



Planning Commission

Larry Fox, Chairperson Summer L. McMullen, Trustee
Michael Mitchell, Vice-Chairperson Sue Grissim, Commissioner
Tom Murphy, Secretary Jim Mayer, Commissioner
Matthew Eckman, Commissioner

Planning Commission Meeting - WORK SESSION ONLY Agenda
Hartland Township Hall
Thursday, February 08, 2024
7:00 PM

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Agenda
5. Approval of Meeting Minutes
 - a. [Planning Commission Meeting Minutes of January 25, 2024](#)
6. Call to Public
7. Work Session
 - a. [Draft Ordinance Solar Energy Panels](#)
8. Call to Public
9. Planner's Report
10. Committee Reports
11. Adjournment

HARTLAND TOWNSHIP PLANNING COMMISSION **DRAFT** MEETING MINUTES

January 25, 2024– 7:00 PM

1. **Call to Order:** Chair Fox called the meeting to order at 7:00 p.m.
2. **Pledge of Allegiance:**
3. **Roll Call and Recognition of Visitors:**
Present – Commissioners Eckman, Fox, Grissim, Mayer, McMullen, Mitchell, Murphy
Absent – None
4. **Approval of the Meeting Agenda:**
A Motion to approve the January 25, 2024, Planning Commission Meeting Agenda was made by Commissioner Grissim and seconded by Commissioner Eckman. Motion carried unanimously.
5. **Approval of Meeting Minutes:**
 - a. Planning Commission Work Session Meeting Minutes of January 11, 2024
A Motion to approve the Planning Commission Meeting Minutes of August 24, 2023, was made by Commissioner Mitchell and seconded by Commissioner Murphy. Motion carried unanimously.
6. **Call to the Public:**
None
7. **Public Hearing**
 - a. Zoning Amendment #24-001 – Amendment to Permit Pharmacies as a Principal Permitted Use in Commercial Zoning Districts

PROPOSED AMENDMENT

Section 3.1.12.B. Principal Permitted Uses – LC (Limited Commercial)

vii. Pharmacies that are under 2,000 square feet

Section 3.1.13.B. Principal Permitted Uses – NSC (Neighborhood Service Commercial)

xii. Pharmacies that are under 2,000 square feet

Section 3.1.14.B. Principal Permitted Uses – GC (General Commercial)

xx. Pharmacies

Chair Fox opened the Public Hearing at 7:02 PM stating all public noticing requirements have been met.

Director Langer gave an overview of the history of this amendment stating the following:

- Pharmacies are not listed as a permitted use in General Commercial, Limited Commercial and Neighborhood Service Commercial zoning districts.
- Existing pharmacies are located within Planned Developments.
- Applicant has presented a proposal for a pharmacy on a General Commercial zoned property.
- Ordinance Review Committee discussed the amendment.

- Additional categories were included.
- Discussed at a Planning Commission Work Session.
- Office district limits pharmacies to 2000 square feet so this limit was used for the smaller commercial zoning categories.

Call to Public:

None

Chair Fox closed the Public Hearing at 7:05 PM.

Chair Fox stated he believes it was an oversight many years ago and never became an issue as the current pharmacies are in PDs.

Commissioner McMullen asked if this amendment specifies what kind of pharmacy? Director Langer replied it would be the same pharmacy as in the Office category that dispenses medical prescription drugs; it would not open up to dispensaries or medical marijuana facilities.

Commissioner Eckman asked about the 2000 square foot limit. Director Langer replied they followed the limit set in the Office category as the Limited Commercial (LC) and Neighborhood Service Commercial (NSC) zoning categories are smaller neighborhood commercial developments not intended for a large commercial use. Retail is capped at 4000 square feet in NSC; LC has caps on retail and office uses even with special use permits.

Commissioner Murphy asked about the size of the location in questions. Director Langer stated the tenant space is approximately 1300 square feet and is located in the GC zoning district where there is no cap. The building could be larger, but the pharmacy use is what is capped.

Commissioner Murphy offered the following Motion:

Move to recommend approval of Zoning Ordinance Text Amendment #24-001, as outlined in the staff memorandum and below.

PROPOSED AMENDMENT

Section 3.1.12.B. Principal Permitted Uses – LC (Limited Commercial)

vii. Pharmacies that are under 2,000 square feet

Section 3.1.13.B. Principal Permitted Uses – NSC (Neighborhood Service Commercial)

xii. Pharmacies that are under 2,000 square feet

Section 3.1.14.B. Principal Permitted Uses – GC (General Commercial)

xx. Pharmacies

Seconded by Commissioner McMullen. Motion carried unanimously.

8. Call to the Public:

None

9. Planner Report:

Director Langer mentioned staff is still working on a couple of Planned Developments; Redwood Phase II and the Climate Controlled Self-Storage both at the Preliminary approval phase. In discussions with Square One Mixed Use Proposal at M-59 and Old US 23.

10. Committee Reports:

None

11. Adjournment of Regular Meeting:

A Motion to adjourn was made by Commissioner Mitchell and seconded by Commissioner Eckman. Motion carried unanimously. The Regular Meeting was adjourned at approximately 7:11 PM.

[Brief Recess]

12. Work Session

- a. Draft Ordinance Solar Energy Panels
The Planning Commission continued to discuss the Draft Solar Ordinance.

13. Adjournment of Work Session:

A Motion to adjourn was made by Commissioner Grissim and seconded by Commissioner Mayer. Motion carried unanimously. The meeting was adjourned at approximately 8:11 PM.

Hartland Township Planning Commission Meeting Agenda Memorandum

Submitted By: Troy Langer, Planning Director
Subject: Draft Ordinance Solar Energy Panels
Date: January 31, 2024

Recommended Action **Move to Initiate Ordinance Amendment regarding Solar Energy Panels.**

Discussion

This memorandum is to briefly outline some of the recent changes in legislation regarding commercial solar panel energy farms.

Recently, the State of Michigan has enacted changes to the regulations that govern solar energy facilities that have a capacity of 50 megawatts or more of energy. The new legislation is within Public Act (PA) 233 and PA 234. These new acts amend Section 13 of the Clean and Renewable Energy and Energy Waste Reduction Act (MCL 460.1013). These amendments leave a number of questions, unanswered, and this will involve consulting the Township Attorney before any final adoption of a new ordinance. It appears these amendments will become effective after November 29, 2024.

However, in moving forward, this memorandum will attempt to simplify the Township's ability to regular solar energy facilities that generate more than 50 megawatts or more of energy. Essentially, a developer has two (2) options with a proposed solar energy facility:

- 1) Pursue a State Certificate through the MPSC (Michigan Public Service Commission). Essentially, this option would be to by-pass any local government review. The developer would seek State approval. This process can be very time consuming and some developers do not necessarily view this as desirable.
- 2) Pursue Local Approval under a local Zoning Ordinance. Essentially, this option would be to obtain approval/permission from the local Township, i.e. Hartland Township. Under this scenario the developer would be subject to the local ordinance and any conditions associated with such an approval, such as a Special Land Use Permit.

