information Act, 1976 PA 442 (“FOIA”), that all persons, except those persons incarcerated in state, county or federal correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with the FOIA. Access to information is important so that people may fully participate in the democratic process. These Procedures and Guidelines are enacted in compliance with the requirements set forth in Section 4(4) of the FOIA.

**II. FOIA COORDINATOR.**

The Township appoints the Township Clerk as FOIA Coordinator. The FOIA Coordinator will respond to requests in accordance with the FOIA. An employee of the Township who receives a request for a public record must promptly forward that request to the FOIA Coordinator. The FOIA Coordinator is responsible for accepting, processing and approving a denial of a request and signing the written notice of denial. The FOIA Coordinator may designate another individual to act on his or her behalf in accepting and processing requests for the Township’s public records, and in approving a denial.

**III. REQUEST REQUIRED.**

A. *Requestor; Public Record.* An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity, except those persons incarcerated in state, county or federal correctional facilities, may request public records from the Township. “Public Record” has the meaning as defined in Section 2(e) of the FOIA.

B. *Verbal Requests.* The Township may, but is not required to, provide public records in response to a verbal request, unless such verbal request is for information that the Township believes is available on its website. In such case, an employee, where practicable and to the best of his or her knowledge, shall inform the requestor about the pertinent website where the information is available.

C. *Written Requests.* Except as provided in Section III.B above, a person desiring to inspect, copy or receive a copy of a public record shall make a written request for the public record to the Township. A request can be made through a letter, in person, or sent by electronic transmission.

1. Where to Send the Request. Whenever possible, requests for public records should be directed to the following recipients so that the information can reach the FOIA Coordinator:

- a. By mail or in person:

Cohoctah Township  
Attn: FOIA Coordinator  
10518 Antcliff Road  
Fowlerville, MI 48836

- b. By e-mail: [bfearclerk@gmail.com](mailto:bfearclerk@gmail.com)

2. Sufficient Description. Requests in writing must identify the public record sufficiently to allow the Township to find the requested record. If not, the request may be denied on that basis.

3. Requester Contact Information Required. A request from a person must include the following (unless the request is from an individual who qualifies as indigent under Section 4(2)(a) of the FOIA):

- a. the requesting person's complete name, address, and contact information, and
- b. if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual.

An address must be written in compliance with United States Postal Service addressing standards. Contact information must include a valid telephone number or electronic mail address.

4. Electronic Transmissions. For requests sent by electronic transmission, the following shall apply:

a. Electronic Transmissions. A written request made by facsimile, electronic mail, or other electronic transmission is not received by the Township's FOIA coordinator until 1 business day after the electronic transmission is made.

b. Spam or Junk Mail Folder. If a written request is sent by electronic mail and delivered to the Township's spam or junk mail folder, the request is not received until 1 day after the Township first becomes aware of the written request. The Township shall note in its records both the time a written request is delivered to its spam or junk mail folder and the time the Township first becomes aware of that request. The FOIA Coordinator shall be responsible for routinely monitoring the spam and junk mail folders in order to determine whether they contain any FOIA requests.



5. Specify Format. The requestor may specify whether he or she would like to inspect, receive paper copies, or receive the public records on nonpaper physical media. The Township is only required to comply with the request for specified nonpaper physical media if it has the technological capability necessary to provide the public records on the requested nonpaper physical media in the particular instance.

6. Subscription. A person has a right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription shall be valid for up to 6 months, at the request of the subscriber, and shall be renewable.

#### **IV. PROCEDURES FOR RESPONDING TO WRITTEN FOIA REQUESTS.**

A. *Response.* Unless otherwise agreed to in writing by the person making the request, the Township shall respond to a request within 5 business days after it receives the request by:

1. Granting the request (which would include notifying the requestor that all or a portion of the public records requested are available on the website, if applicable);
2. Issuing a written notice to the requesting person denying the request;
3. Granting the request in part and issuing a written notice to the requesting person denying the request in part (which would include notifying the requestor that all or a portion of the public records requested are available on the website if applicable); or
4. Issuing a notice extending for not more than 10 business days the period during which the Township shall respond to the request.

The Township's written response shall be considered the final determination regarding the FOIA request.

B. *Understanding the Township's Response.* The Township has an obligation to respond as required under the FOIA. If the Township grants a written request in full, the requestor will receive a notice indicating that it has been granted. However, if the request is denied or denied in part, the Township shall provide the following information:

- 1 Pursuant to Section 13 of the FOIA, the Township may exempt certain documents from disclosure. The FOIA Coordinator will review the request to determine if any exemptions apply. The FOIA Coordinator may request assistance from the Township's Attorney regarding the application of exemptions. If exempt, the Township shall provide an explanation of the basis under this act or

other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

2. A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the Township, if that is the reason for denying the request or a portion of the request. The denial letter may indicate that the letter serves as the certificate as required by the FOIA.