In drafting a local municipal ordinance, the Township has a couple of options:

- 1) Draft zoning ordinance regulations that outline the requirements and process for any solar energy facility. These could include requirements such as, height, setback, screening, as well as performance bonds.
- 2) Draft a CREO (Compatible Renewable Energy Ordinance). This ordinance can not be more restrictive than the State requirements. Although a local municipality may be able to have some unique elements to a CREO ordinance, the County would also need to adopt a CREO ordinance and the two (2) ordinances would have to be the same. Essentially, this would require all Township's to have the same CREO ordinance.
- 3) Draft a zoning ordinance that is similar to a CREO ordinance, but would have some additional requirements that may still not deter a developer from pursuing local review and approval.

Since this is the initial discussion of this topic by the Planning Commission, this memorandum will be kept short. Instead, there will be a number of attachments, such as other community ordinances, and reference materials. These are being sent as general background information.

Attachments:

1. Attorney Template Solar Ordinance
2. Ordinance Review Committee Template Solar Ordinance
3. Article on Township Focus Renewable Energy in Michigan
4. MTA Presentation Renewable Energy Siting

_____ TOWNSHIP

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
TO REGULATE SOLAR ENERGY SYSTEMS**

The Township of _____ ordains:

Section 1. Add Definitions to Article X.

The following definitions are added to Article X, Section X of the Zoning Ordinance, and will be placed in the Zoning Ordinances so that all definitions are in alphabetical order:

- A. Abandonment: A Solar Energy System is abandoned if it has not been in operation for a period of one (1) year. This includes a Solar Energy System that was never operational if construction has been halted for a period of one (1) year.
- B. Building Integrated Photovoltaics (BIVPs): A small Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.
- C. Commercial Solar Energy System: A Solar Energy System in which the principal design, purpose, or use is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.
- D. Ground Mounted Solar Energy System: A Private or Commercial Solar Energy System that is not attached to or mounted to any roof or exterior wall of any principal or accessory building.
- E. Private Solar Energy System: A Solar Energy System used exclusively for private purposes and not used for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.
- F. Roof or Building Mounted Solar Energy System: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building, but excluding BIVPs.
- G. Solar Energy System: Any part of a system that collects or stores solar radiation or energy for the purpose of transforming it into any other form of usable energy, including the collection and transfer of heat created by solar energy to any other medium by any means.

Section 2. Add New Section XX, entitled “Solar Energy Systems”

Section XX, entitled “Solar Energy Systems,” is added to Article X of the Township’s Zoning Ordinance. The section reads in its entirety as follows:

Section XX. Solar Energy Systems.

A. General Provisions. All Solar Energy Systems are subject to the following requirements:

1. All Solar Energy Systems must conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes and applicable industry standards, including those of the American National Standards Institute (ANSI).
2. The Township may revoke any approvals for, and require the removal of, any Solar Energy System that does not comply with this Ordinance.
3. Solar Energy Systems must be located or placed so that concentrated solar glare is not directed toward or onto nearby properties or roadways at any time of the day.
4. Solar Energy Systems are permitted in the Township as follows, subject to this Section XX and other applicable provisions of the Zoning Ordinance:

Type of System	Sub-Type of System	Zoning District	Special Use Permit
Private Solar Energy System	Private BIVPs	All zoning districts	Not required
	Roof or Building Mounted Private Solar Energy System	All zoning districts as accessory use	Not required
	Ground Mounted Private Solar Energy Systems	A-1 (Agricultural)	Required
Commercial Solar Energy System	All Commercial Solar Energy Systems (Ground Mounted only)	A-1 (Agricultural)*	Required

* Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program.

B. Private Solar Energy Systems.

1. Private Solar Energy System BIVPs. Private Solar Energy System BIVPs are permitted in all zoning districts. A building permit is required for the installation of BIVPs.
2. Roof or Building Mounted Private Solar Energy Systems. Roof or Building Mounted Private Solar Energy Systems are permitted in all zoning districts as an accessory use, subject to the following requirements:
 - a. No part of the Solar Energy System erected on a roof is permitted to extend beyond the peak of the roof. If the Solar Energy System is mounted on a building in an area other than the roof, no part of the Solar Energy System is permitted to extend beyond the wall on which it is mounted.

- b. No part of a Solar Energy System mounted on a roof is to be installed closer than three (3) feet from the edges of the roof, the peak, or eave or valley to maintain pathways of accessibility.
- c. No part of a Solar Energy System mounted on a roof is permitted to extend more than two (2) feet above the surface of the roof.
- d. If a Roof or Building Mounted Private Solar Energy System has been abandoned, the property owner must remove it within three (3) months after the date of abandonment.
- e. A building permit is required for the installation of Roof or Building Mounted Private Solar Energy Systems.

3. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are allowed only in the A-1, Agricultural, zoning district and require a special land use permit and site plan review. In addition to all requirements for a special land use permit under Article X and site plan review and approval under Article X, Ground Mounted Private Solar Energy Systems are also subject to the following requirements:

- a. *Site Plan.* Before installation of a Ground Mounted Private Solar Energy System, the property owner must submit a site plan to the Zoning Administrator. The site plan must include setbacks, panel size, and the location of property lines, buildings, fences, greenbelts, and road right of ways. The site plan must be drawn to scale.
- b. *Maximum Height.* A Ground Mounted Private Solar Energy System must not exceed the maximum building height for adjacent accessory buildings and must not exceed fifteen (15) feet above the ground when oriented at maximum tilt.
- c. *Location.* A Ground Mounted Private Solar Energy System must be located in the rear yard and meet the rear yard setback requirements applicable in the A-1 zoning district.
- d. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Ground Mounted Private Solar Energy System to any building or other structure must be located underground. If batteries are used as part of the Ground Mounted Private Solar Energy System, they must be placed in a secured container or enclosure.
- e. *Screening.* Greenbelt screening is required around any Ground Mounted Private Solar Energy System and around any equipment associated with the system to obscure, to the greatest extent possible, the Solar Energy System from any adjacent residences. The greenbelt must consist of shrubbery, trees, or other non-invasive plant species that provide a visual screen. In lieu of a planting

greenbelt, a decorative fence that is at least 50% opaque (meeting the requirements of this Ordinance applicable to fences) may be used if approved by the Planning Commission.

- f. *Lot Area Coverage.* No more than 20% of the total lot area may be covered by a Ground Mounted Private Solar Energy System.
- g. *Appearance.* The exterior surfaces of a Ground Mounted Private Solar Energy System must be generally neutral in color and substantially non-reflective of light.
- h. *Abandonment.* If a Ground Mounted Private Solar Energy System has been abandoned, the property owner must notify the Township and remove the system within three (3) months after the date of abandonment.
- i. *Building Permit.* A building permit is required for installation of a Ground Mounted Private Solar Energy System.
- j. *Transferability.* A special use permit for a Ground Mounted Private Solar Energy System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township.
- k. *Remedies.* If an applicant or operator of a Ground Mounted Solar Energy System fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the special land use permit and site plan approval after giving the applicant notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

C. Commercial Solar Energy Systems. Commercial Solar Energy Systems are allowed only in the A-1, Agricultural, zoning district (except they are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program) and require a special land use permit and site plan review. In addition to all requirements for a special land use permit under Article X and site plan review and approval under Article X, Commercial Solar Energy Systems are also subject to the following requirements:

1. *Application Requirements.* The applicant for a Commercial Solar Energy System must provide the Township with all of the following:

- a. Application fee in an amount set by resolution of the Township Board.