3. A description of a public record or information on a public record that is separated or deleted pursuant to Section 14 of the FOIA, if a separation or deletion is made.

4. A full explanation of the requesting person's right to do either of the following:

a. Submit to the Township Board a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial; or

b. Seek judicial review of the denial under Section 10 of the FOIA.

5. Notice of the right to receive attorneys' fees and damages as provided in Section 10 of the FOIA, MCL 15.240, if, after judicial review, the court determines that the Township has not complied and orders disclosure of all or a portion of a public record.

C. *No Obligation to Create Records.* The FOIA does not require the Township to make a compilation, summary, or report of information. Further, the Township is not required to create a new public record in order to respond to a request.

D. *Documents Available on Website.* If the FOIA Coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the Township shall notify the requestor in its written response. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.

If all or a portion of the requested records are available on the website and the Township has included the website address in its written response, but the requestor wants the public records in a paper format or other nonpaper physical media, the Township shall provide the public records in the specified format. On the detailed itemization, the Township shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website.

**V. FEES.**

The Township may charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record because it has established, made publicly available, and follows these Procedures and Guidelines and the FOIA. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor; the cost of search, examination and review; and the deletion and separation of exempt information from non-exempt information as set forth more fully in these Procedures and Guidelines. The FOIA Coordinator shall provide a detailed itemization of costs on a standard form, as required under Section 4(4) of the FOIA (“Detailed Itemization”). The total fee shall not exceed the sum of the following components:

A. *Labor Costs:*

1. Searching for, Locating and Examining.

a. The Township may charge for searching for, locating and examining public records in conjunction with receiving and fulfilling a granted written request.

b. The Township shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor.

c. These labor costs shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.

2. Separating and Deleting Exempt from Non-Exempt:

a. For services performed by an employee of the Township, the Township shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from non-exempt information in the particular instance, regardless of whether that person is available or who actually performs the labor. All references in these Procedures and Guidelines to separating and deleting exempt information from non-exempt information shall refer to the separation and deletion requirements set forth in Section 14 of the FOIA, MCL 15.244.

b. If the Township does not employ a person capable of separating and deleting exempt information from non-exempt information in the particular instance, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from non-exempt information in the same manner as employee labor costs when calculating charges under this subdivision if all of the following occur:

1) The Township's FOIA Coordinator determines on a case-by-case basis that the Township does not employ a person capable of separating and deleting exempt information from non-exempt information.

2) The Township clearly notes the name of the contracted person or firm on the Detailed Itemization.

3) Total labor costs calculated for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate.

c. These labor costs shall be estimated and charged in increments of 15 minutes, with all partial time increments rounded down.

d. The Township shall not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the Township's possession.

e. If the Township directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from this labor charge.

3. Duplication or Publication Labor Charges.

a. The Township may charge labor costs for duplication and publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor.

b. The Township shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.

c. Labor costs shall be estimated and charged in increments of one (1) minute or more, with all partial time increments rounded down.

4. Fringe Benefit Costs. The Township may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the Detailed Itemization. Subject to the 50% limitation, the Township shall not

charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits.

If all or a portion of the requested records are available on the website and the Township has included the website address in its written response but the requestor wants the public records in a paper format or other nonpaper physical media, the Township shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual costs of providing the information in the specified format.

5. Overtime Wages. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the Detailed Itemization.

6. Itemization. All labor fee components shall be itemized using both the hourly wage and the number of hours charged on the Detailed Itemization.

7. Unreasonably High Costs. The labor fee shall not be charged for (1) searching for, locating and examining of public records, or (2) the cost of the deletion and separation of exempt information from non-exempt information, unless failure to charge a fee would result in unreasonably high costs to the Township because of the nature of the request in the particular instance, and the Township specifically identifies the nature of these unreasonably high costs. The FOIA Coordinator has authority to determine when the costs are unreasonably high in a particular instance, including, but not limited to, instances when the costs would be excessive and beyond the normal or usual amounts for responding to a request. In doing so, the FOIA Coordinator may take into account considerations such as the volume and complexity of the FOIA request as well as the Township's particular fiscal condition at the time of the request or any other conditions authorized by law.

B. *Other Costs.*

1. Nonpaper Physical Media. Costs for providing records on nonpaper physical media.

a. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. The Township is not required to provide the documents on nonpaper physical media if it lacks the technological capability necessary to provide records on the requested particular nonpaper physical media.

b. For public records provided to the requestor on nonpaper physical media, the Township may charge the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or

similar media. The Township may use (but is not required to) a computer disc, thumb drive or other nonphysical media provided by the requestor but only if it is provided in its original packaging. Because the safety and security of the Township's computers and network is of important public interest, the Township may take that security interest into account when determining the means of providing the documents on nonpaper physical media.

2. Costs for Providing Paper Copies.

a. For paper copies of public records provided to the requestor, the Township may charge the actual total incremental cost of necessary duplication or publication, not including labor.

b. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided.

c. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. For all other paper sizes, the Township may charge the actual total incremental cost of duplication or publication, not including labor.

d. The Township shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

3. Mailing Costs.

a. The Township shall charge the actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner.

b. The Township shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, but may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.

C. *Statutory Fees.* The fees set forth in this Section V do not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.

- D. *Fees Paid Before Providing Documents.* The Township shall require that all fees be paid in full before providing records in response to granted or granted in part written requests.

## VI. DEPOSIT.

A. *Deposit.* In either the Township's initial response or subsequent response as described under Section 5(2)(d), the Township may require a good-faith deposit before providing the public records to the requestor if the entire fee estimate or charge authorized the FOIA exceeds \$50.00, based on a good-faith calculation of the total. The deposit shall not exceed 1/2 of the total estimated fee, and the Township's request for a deposit shall be included in the Detailed Itemization. The response shall also contain a best efforts estimate by the Township regarding the time frame it will take the Township to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the Township, but the Township shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy and the nature of the request in the particular instance. If the Township does not respond in a timely manner as required by the FOIA, it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve the Township from any of the other requirements of this act.

B. *Increased Deposit For Prior Unpaid Requests.* After the Township has granted and fulfilled a written request from an individual under this act, if the Township has not been paid in full the total amount for the copies of public records that the Township made available to the individual as a result of that written request, the Township may require a deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if all of the following apply:

1. The final fee for the prior written request was not more than 105% of the estimated fee.
2. The public records made available contained the information being sought in the prior written request and are still in the Township's possession.
3. The public records were made available to the individual, subject to payment, within the time frame estimate described Section 4(7) of the FOIA.
4. Ninety days have passed since the Township notified the individual in writing that the public records were available for pick up or mailing.
5. The individual is unable to show proof of prior payment to the Township.
6. The Township calculates a Detailed Itemization that is the basis for the current written request's increased estimated fee deposit.

The Township shall no longer require an increased estimated fee deposit from an individual described above if any of the following apply:

1. The individual is able to show proof of prior payment in full to the Township;
2. The Township is subsequently paid in full for the applicable prior written request; or
3. Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the Township.

C. *Payment of Deposit; Abandonment of Request.* If a deposit that is required under Subsection 4(8) or 4(11) of the FOIA (as described in Subsections VI.A and B above) is not received by the Township within 45 days from receipt by the requesting person of the notice that a deposit is required, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. This notice of a deposit requirement is considered received 3 days after it is sent, regardless of the means of transmission. Notice of a deposit requirement will include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

## **VII. WAIVER OR REDUCTION OF FEES.**

A. *Waiver of Fees of First \$20.00.* A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either of the following:

1. Indigency. An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.

- a. If the requestor is eligible for a requested discount, the Township shall fully note the discount on the Detailed Itemization.

- b. If a requestor is ineligible for the discount, the Township shall inform the requestor specifically of the reason for ineligibility in the Township's written response. An individual is ineligible for this fee reduction if any of the following apply:

- 1) The individual has previously received discounted copies of public records from the same Township twice during that calendar year.



2) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request, as verified by an affidavit executed by the requestor.

2. Certain Non-Profit Organizations. A non-profit organization formally designated by the state to carry out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

- a. Is made directly on behalf of the organization or its clients.
- b. Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- c. Is accompanied by documentation of its designation by the state, if requested by the Township.

B. *Public Interest Reduction or Waiver.* The FOIA Coordinator may reduce or waive the imposition of fees if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

C. *Reduction for Late Responses.* If the Township does not respond to a written request in a timely manner as required by the FOIA, the Township shall do the following:

1. Reduce the charges for labor costs by 5% for each day the Township exceeds the time permitted, with a maximum 50% reduction, if either of the following applies:
  - a. The late response was willful and intentional.
  - b. The written request:
    - (i) included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or
    - (ii) specifically included the words, characters, or abbreviations for “freedom of information”, “information”, “FOIA”, “copy”, or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.