- b. A list of all parcel numbers that will be used by the Commercial Solar Energy System; documentation establishing ownership of each parcel; and any lease agreements, easements, or purchase agreements for the subject parcels.
- c. An operations agreement setting forth the operations parameters, the name and contact information of the certified operator, the applicant's inspection protocol, emergency procedures, and general safety documentation.
- d. Current photographs of the subject property.
- e. A site plan that includes all proposed structures and the location of all equipment, transformers, and substations, as well as all setbacks, panel sizes, and the location of property lines, signage, fences, greenbelts and screening, drain tiles, easements, floodplains, bodies of water, proposed access routes, and road right of ways. The site plan must be drawn to scale and must indicate how the Commercial Solar Energy System will be connected to the power grid.
- f. A copy of the applicant's power purchase agreement or other written agreement with an electric utility showing approval of an interconnection with the proposed Commercial Solar Energy System.
- g. A written plan for maintaining the subject property, including a plan for maintaining and inspecting drain tiles and addressing stormwater management, which is subject to the Township's review and approval.
- h. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the Commercial Solar Energy System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Commercial Solar Energy System and restore the subject parcels, which is subject to the Township's review and approval.
- i. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval.
- j. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Commercial Solar Energy System, which is subject to the Township's review and approval.
- k. A plan for managing any hazardous waste, which is subject to the Township's review and approval.

- l. A transportation plan for construction and operation phases, including any applicable agreements with the County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.
- m. An attestation that the applicant will indemnify and hold the Township harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Solar Energy System, which is subject to the Township's review and approval.
- n. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.); Part 303, Wetlands (MCL 324.30301 et. seq.); Part 365, Endangered Species Protection (MCL324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township
- o. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.

2. *System and Location Requirements.*

- a. Commercial Solar Energy Systems must be ground mounted.
- b. Commercial Solar Energy Systems must be located on parcels of land twenty (20) acres in size or larger.
- c. Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program.
- d. Commercial Solar Energy Systems (including all solar panels, structures, and equipment) must be set back 500 feet from all lot lines and public road rights-of-way. If a single Commercial Solar Energy System is located on more than one lot, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots.
- e. The height of the Commercial Solar Energy System and any mounts, buildings, accessory structures, and related equipment must not exceed fifteen (15) feet when oriented at maximum tilt. Lightning rods may exceed 15 feet in height, but they must be limited to the

height necessary to protect the Commercial Solar Energy System from lightning.

3. *Lot Area Coverage.* No more than 20% of the total lot area may be covered by a Commercial Solar Energy System.

4. *Permits.* All required county, state, and federal permits must be obtained before the Commercial Solar Energy System begins operating.

5. *Screening.* Greenbelt screening is required around any Commercial Solar Energy System and around any equipment associated with the system to obscure, to the greatest extent possible, the Solar Energy System from any adjacent residences. The greenbelt must consist of shrubbery, trees, or other non-invasive plant species that provide a visual screen. At least 50% of the plants must be evergreen trees that are at least six feet tall at the time of planting. In lieu of a planting greenbelt, a decorative fence that is at least 50% opaque and that meets the requirements of this Ordinance applicable to fences may be used if approved by the Planning Commission.

6. *Lighting.* Lighting of the Commercial Solar Energy System is limited to the minimum light necessary for safe operation. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Commercial Solar Energy System. The Commercial Solar Energy System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads.

7. *Security Fencing.* Security fencing must be installed around all electrical equipment related to the Commercial Solar Energy System, including any transformers and transfer stations. Appropriate warning signs must be posted at safe intervals at the entrance and around the perimeter of the Commercial Solar Energy System.

8. *Noise.* The noise generated by a Commercial Solar Energy System must not exceed the following limits:

- a. Forty (40) Dba Lmax, as measured at the property line of any adjacent R-1 (Residential) or B-1 (Business) zoned land in existence at the time the Commercial Solar Energy System is granted special land use approval.
- b. Forty (40) Dba Lmax, as measured at any neighboring residence in existence at the time the Commercial Solar Energy System is granted special land use approval, between the hours of 9:00 p.m. and 7:00 a.m.
- c. Forty (40) Dba Lmax, as measured at the lot lines of the project boundary.
- d. In addition to the above limitations, a sound barrier of a solid decorative masonry wall or evergreen tree berm, with trees spaced not less than 10 feet apart, must be constructed to reduce noise levels surrounding all inverters. The berm must be no more than ten (10)

feet from all inverters, must be at least as tall as all inverters but not more than three (3) feet taller than the height of all inverters.

9. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Commercial Solar Energy System to any building or other structure must be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation. If batteries are used as part of the Ground Mounted Solar Energy System, they must be placed in a secured container or enclosure.

10. *Drain Tile Inspections.* The Commercial Solar Energy System must be maintained in working condition at all times while in operation. The applicant or operator must inspect all drain tile at least once every three years by means of robotic camera, with the first inspection occurring before the Commercial Solar Energy System is in operation. The applicant or operator must submit proof of the inspection to the Township. The owner or operator must repair any damage or failure of the drain tile within sixty (60) days after discovery and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present at each inspection or to conduct an independent inspection.

11. *Insurance.* The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least \$10 million per occurrence.

12. *Decommissioning.* If a Commercial Solar Energy System is abandoned or otherwise nonoperational for a period of one year, the property owner or the operator must notify the Township and must remove the system within six (6) months after the date of abandonment. Removal requires receipt of a demolition permit from the Building Official and full restoration of the site to the satisfaction of the Zoning Administrator. The site must be filled and covered with top soil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Commercial Solar Energy System that is never fully completed or operational if construction has been halted for a period of one (1) year.

13. *Financial Security.* To ensure proper decommissioning of a Commercial Solar Energy System upon abandonment, the applicant must post financial security in the form of a security bond, escrow payment, or irrevocable letter of credit in an amount equal to 125% of the total estimated cost of decommissioning, code enforcement, and reclamation, which cost estimate must be approved by the Township. The operator and the Township will review the amount of the financial security every two (2) years to ensure that the amount remains adequate. This financial security must be posted within fifteen (15) business days after approval of the special land use application.

14. *Extraordinary Events.* If the Commercial Solar Energy System experiences a failure, fire, leakage of hazardous materials, personal injury, or other extraordinary or catastrophic event, the applicant or operator must notify the Township within 24 hours.