2. If a charge reduction is required, the Township shall fully note the charge reduction on the Detailed Itemization.

## **VIII. INSPECTION.**

Upon request, the Township must furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and must furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. Pursuant to Section 4(1) of the FOIA, the Township may charge a fee for the public record search, for the necessary copying of a public record for inspection or for providing a copy of the public record after inspection.

The FOIA permits the Township to make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. The Township must protect public records from loss, unauthorized alteration, mutilation, or destruction. As such, the Township authorizes the FOIA Coordinator to determine whether in a particular circumstance an employee or agent of the Township must be present at any inspection of documents to protect the public records, and in such cases may assess charges as appropriate under law.

## **IX. CERTIFIED COPIES.**

The Township must, upon written request, furnish a requesting person a certified copy of the public record disclosed in whole or in part by the Township.

## **X. APPEALS.**

### *A. Appeal of a Final Determination to Deny All or a Portion of the Request.*

1. Submit an Appeal. If a requestor desires to appeal all or part of a final determination to deny a request, the requestor must submit to the Cohoctah Township Board (“Township Board”) a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the denial.
2. Receipt of Appeal. The Township Board is not considered to have received a written appeal until the first regularly scheduled meeting of the Township Board following submission of the written appeal.
3. Response to Appeal. Within 10 business days after receiving a written appeal, the Township Board shall do 1 of the following:
  - a. Reverse the disclosure denial.
  - b. Issue a written notice to the requesting person upholding the disclosure denial.

c. Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

d. Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Township Board shall respond to the written appeal. The Township Board shall not issue more than 1 notice of extension for a particular written appeal.

B. *Appeals of Fees (Including Deposits).*

1. Submit an Appeal. If the Township requires a fee that exceeds the amount permitted under these Procedures and Guidelines or Section 4 of the FOIA, the requesting person may submit to the Township Board a written appeal for a fee reduction that specifically states the word “appeal” and identifies how the required fee exceeds the amount permitted under these Procedures and Guidelines or Section 4 of the FOIA.

2. Receipt of Appeal. The Township Board is not considered to have received a written appeal under until the first regularly scheduled meeting of the Township Board following submission of the written appeal.

3. Response of Appeal. Within 10 business days after receiving a written appeal, the Township Board shall do 1 of the following:

a. Waive the fee.

b. Reduce the fee and issue a written determination to the requesting person indicating the specific basis under Section 4 of the FOIA that supports the remaining fee. The determination shall include a certification from the Township Board that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available Procedures and Guidelines and Section 4 of the FOIA.

c. Uphold the fee and issue a written determination indicating the specific basis under Section 4 of the FOIA that supports the required fee. The determination shall include a certification from the Township Board that the statements in the determination are accurate and that the fee amount complies with these Procedures and Guidelines and Section 4 of the FOIA.

d. Issue a notice extending for not more than 10 business days the period during which the Township Board must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The Township Board shall not issue more than 1 notice of extension for a particular written appeal.

## XI. CIVIL ACTION.

### A. *Civil Action for Non-Disclosure or Denial of Public Records.*

1. Civil Action After Appeal: If the Township Board fails to respond to a written appeal or if the Township Board upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action within 180 days after the Township's final determination to deny a request.
2. Civil Action Directly After Denial. A requestor may also commence a civil action in the circuit court to compel the Township's disclosure of the public records within 180 days after the Township's final determination to deny a request. The requestor is not required to appeal the denial to the Township Board before commencing the civil action.
3. Remedies; Fines. If the court determines a public record is not exempt from disclosure, it shall order the Township to cease withholding or to produce all or a portion of a public record wrongfully withheld. If the person prevails, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Township prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines that the Township has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Township to pay a civil fine of \$1,000.00 and shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00.

### B. *Civil Action Regarding Fees.*

1. Civil Action After Appeal. A requestor may commence a civil action in the circuit court for a fee reduction if the Township (1) failed to respond to a written appeal or (2) made a determination on a written appeal. A requestor must submit an appeal to the Township Board for a fee reduction before commencing a civil action. If a civil action is commenced against the Township, the Township is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. This action must be filed within 45 days after receiving notice of the determination of an appeal to the Township Board.
2. Remedies; Fines. If the requesting person prevails by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. If the court determines the Township has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order

the Township to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction.