15. *Annual Report.* The applicant or operator must submit a report on or before January 1 of each year that includes all of the following:

- a. Current proof of insurance;

- b. Verification of financial security; and
- c. A summary of all complaints, complaint resolutions, and extraordinary events.

16. *Inspections.* The Township may inspect a Commercial Solar Energy System at any time by providing 24 hours advance notice to the applicant or operator.

17. *Transferability.* A special use permit for a Commercial Solar Energy System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township.

18. *Remedies.* If an applicant or operator fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the special land use permit and site plan approval after giving the applicant or operator notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

Section 3. Amend Section XX.

Section XX of the Zoning Ordinance, entitled A-1 Agricultural Zoning District is amended to add the following uses permitted by special land use permit:

- Ground Mounted Private Solar Energy System
- Commercial Solar Energy System

Section 4. Validity and Severability.

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

Section 5. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 6. Effective Date.

This Ordinance takes effect seven (7) days after publication as provided by law.

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
TO REGULATE SOLAR ENERGY SYSTEMS**

The Township of _____ ordains:

Section 1. Add Definitions to Article X.

The following definitions are added to Article X, Section X of the Zoning Ordinance, and will be placed in the Zoning Ordinances so that all definitions are in alphabetical order:

- A. Abandonment: A Solar Energy System is abandoned if it has not been in operation for a period of one (1) year. This includes a Solar Energy System that was never operational if construction has been halted for a period of one (1) year.
- B. Building Integrated Photovoltaics (BIVPs): A small Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.
- C. Commercial Solar Energy System: A Solar Energy System in which the principal design, purpose, or use is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.
- D. Ground Mounted Solar Energy System: A Private or Commercial Solar Energy System that is not attached to or mounted to any roof or exterior wall of any principal or accessory building.
- E. Private Solar Energy System: A Solar Energy System used exclusively for private purposes and not used for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.
- F. Roof or Building Mounted Solar Energy System: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building; but excluding BIVPs.
- G. Solar Energy System: Any part of a system that collects or stores solar radiation or energy for the purpose of transforming it into any other form of usable energy, including the collection and transfer of heat created by solar energy to any other medium by any means.
- H. Surplus Electrical Energy: Any solar energy not used by a private solar energy system that is sent back into the energy grid.

Section 2. Add New Section XX, entitled “Solar Energy Systems”

Section XX, entitled “Solar Energy Systems,” is added to Article X of the Township’s Zoning Ordinance. The section reads in its entirety as follows:

Section XX. Solar Energy Systems.

A. General Provisions. All Solar Energy Systems are subject to the following requirements:

1. All Solar Energy Systems must conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes and applicable industry standards, including those of the American National Standards Institute (ANSI).

2. The Township may revoke any approvals for, and require the removal of, any Solar Energy System that does not comply with this Ordinance, as amended.

3. Solar Energy Systems are permitted in the Township as follows, subject to this Section XX and other applicable provisions of the Zoning Ordinance:

Type of System	Sub-Type of System	Zoning District	Special Use Permit
Private Solar Energy System	Private BIVPs	All zoning districts	Not required
	Roof or Building Mounted Private Solar Energy System	All zoning districts as accessory use	Not required
	Ground Mounted Private Solar Energy Systems	All zoning districts as accessory use	Not Required
Commercial Solar Energy System	All Commercial Solar Energy Systems (Ground Mounted only)	CA (Conservation Agricultural)	Required

4. Private Solar Energy Systems that are two (2) square feet or less in area, are exempt from these regulations and a land use permit.

B. Private Solar Energy Systems.

1. Private Solar Energy System BIVPs. Private Solar Energy System BIVPs are permitted in all zoning districts. A land use permit is required for the installation of BIVPs.

2. Roof or Building Mounted Private Solar Energy Systems. Roof or Building Mounted Private Solar Energy Systems are permitted in all zoning districts as an accessory use, subject to the following requirements:

- a. Roof or Building Mounted Private Solar Energy Systems are permitted on both principal structures and accessory structures.
- b. No part of the Solar Energy System erected on a roof is permitted to extend beyond the peak of the roof or shall extend above the parapet wall. If the Solar Energy System is mounted on a building in an area other than the roof, no part of the Solar Energy System is permitted to extend beyond the wall on which it is mounted.

- c. No part of a Solar Energy System mounted on a roof is to be installed closer than three (3) feet from the edge of the roof, eave or valley to maintain pathways of accessibility.
- d. A land use permit is required for the installation of Roof or Building Mounted Private Solar Energy Systems.

3. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are allowed in all zoning districts and require a Land Use Permit. In addition to all requirements for a land use permit, Ground Mounted Private Solar Energy Systems are also subject to the following requirements:

- a. *Site Plan.* Before installation of a Ground Mounted Private Solar Energy System, the property owner must submit a site plan to the Zoning Administrator. The site plan must be drawn to scale.
- b. *Maximum Height.* A Ground Mounted Private Solar Energy System must not exceed the maximum height of twelve (12) feet above the ground when oriented at maximum tilt.
- c. *Location.* A Ground Mounted Private Solar Energy System must be located in the side or rear yard and must comply with all required setback requirements applicable to a ground mounted private solar energy system.
- d. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Ground Mounted Private Solar Energy System to any building or other structure must be located underground. If batteries are used as part of the Ground Mounted Private Solar Energy System, they must be placed in a secured container or enclosure.
- e. *Lot Area Coverage.* Ground Mounted Private Solar Energy Systems shall not count toward the lot coverage requirements of the zoning district standards.
- f. *Setbacks.* Ground Mounted Private Solar Energy Systems shall be located 50 feet from any rear property line; 40 feet from any side property line; and shall not maintain a required setback from another structure on the same property. Ground Mounted Private Solar Energy Systems shall not be permitted in the front yard area.
- g. *Appearance.* The exterior surfaces of a Ground Mounted Private Solar Energy System must be generally neutral in color and substantially non-reflective of light.
- h. *Remedies.* If an applicant or operator of a Ground Mounted Solar Energy System fails to comply with this Ordinance, the Township, in

addition to any other remedy under this Ordinance, may revoke the land use permit approval after giving the applicant notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

C. Commercial Solar Energy Systems. Commercial Solar Energy Systems are allowed only in the CA, Conservation Agricultural, zoning district and require a special land use permit and site plan review. In addition to all requirements for a special land use permit under Article X and site plan review and approval under Article X, Commercial Solar Energy Systems are also subject to the following requirements:

1. *Application Requirements.* The applicant for a Commercial Solar Energy System must provide the Township with all of the following:

- a. Application fee in an amount set by resolution of the Township Board.
- b. A list of all parcel numbers that will be used by the Commercial Solar Energy System; documentation establishing ownership of each parcel; and any lease agreements, or easements, for the subject parcels.
- c. An operations agreement setting forth the operations parameters, the name and contact information of the certified operator, the applicant's inspection protocol, emergency procedures, and general safety documentation. (*Maybe Eliminate this section*).
- d. Property survey that depicts all easements and existing structures and equipment.
- e. A site plan that includes all proposed structures and the location of all equipment, transformers, and substations, as well as all setbacks, panel sizes, and the location of property lines, signage, fences, greenbelts and screening, drain tiles, easements, floodplains, bodies of water, proposed access routes, and road right of ways. The site plan must be drawn to scale and must indicate how the Commercial Solar Energy System will be connected to the power grid.
- f. A copy of the applicant's power purchase agreement or other written agreement with an electric utility showing approval of an interconnection with the proposed Commercial Solar Energy System. (*Ask Attorney if we need this*).
- g. A written plan for maintaining the subject property, including a plan for maintaining and addressing stormwater management, which is subject to the Township's review and approval.
- h. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the

Commercial Solar Energy System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Commercial Solar Energy System and restore the subject parcels, which is subject to the Township's review and approval. *(Ask Attorney if this is needed)* *(Also see page 8, Section 12).*

- i. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval. *(Ask Attorney if this is needed)*. *(Also see page 8, Section 13).*
- j. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Commercial Solar Energy System, which is subject to the Township's review and approval. *(Ask if this is needed).*
- k. A plan for managing any hazardous waste, which is subject to the Township's review and approval.
- l. A construction phasing or sequencing plan, a temporary storage plan, transportation plan for construction and operation phases, including any applicable agreements with the County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.
- m. An attestation that the applicant will indemnify and hold the Township harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Solar Energy System, which is subject to the Township's review and approval. *(Ask Attorney if this is needed).*
- n. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.); Part 303, Wetlands (MCL 324.30301 et. seq.); Part 365, Endangered Species Protection (MCL324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township
- o. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative. *(Ask Attorney if this can be removed).*

2. *System and Location Requirements.*

- a. Commercial Solar Energy Systems must be ground mounted.

- b. Commercial Solar Energy Systems must be located on parcels of land twenty (20) acres in size or larger. *(Do we need a minimum size? Ask Attorney).*
- c. Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program. *(Ask Attorney if this can be removed).*
- d. Commercial Solar Energy Systems (including all solar panels, structures, equipment, and fencing) must be set back 500 feet from all lot lines, private road easements, shared driveway easements, and public road rights-of-way. If a single Commercial Solar Energy System is located on more than one lot, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots.
- e. The height of the Commercial Solar Energy System and any mounts, buildings, accessory structures, and related equipment must not exceed fifteen (15) feet when oriented at maximum tilt.

3. *Lot Area Coverage.* Shall comply with zoning district requirements; however, the free-standing solar panels shall not count toward the lot coverage requirements.

4. *Permits.* All required county, state, and federal permits must be obtained before the Commercial Solar Energy System begins any construction.

5. *Screening.* Greenbelt screening is required around any Commercial Solar Energy System and around any equipment associated with the system shall comply with the Greenbelt standards outlined in Section 5.11.2.B.C. of the Township Zoning Ordinance.

6. *Lighting.* Lighting of the Commercial Solar Energy System is limited to the minimum light necessary for safe operation. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Commercial Solar Energy System. The Commercial Solar Energy System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads.

7. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Commercial Solar Energy System to any building or other structure must be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation. If batteries are used as part of the Ground Mounted Solar Energy System, they must be placed in a secured container or enclosure.

8. *Drain Tile Inspections.* The Commercial Solar Energy System must be maintained in working condition at all times while in operation. The applicant or operator must inspect all drain tile at least once every three years by means of robotic camera, with the first inspection occurring before the Commercial Solar Energy System is in operation. The applicant or operator must submit proof of the inspection to the Township. The owner or operator must repair any damage or failure of the drain tile within sixty (60) days after discovery and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present

at each inspection or to conduct an independent inspection. ***(Get comments from Engineering Consultant on this).***

9. ***Insurance.*** The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least \$10 million per occurrence. ***(Get comments from Attorney if this is needed).***

10. ***Decommissioning.*** If a Commercial Solar Energy System is abandoned or otherwise nonoperational for a period of one year, the property owner or the operator must notify the Township and must remove the system within six (6) months after the date of abandonment. Removal requires receipt of a demolition permit from the Building Official and full restoration of the site to the satisfaction of the Zoning Administrator. The site must be filled and covered with topsoil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Commercial Solar Energy System that is never fully completed or operational if construction has been halted for a period of one (1) year. ***(Get comments from Attorney if this is needed).***

11. ***Financial Security.*** To ensure proper decommissioning of a Commercial Solar Energy System upon abandonment, the applicant must post financial security in the form of a security bond, escrow payment, or irrevocable letter of credit in an amount equal to 125% of the total estimated cost of decommissioning, code enforcement, and reclamation, which cost estimate must be approved by the Township. The operator and the Township will review the amount of the financial security every two (2) years to ensure that the amount remains adequate. This financial security must be posted within fifteen (15) business days after approval of the special land use application. ***(Get comments from Attorney if this is needed).***

12. ***Annual Report.*** The applicant or operator must submit a report on or before January 1 of each year that includes all of the following:

- a. ***Current proof of insurance;***
- b. ***Verification of financial security; and***
- c. ***A summary of all complaints, complaint resolutions, and extraordinary events. (Get Comments from Attorney if this is needed).***

13. ***Inspections.*** The Township may inspect a Commercial Solar Energy System at any time by providing 24 hours advance notice to the applicant or operator.

14. ***Transferability.*** A special use permit for a Commercial Solar Energy System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township. ***(Ask Attorney if this is needed).***

15. ***Remedies.*** If an applicant or operator fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the special land use permit and site plan approval after giving the applicant or operator notice and an opportunity to be

heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs. (*Ask Attorney if this is needed*).

Section 3. Amend Section XX.

Section XX of the Zoning Ordinance, entitled CA (Conservation Agricultural) Zoning District is amended to add the following uses permitted by special land use permit:

- Ground Mounted Private Solar Energy System
- Commercial Solar Energy System

Section 4. Validity and Severability.

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

Section 5. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 6. Effective Date.

This Ordinance takes effect seven (7) days after publication as provided by law.

Renewable energy in Michigan: Many questions remain

On Nov. 28, 2023, Gov. Whitmer signed into law two bills—now Public Acts 233 and 234 of 2023—that will preempt townships (and other local governments) from control over the siting of certain renewable energy wind, solar and battery storage facilities. The new laws replace local control with a state-controlled statutory framework and grant new siting authority over these facilities to the Michigan Public Service Commission (MPSC). What is the new process? And will townships still play a role? The following is intended to provide an overview of these new laws—with the understanding that the answers provided are to the best of our knowledge at this time.

PA 233 and 234 leave many gray areas, which will hopefully be clarified over the upcoming months during implementation through the state agency rule-making process or technical amendments—rather than by trial and error impacting Michigan’s communities. Townships should consult their legal counsel regarding the regulation of renewable energy facilities under this new legislation.

What type and size of renewable energy facilities does PA 233 regulate?