**XII. FOIA RECORD RETENTION.**

The FOIA Coordinator must keep a copy of all written requests and documents sent in response to the request for public records on file for no less than 1 year, unless a longer retention time has been specified in a record retention policy applicable to the Township.

**XIII. PUBLICATION AND NOTIFICATION OF PROCEDURE AND GUIDELINES.**

Because the Township maintains a website, these Procedures and Guidelines and the summary shall be posted and maintained on the website. The Township shall make these Procedures and Guidelines and summary publicly available by providing free copies both in the response to a written request and upon request by visitors at the Township's office. However, the Township may include the website link instead of providing paper copies in its response to a written request.

**XIV. SEVERABILITY; ENFORCEABILITY.**

If any clause, provision or section of these Procedures and Guidelines shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections. If any of the Procedures and Guidelines is determined by the FOIA Coordinator to be in conflict with the FOIA or other law after adoption, the FOIA Coordinator has the authority to process FOIA requests in conformance with the FOIA and shall seek to amend these Procedures and Guidelines as soon as possible.

**XV. EFFECTIVE DATE.**

These Procedures and Guidelines shall become effective upon approval.

# **Exhibit B**

**FOIA – Written Public Summary**

## COHOCTAH TOWNSHIP

### **WRITTEN PUBLIC SUMMARY OF THE FREEDOM OF INFORMATION ACT PROCEDURES AND GUIDELINES**

Cohoctah Township (the “Township”) adopts this written public summary pursuant to the requirements of Section 4(4) of the Michigan Freedom of Information Act, 1976 PA 442 (“FOIA”) so that the public will understand the Township’s Procedures and Guidelines for processing FOIA requests. This is a summary of the Procedures and Guidelines. A complete copy of the Procedures and Guidelines is available at the Township Hall located at 10518 Antcliff Road, Fowlerville, MI 48836 or on the website at <https://www.cohoctahtownship.org>

#### **A. How Can I Request a Public Record?**

- A person (except those persons incarcerated in state, county or federal correctional facilities), may request public records.
- The requestor must send a written request for the public record to the Township. A request can be made through a letter, in person, or sent by electronic transmission. The requests should be directed to the FOIA Coordinator. The contact information is as follows:
  - a. By mail or in person:  
  
Cohoctah Township  
Attn: FOIA Coordinator  
10518 Antcliff Road  
Fowlerville, MI 48836
  - b. By e-mail: [bfearclerk@gmail.com](mailto:bfearclerk@gmail.com)
- A request from a person must include (unless the request is from an individual who qualifies as indigent) the person’s complete name, address (in compliance with United State Postal Service standards), and contact information, and if made by a person other than an individual, the complete name, address, and contact information of the person’s agent who is an individual. Contact information must include a valid telephone number or electronic mail address.
- The requestor will not be required to use a specific form or format, but requests must identify the public record sufficiently to allow the Township to find the requested record.
- The Township may, but is not required to, respond to a verbal request. However, if the Township believes the information is available on its website, the Township will inform the requestor of the website location where practicable and to the best of his or her knowledge.

**B. When Can I Expect a Response?**

- Unless otherwise agreed to in writing, the Township will respond or seek a deposit within 5 business days after it receives the request. However, the Township may extend that time period by 10 business days.
- Please keep in mind that a request sent by e-mail or other electronic means is not considered received until 1 business day after it is transmitted. If the request is sent to a spam or junk mail folder, it is not considered received until 1 day after it is discovered.

**C. How Can I Understand the Response?**

- If the Township grants a written request in full, the requestor will receive a notice indicating that it has been granted.
- However, if the request is denied or denied in part, the Township shall provide any or all of the following information, depending upon the reason for the denial:
  - An explanation of the basis that the public record, or portion of that public record, is exempt from disclosure, including a description of the information that is separated or deleted.
  - A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the Township.
  - A full explanation of the requesting person's right to (1) submit to the Township Board a written appeal; or (2) seek judicial review of the denial under Section 10 of the FOIA. (See below for more details).
  - Notice of the right to receive attorneys' fees and damages if a court determines that the Township has not complied and orders disclosure of all or a portion of a public record.
- If a request is granted in part or granted in full, the Township will require payment before providing documents.

**D. What if I Request Documents Available on the Website?**

- If documents are available on the website, to the degree practicable, the response will include a specific webpage address where the requested information is available.
- The Township will inform the requestor of the additional charge to receive copies of the public records that are available on its website.