PA 233 amends Section 13 of the Clean and Renewable Energy and Energy Waste Reduction Act (MCL 460.1013, *et seq.*) by adding a new Part 8, which sets forth **a regulatory process for the construction of certain wind, solar and energy**

storage facilities. Part 8 regulates construction of “utility-scale energy facilities,” which includes:

- any solar energy facility with a nameplate capacity of 50 megawatts or more
- any wind energy facility with a nameplate capacity of 100 megawatts or more
- any energy storage facility with nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more

It is important to note that “construction” is not limited to new facilities. Under the law, construction is any substantial action taken constituting the placement, erection, expansion or repowering of these facilities. This definition clearly intends to govern the location and construction of new



utility-scale energy facilities and the expansion or repowering of existing facilities. While townships must abide by the regulatory framework in Part 8 for construction of these larger, utility-scale energy facilities, smaller sized projects are not included and remain subject to local zoning regulatory authority.

To determine when Part 8 controls, it is essential to calculate nameplate capacity. Nameplate capacity means the designed full-load sustained generating output of an energy facility—even if components of the energy facility are located on different parcels, *whether contiguous or noncontiguous*. When determining nameplate capacity, the energy must share a single point of connection to the grid. This limitation will be particularly important when considering the facilities' nameplate capacity where developers try to include noncontiguous parcels to reach the preemptive number of megawatts.

Is PA 233 now in effect?

No. PA 233 becomes effective one year after the legislation was signed—**Nov. 29, 2024**. This gives townships a short window to:

- review compliance with the regulatory process set forth in PA 233
- determine what course of action makes sense for the township

- make any needed revisions to current ordinances or master plans
- adopt any new ordinances

This timeframe will go by fast, so townships should begin discussion of this regulatory process right away.

So, how will these facilities be regulated? Do townships have any authority?

PA 233 provides a new regulatory framework for an electric provider or independent power producer to pursue a state certificate from the MPSC for the construction of a utility-scale energy facility. Generally, the **developer can choose** to either pursue a state certificate through the MPSC, or to propose construction outside of PA 233 under a local zoning ordinance or in a community where no local zoning exists.

There are, however, a couple exceptions to this developer's choice:

- A local unit of government with zoning jurisdiction may request that the MPSC require a developer to go through the state certificate process for construction. For various reasons, it may be more palatable for a local unit to require use of the state approval process even when the developer may want to go under its local zoning ordinance for approval.



Public Act 233 of 2023 replaces local control over utility-scale renewable energy facilities with a state-controlled statutory framework, and grants new siting authority over these facilities to the Michigan Public Service Commission. Many questions, and concerns, remain over this legislative takeover of local zoning authority.

- Even if the developer decides to pursue a state certificate for construction, the legislation may direct them down a different path under a severely restricted local approval process. If all affected local units timely notify the developer that they have a **compatible renewable energy ordinance** (CREO), the developer **must** start down this alternate path for local approval.

Inside a CREO

A CREO is an ordinance that provides for the development of utility-scale energy facilities within the local unit of government. This ordinance cannot be more restrictive than the requirements included in Section 226(8) of PA 233, which delineates separate siting regulations for each of the three types of renewable energy facilities (wind, solar and energy storage).

- For **solar energy facilities**, it addresses setbacks, fencing, height, sound and dark sky lighting.
- For **wind energy facilities**, it addresses setbacks, sound, light mitigation, shadow flicker, height, radar interference or other relevant issues determined by the MPSC.
- For **energy storage facilities**, it addresses setbacks, compliance with national fire protection standards, sound and dark sky lighting.

The regulations for all three facilities also provide for any more stringent requirements adopted by the MPSC that are necessary for compliance with state or federal environmental regulations.

What does this mean for current township ordinances? Most current township zoning ordinances with renewable energy facility provisions are more detailed or limiting than the new requirements in Section 226(8). If the ordinance is more stringent than the new requirements, then it will not qualify as a CREO and the developer can simply bypass the local unit and seek a state certificate. In addition, if your township has a moratorium on the development of utility-scale energy facilities, it is considered not to have a CREO.

Public meetings in affected local units

Both processes under PA 233—if a developer goes through the state or through a local unit with a CREO—start with the same requirement: the developer proposing to obtain a state certificate must hold a **public meeting in each affected local unit**. An “affected local unit” is defined as a unit of local government (township, county, city and village) in which all or part of a proposed energy facility will be located. For example, if the proposed utility-scale energy facility straddles two townships in two different counties, there would need to be four public meetings; one in each township and one in each county.

There is one exception for these public meetings. If a public meeting is held in a township, it is considered to be held in each village located within the township. This exception would only impact projects located in a village.

Overall, it might have made more sense if the “affected local unit” was defined by zoning jurisdiction since the only unit really affected or preempted is the governmental unit that exercises zoning jurisdiction over the area of the project. That, however, is not what the statutory language provides.

At least 60 days before a public meeting, a developer is required to *offer* to meet with the chief elected official, or their designee, for each affected local unit to discuss the site plan. The act, however, does not define “chief elected official.” Other statutes (i.e., the Michigan Planning Enabling Act and State Construction Code Act) define the chief elected official in a township as the supervisor, and so it may be fair to assume the same is true here. A future technical amendment may clarify this definition. If within 30 days following the meeting to discuss the site plan, the chief elected official of each affected local unit notifies the developer that the local unit has a CREO, the developer **must** then file for local approval with *each affected local unit*.

Unfortunately, this process becomes somewhat convoluted and cumbersome. It is not enough for the township to simply have a CREO—each other affected local unit must also have their own CREO in order to require the developer to go through the local application process.

Let’s look at an example. If a proposed project straddles two townships in the same county, then each township *and* the county must timely notify the developer that they *each* have a CREO. If this occurs, the developer must go through the approval process with both townships and the

county. Therefore, even if your township has a CREO, it will be dependent on other affected local units to determine whether your local CREO process can be used to consider the project. PA 233 then sets out the framework to consider the developer's project under a local application process using the CREO.

The MPSC application process—including intervenor funds for locals

If all of the affected local units do not timely notify the developer that they have a CREO, then the process to apply for an MPSC certificate continues at the state level. This process picks back up with the public meeting and requires that at least 30 days before a meeting, the developer shall notify the clerk of the affected local unit(s) of the time, date, location and purpose of the meeting and provide a copy of the site plan or the web address where a site plan is available for review. At least 14 days before the public meeting, the developer must publish notice of the meeting. The law states that the notice must be published in a newspaper of general circulation in the affected area or in a "comparable digital alternative." It is unclear what is meant in the statute by a comparable digital alternative, and we will likely receive future clarification from the MPSC. The MPSC is required to make rules regarding the format and content of the notice.

While proponents of the legislation tout that the public meeting gives communities and residents a voice, unfortunately, the statute provides no requirements that the developer or MPSC take any of those comments into account in the application process. There is no direction in the statute as to what role the MPSC will play in the public meeting, or if MPSC representatives even need to attend. It appears from the statute that the meetings are simply a "check box" on the developer's way to file an application with the MPSC. The MPSC may address additional meeting requirements in future rule-making.

Once the developer has prepared a site plan and has held this public meeting, it can then submit an application to the MPSC. The MPSC application process is spelled out in detail in PA 233. Some of the highlights are as follows:

The developer must submit to the MPSC an application as specified in Section 225(1) of the act and a site plan as specified in Section 224. Under the new law, the MPSC may also promulgate rules that could include additional site plan and application requirements.

When the developer files an application with the MPSC, it must grant to each affected local unit an amount determined by the MPSC up to \$75,000 per unit, not to exceed \$150,000 in total. Each affected local unit must deposit the grant in a **local intervenor compensation fund** to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate. The application is treated as a contested case under the Administrative Procedures Act and each affected local unit, participating property owner or nonparticipating property owner may intervene by right. This funding to intervene is an incentive for a local unit to simply go through the state certificate process and use the developer's funds to intervene in the process.

MTA opportunities to learn more

As township leaders, planning and zoning officials, and residents continue to learn more about the new renewable energy facility siting laws, we know that questions and concerns will also continue. That's why MTA has planned numerous



educational opportunities in the upcoming months, connecting you with MTA legal counsel and allowing you to listen, learn and get your questions answered, to the extent possible, on "Renewable Energy Siting: What's Next?" Join us:

- **Jan. 17 at noon, "Now You Know" lunchtime webinar**—Get an overview of the legislation, how it impacts your township's existing ordinances, public safety and infrastructure considerations, and more—all in just one hour. Cost is just \$25; register online at <https://bit.ly/NYKmta>. Can't make it live? A recording will be available after the webinar; watch MTA publications for details on availability.
- **Jan. 23**—Join us for **MTA's 2024 Capital Conference** in Lansing for legislative and educational updates, including the latest on renewable energy. The day's agenda also includes lunch with lawmakers, as well as general and breakout sessions on important issues that impact townships around the state. Turn to the inside back cover for a registration form, or visit www.michigantownships.org (look under "Advocacy") to register and for additional details. Let your voice be heard!
- **April 22-25**—Our **2024 Annual Conference & Expo**, held at the Grand Traverse Resort, includes several sessions on renewable energy in Michigan, including more from MTA Legal Counsel on the siting legislation and what it means for your township. Read all about the township event of the year in the registration brochure, included in **this** issue of *Township Focus*, as well as on MTA's website. Registration opens Jan. 3. We looking forward to seeing you in April!





Among the items necessary for granting of a certificate to construct a utility-scale renewable energy facility, the Michigan Public Service Commission must determine that the public benefits of the proposed facility justify its construction, and the proposed facility will not unreasonably diminish farmland.

The MPSC must grant or deny the certificate to construct the utility-scale energy facility within one year after a complete application is filed with the commission. When making its decision on the application, the MPSC must consider feasible alternative developed locations if the site is undeveloped land, as well as consider the impact on local land use, including the percentage of land within the local unit dedicated to energy generation. The MPSC may also condition the certificate on:

- establishing and maintaining vegetative ground cover
- meeting or exceeding pollinator standards established by the “Michigan Pollinator Habitat Planning Scorecard for Solar Sites”
- providing for community improvements in the affected local unit
- providing for proper care of the property during construction and operation of the facility

Among other **items necessary for the grant of the certificate**, the MPSC must determine that:

- the public benefits of the proposed energy facility justify its construction
- the proposed energy facility will not unreasonably diminish farmland, including, but not limited to, prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops

- the facility will meet the facility standards contained in Section 226(8) (this is the same section that provides the standards for a CREO)

A benefit to locals when the developer uses the MPSC certificate process is that the developer must enter into a **host community agreement with each affected local unit** agreeing that upon commencement of any operation, the energy facility owner must pay the affected local unit \$2,000 per megawatt of nameplate capacity located within the affected local unit. If, for example, a 100-megawatt project is approved by the MPSC in your township, when the facility begins operation, both the township and the county would each get \$200,000. The payment may only be used as determined by the affected local unit for police, fire, public safety, or other infrastructure. It may also be used for other projects as agreed to by the local unit and the applicant. If the local unit refuses to enter into the host community agreement, then the money gets distributed to community-based organizations.

How does the approval process work if all affected local units timely notify the developer that they each have a CREO?

If each affected local unit has a CREO and notifies the developer within 30 days following the site plan review discussion with each chief elected officer, then the developer must file for approval with each local unit. The filing would take the form of an application that is required to contain most of the same requirements as the MPSC application. This would include, among other things, a **decommissioning plan** as set out in PA 233. A local unit may also require other application information necessary to determine compliance with the CREO. Again, the CREO is very limited and cannot be more restrictive than the standards in Section 226(8).

The local unit is required to approve or deny the application within 120 days after receiving it, unless the applicant and local unit jointly agree to extend the deadline by up to another 120 days. There is nothing in the statute that addresses tolling for an incomplete application. This is another gray area. It could be argued that the local unit would not accept an application for filing that is incomplete so no timeline would start until a complete application is filed. It is unknown at this time how such an argument would be viewed by the courts or the MPSC.

PA 233 provides that the developer may abandon the local approval process and return to the MPSC certificate application process if:

- an affected local unit fails to timely approve or deny an application
- the application complies with the requirements of Section 226(8), but an affected unit denies the application

- an affected local unit amends the zoning ordinance after the chief elected official notifies the developer that it has a CREO, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in Section 226(8)

Once again, it appears that the second basis above limits the CREO to nothing more than what is in Section 226(8). If a local unit denies the application for any reason other than noncompliance with Section 226(8) standards, then the developer can go back to the state certificate process. When the process returns to the MPSC, the developer does not have to hold the public meeting in the affected local units or, more importantly, provide the money to the affected local units for the intervention funding. This works to punish the local units by depriving them of the funding to participate in the contested proceedings before the MPSC.

Remember, at a minimum, there will be a township CREO application and a county CREO application; if either fails to properly process the application, the developer may return to the MPSC process. **Each of the local units is reliant on the other and needs to cooperate among themselves to be successful with the CREO approach.**

Additionally, if the MPSC approves a developer for a certificate after the process is returned to the MPSC as provided above, then the local unit is considered to no longer have a CREO, unless the MPSC finds that the local unit's denial of the application was reasonably related to the developer's failure to provide information required for the application.

Be aware of pitfalls

At first impression, there are many pitfalls to be aware of in trying to retain local control through a CREO. Among other items already discussed, it is unclear if the developer can be required to provide a local host community agreement of \$2,000 per megawatt if the application is not processed through the MPSC. There is much discussion with legal and planning professionals about using a noncompliant zoning ordinance that incentivizes the developer to use a local process instead of going through a CREO or the state certificate process. This noncompliant ordinance might include such things as a required host community agreement, control over where facilities can be sited, a cap on the overall amount of land in the township that can be used for this purpose, a timeline for action on an application, and better decommissioning standards. There is also risk with going this route, and it should not be undertaken without guidance from legal counsel.

What purpose does PA 234 serve?