**E. What Fees Will the Township Charge?**

- The FOIA Coordinator will provide a detailed itemization of costs.
- For labor costs, the fee shall not exceed the sum of the following components:
  - Hourly Wage. The Township will not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records; separating and deleting exempt information from non-exempt



information; and for duplication and publication regardless of whether that person is available or who actually performs the labor, except if the Township does not employ a person capable of separating and deleting exempt information from non-exempt information, it may treat necessary contracted labor costs for that purpose in the same manner as employee labor costs but may not exceed 6 times the State minimum hourly wage.

- Time Increments: The fee will be charged in 15-minute increments, with all partial time rounded down, except the labor fee for duplication and publication, which shall be charged in one (1) minute increments.
  - Determination of Unreasonably High Labor Costs. The fee for searching for, locating and examining public records and separating exempt information from non-exempt information (including redacting) will not be charged, unless failure to charge a fee would result in unreasonably high costs to the Township because of the nature of the request in the particular instance, and the Township specifically identifies the nature of these unreasonably high costs.
  - Overtime. Overtime wages shall not be included unless agreed to by the requestor.
  - Description of Charge. The detailed itemization will include both the hourly wage and the number of hours charged.
  - Fringe Benefit Costs. The Township may also add up to 50% to the applicable labor charge amount (but may not exceed actual costs) to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits, unless a requestor wants records that are available on the website. In which case, the fringe benefit multiplier can be greater than the 50% limitation.
- For public records provided to the requestor on nonpaper physical media (discs, flash drives, e-mails), the Township may charge the actual and most reasonably economical cost of the media.
  - For paper copies, the Township may charge the actual total incremental cost of necessary duplication or publication not to exceed \$.10 per page (single or double sided) for 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. The Township will charge the actual cost of copies made on paper of a different size. The Township will use double-sided printing, if cost saving and available.
  - The Township may charge the actual cost of mailing and the least expensive form of postal delivery confirmation.

**F. Will a Deposit be Required?**

- The Township may require a good-faith deposit of ½ of the estimated fee if the entire fee estimate or charge authorized under the FOIA exceeds \$50.00, based on a good-faith calculation of the total estimated fee.
- The Township will also provide a best efforts, nonbinding estimate of the time frame it will take the Township to provide the public records to the requestor.
- If the Township has granted a prior request but has not been paid in full, the Township may require a deposit of up to 100% of the estimated fee if all of the following apply:
  - The final fee for the prior written request was not more than 105% of the estimated fee.
  - The public records made available contained the information being sought in the prior written request and are still in the Township’s possession.
  - The public records were made available to the individual, subject to payment, within the time frame estimate described Section 4(7) of the FOIA.
  - Ninety days have passed since the Township notified the individual in writing that the public records were available for pick up or mailing.
  - The individual is unable to show proof of prior payment to the Township.
  - The Township calculates a Detailed Itemization that is the basis for the current written request’s increased estimated fee deposit.

The Township shall no longer require an increased estimated fee deposit if any of the following apply:

- The individual is able to show proof of prior payment in full to the Township;
  - The Township is subsequently paid in full for the applicable prior written request;  
or
  - Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the Township.
- If a deposit is not received within 45 days from receipt of the deposit notice letter (it is considered received 3 days after it is sent), and no appeal of the deposit amount is filed, the request is abandoned. The notice of a deposit will include the date by which the deposit must be received (48 days after notice is sent).

**G. Am I Entitled to a Wavier or Reduction of Fees?**

- A reduction of the fee by \$20.00 is available to certain individuals who submit an affidavit stating they are indigent and receiving public assistance, or if not receiving public assistance, stating facts showing inability to pay because of indigency. For this reduction to apply, the individual may not have received discounted fees twice during that calendar year and the person may not be requesting on behalf of parties who are paying to make the request.
- A reduction of the fee by \$20.00 is also available to certain non-profit organizations formally carrying out activities under subtitle C of the developmental disabilities assistance and bill of rights act of 2000, and the protection and advocacy for individuals with mental illness act, provided that the request is made on behalf of the organization or

its clients, is made for a reason consistent with the laws under Section 931 of the mental health code and is accompanied by documentation of its designation by the state.

- The FOIA Coordinator may reduce or waive the imposition of fees if the FOIA Coordinator determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.
- If the Township does not respond to a written request in a timely manner as required by the FOIA, the Township shall reduce the charges for labor costs by 5% for each day the Township exceeds the time permitted, with a maximum 50% reduction, if the late response was willful and intentional or the written request included specific language as set forth more fully in the Procedures and Guidelines.

#### **H. How Can I Appeal a Decision to Deny All or Part of My Request?**

- If a requestor desires to appeal all or part of a decision to deny a request, the requestor must submit to the Cohoctah Township Board (“Township Board”) a written appeal that specifically states the word “appeal” and identifies the reason or reasons for reversal of the denial.
- The Township Board is not considered to have received a written appeal until the first regularly scheduled meeting after submission of the written appeal.
- The Township will respond within 10 business days by reversing the disclosure denial, upholding the denial, revising in part and upholding in part the denial or issuing a 10 business day extension.

#### **I. How Can I Appeal a Determination of the Fee or Deposit Amount?**

- The requestor may submit to the Township Board a written appeal for a fee reduction that specifically states the word “appeal” and identifies how the required fee exceeds the amount permitted under the Procedures and Guidelines or Section 4 of the FOIA.
- The Township Board is not considered to have received a written appeal until the first regularly scheduled meeting after submission of the written appeal.
- The Township will respond within 10 business days by waiving the fee, reducing the fee and explaining the basis for the remaining fee, upholding the fee or issuing a 10 business day extension.

#### **J. Can I File a Lawsuit Regarding the Denial of a FOIA Request?**

- If the Township Board fails to respond to a written appeal or if the Township Board upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requestor may seek judicial review of the nondisclosure by commencing a civil action within 180 days after the Township’s final determination to deny a request. A requestor may also commence a civil action in the circuit court to compel the Township’s disclosure of the public records within 180 days after the Township’s final determination to deny a request. The requestor is not required to appeal the denial to the Township Board before commencing the civil action.

- If a person prevails in an action regarding the denial of a request, the court shall award reasonable attorneys' fees, costs and disbursements. If the person prevails in part, the court may award all or a portion of the attorneys' fees, costs and disbursements. If the court determines the FOIA was arbitrarily or capriciously violated, the court shall order a civil fine of \$1,000.00 to be paid to the state treasury. The court may also award actual, compensatory or punitive damages.

**K. Can I File a Lawsuit Regarding the Fee Charged For a FOIA Request?**

- A requestor may commence a civil action in the circuit court for a fee reduction if the Township (1) failed to respond to a written appeal or (2) issued a determination of a written appeal. This action must be filed within 45 days after receiving notice of the determination of an appeal to the Township Board. The requestor must file an appeal for a fee reduction before commencing a circuit court action.
- If a person prevails in an action by receiving a reduction of 50% or more of the total fee, the court may award all or a portion of the reasonable attorneys' fees. If the court determines FOIA was arbitrarily or capriciously violated, the court shall order a civil fine of \$500.00 to be paid to the state treasury. The court may also award actual, compensatory or punitive damages.

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# **Exhibit C**

**FOIA – Detailed Itemization Sheet**

**COHOCTAH TOWNSHIP DETAILED ITEMIZATION**

<b>LABOR CHARGES</b>	
<p><b>A. Cost for Searching for, Locating and Examining of Public Records</b></p> <p>1. <i>Determination of Hourly wage:</i>            \$ _____            \$ _____ (Employee 2 ("E2"), if applicable)            \$ _____ (Employee 3 ("E3"), if applicable)</p> <p><input type="checkbox"/> Hourly wage includes a fringe benefit percentage multiplier of _____%</p> <p>2. <i>Determination of total time using increments of 15 minutes with partial time rounded down:</i> _____ hours; E2 _____; E3 _____.</p> <p>The FOIA Coordinator has determined that failure to charge this fee would result in unreasonably high costs to the Township because of the nature of the request in the particular instance because of the following reasons:            _____            _____</p>	<p>Hourly wage:            \$ _____            \$ _____ (E2)            \$ _____ (E3)</p> <p>Total time:            _____ hours            _____ hours (E2)            _____ hours (E3)</p> <p><b>A. Total Fee (hourly wage x total time):</b>            \$ _____</p>
<p><b>B. Cost for Separating Exempt Information, including Redaction of Documents.</b></p> <p>1. <i>For employees, determination of the Hourly wage:</i>            \$ _____            \$ _____ (Employee 2 ("E2"), if applicable)            \$ _____ (Employee 3 ("E3"), if applicable)</p> <p><input type="checkbox"/> Hourly wage includes a fringe benefit percentage multiplier of _____%</p> <p>2. <i>Determination of total time using increments of 15 minutes with partial time rounded down.</i> _____ hours; E2 _____; E3 _____.</p> <p>The FOIA Coordinator has determined that failure to charge this fee would result in unreasonably high costs to the Township because of the nature of the request in the particular instance because of the following reasons:            _____            _____</p> <p>2. <i>For Contracted Labor Costs:</i>  <input type="checkbox"/> The FOIA Coordinator has determined that the Township does not employ a person capable of deleting exempt information from non-exempt information in the particular instance and the work is being performed by the following person or firm:            _____</p>	<p>Hourly wage:            \$ _____            \$ _____ (E2)            \$ _____ (E3)</p> <p>Total time:            _____ hours            _____ hours (E2)            _____ hours (E3)</p> <p><b>B1. Total Fee (hourly wage x total time):</b>            \$ _____</p>

<p>a. Determination of the Hourly wage:</p> <p>The hourly wage of the contracted labor (not to exceed 6 times the State of Michigan minimum hourly wage): \$ _____</p> <p>b. Determination of total time using increments of 15 minutes with partial time rounded down. _____ hours.</p> <p><input type="checkbox"/> The FOIA Coordinator has determined that failure to charge this fee would result in unreasonably high costs to the Township because of the nature of the request in the particular instance because of the following reasons:</p> <p>_____</p> <p>_____</p>	<p>Contracted labor hourly wage: \$ _____</p> <p>Contracted labor hours: _____ hours</p> <p><b>B.2 Total Fee for contracted labor (hourly wage x hours):</b> \$ _____</p>
<p><b>C. Cost for Duplication and Publication.</b></p> <p>1. Determination of the Hourly wage: \$ _____</p> <p><input type="checkbox"/> Hourly wage includes a fringe benefit percentage multiplier of _____%</p> <p>2. Determination of total time using increments of one (1) minute with partial time rounded down. _____ hours.</p>	<p>Hourly wage: \$ _____</p> <p>Total time: _____ hours</p> <p><b>C. Total Fee (hourly wage x hours)</b> \$ _____</p>
<p><b>Other Actual Costs</b></p>	
<p><b>D. Costs for Paper Copies.</b></p> <p>The actual total incremental cost of necessary duplication and publication using the most economical means available:</p> <p>1. Not to exceed \$.10 per sheet for 8 ½ by 11 or 8 ½ by 14 in paper: \$ _____ per sheet x _____ number of sheets = \$ _____.</p> <p>2. Other paper sizes: \$ _____ per sheet x _____ number of sheets = \$ _____.</p>	<p><b>D. Total Fee (add totals for all sizes of paper):</b> \$ _____</p>
<p><b>E. Costs for Nonpaper Physical Media.</b></p> <p>The actual and most reasonably economical cost of the computer disc, flash drives, computer tape or other similar media: \$ _____ per item x _____ number of items .</p>	<p><b>E. Total Fee:</b> \$ _____</p>
<p><b>F. Cost of Mailing:</b></p> <p>1. The actual cost of mailing: \$ _____</p> <p>2. Fee for the least expensive postal delivery confirmation: \$ _____</p> <p>3. Costs for the envelope or box for mailing \$ _____.</p> <p><input type="checkbox"/> The requestor has stipulated to expedited shipping and/or insurance and those costs are listed above as the actual costs of mailing.</p>	<p><b>F. Total Fee: (add all 3 costs):</b> \$ _____</p>
<p><b>Total Fee (If No Deposit)</b> Fee paid on: _____</p>	

<b>Deposit Required</b>		
<input type="checkbox"/> The Township requires a deposit of \$_____ (1/2 of the estimated fee) and this total estimated fee exceeds \$50.00.  <input type="checkbox"/> The Township requires a deposit of \$_____ (100% of the estimated fee) because this request meets the statutory requirements for failing to pay for prior requests under Section 4(11) of the FOIA.  The deposit must be received on or before _____. If the deposit is not received by this date, the request will be considered abandoned.		Deposit Amount: \$_____  Deposit Paid on _____
<b>Total Fee</b> \$ _____ - <b>Deposit Amount</b> \$ _____ = <b>Remaining Fee Due of</b> \$ _____  <b>Fee Paid on</b> _____		Total Fee Due:  \$_____

<b>Costs for Providing Documents Available on the Website</b>		
The Township has notified the requestor in its written response that all or a portion of the requested information is available on its website. The Township has determined that the detailed itemization of the cost of the information that is available on the website is \$_____.		<b>Total Fee:</b> _____

<b>Reductions for Late Response</b>		
<b>Reduction for Late Response:</b> If the Township does not respond to a written request in a timely manner, the Township shall reduce the charges for labor costs by 5% for each day the Township exceeds the time permitted, with a maximum 50% reduction. _____ days x 5% of labor costs = \$_____		Subtract \$_____ of labor charges (up to 50% of labor costs).