PA 234, part of the renewable energy package along with PA 233, amends the Michigan Zoning Enabling Act (MZEA) to subject a zoning ordinance to Part 8 of the Clean and Renewable Energy and Energy Waste Reduction Act (MCL 460.1221 through 460.1232). Part 8 contains all of the regulations in PA 233 as discussed above.

PA 234 also subjects a zoning ordinance to the following requirement: "A renewable energy project that receives special land use approval under Section 502 **on or after January 1, 2021**, is considered to be a prior nonconforming use and the special land use approval shall not be revoked or modified if substantial construction has occurred or if an

expenditure equal to 10% of the project construction costs or \$10,000.00, whichever is less, has been made."

This provision alters nonconforming use vested rights established by case law or as otherwise contained in a local zoning ordinance. It creates a very low threshold for a renewable energy project. It is also problematic that it does not define what a renewable energy project is under the MZEA.

It should also be understood that PA 234 becomes effective prior to PA 233, on Feb. 13, 2024.

What's next

MTA, local government attorneys, renewable energy experts and others are continuing to wade through this legislation, seeking answers, consensus and clarification as communities grapple with the effects of the new law. MTA is working with its legal counsel to prepare a sample compatible renewable energy ordinance and application. Watch MTA publications for availability, and please consult your local attorney for guidance specific to your township. MTA will continue to advocate for Michigan's townships, and assist its member townships in navigating the renewable energy path forward.



Robert E. Thall, MTA Legal Counsel
Bauckham, Thall, Seeber, Kaufman & Koches, PC

Watch MTA's "Renewable Energy" webpage (click on "MTA On the Issues" under the "Advocacy" tab on www.michigantownships.org) for additional guidance and information.



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RENEWABLE ENERGY

UNDERSTANDING NEW LEGISLATION

PRESENTERS: ROBERT E. THALL &
CATHERINE P. KAUFMAN
MTA LEGAL COUNSEL

Powerpoint Template provided by Contoso

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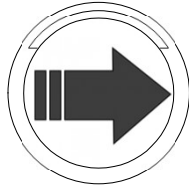
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TODAY'S PRESENTATION



BACKGROUND

- History of legislation
- Key provisions



FLOWCHART

- What are the different processes?



WHAT NEXT?

- What power is left?
- What should we do now?



CONCLUSION

- Misc. questions
- Final thoughts



3

3

BACKGROUND

History of legislation; key provisions



4

4

OVERVIEW OF LEGISLATION

PA 233 OF 2023

- Contains the vast majority of new rules
- Signed Nov. 28, 2023
- Takes effect Nov. 29, 2024

- Limits local zoning based on PA 233
- Adds vested rights
- Signed Nov. 28, 2023
- Takes effect Feb. 13, 2024

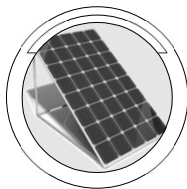
PA 234 OF 2023



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PROJECTS COVERED BY NEW LAW



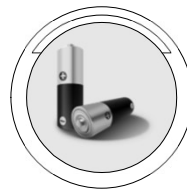
SOLAR

50 megawatts or more nameplate capacity across the entire project



WIND

100 megawatts or more nameplate capacity across the entire project



BATTERY STORAGE

50 megawatts or more nameplate capacity and energy discharge capability of 200 megawatt hours or more



EXISTING PROJECTS

Expansion, or repowering of any existing facility that meets the requirements listed to the left



6

6

SUMMARY OF PA 233

- Makes significant changes to the permitting process for utility-scale renewable energy facilities
 - Including solar, wind, and battery energy storage
- Allows developers to apply directly to the Michigan Public Service Commission (MPSC) to construct utility-scale renewable energy facilities
 - Unless all affected local units adopt “compatible renewable energy ordinance” (to be discussed shortly)
- Sets statewide standards for projects
- Severely limits local control



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SUMMARY OF PA 234

- Signed alongside PA 233, but takes effect Feb. 13, 2024
- Amends MZEA to subject all zoning ordinances to provisions of PA 233
- Also adds the following:
 - “A renewable energy project that receives special land use approval under Section 502 **on or after January 1, 2021**, is considered to be a prior nonconforming use and the special land use approval shall not be revoked or modified if substantial construction has occurred or if an expenditure equal to 10% of the project construction cost or \$10,000, whichever is less, has been made.”
- Alters nonconforming use vested rights law to create a very low threshold for renewable energy projects



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KEY PROVISIONS - WIND

Setbacks

- 2.1 times height to nearest outside wall of occupied building on nonparticipating property
- 1.1 times height to:
 - Nearest point of outside wall on participating property
 - Nonparticipating property lines
 - Centerline of road right-of-way

Noise

- 55 dBA average measured from nearest dwelling



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KEY PROVISIONS - SOLAR

Setbacks

- 300 feet from occupied nonparticipating buildings
- 50 feet from road right-of-way
- 50 feet from nonparticipating property lines

Maximum height

- 25 feet at full tilt

Noise

- 55 dBA average - nearest dwelling



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KEY PROVISIONS – BATTERY STORAGE

Setbacks

- 300 feet from nonparticipating occupied buildings
- 50 feet from road right-of-way
- 50 feet from shared property lines

Noise

- 55 dBA average measured from nearest dwelling



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KEY PROVISIONS – “COMPATIBLE RENEWABLE ENERGY ORDINANCE” (CREO)

- CREO is an ordinance adopted by all local units transferring permitting authority to them instead of the State/MPSC
- CREO cannot be more restrictive on any of the items listed in 226(8)
 - Cannot be more restrictive on setbacks, noise restrictions, height restrictions listed on previous slides and all other items listed in the statute
- All affected local governments must have a CREO in order for applicant to be required to use it
 - This includes any townships, counties, villages, or cities where project is located
- CREO process is extremely fast
 - Township must approve or deny entire application within 120 days
- More on the CREO process is discussed in the next section

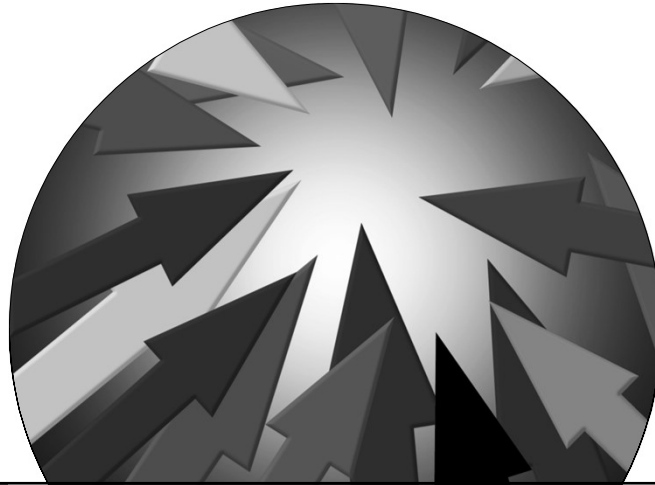


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FLOWCHART

What are the processes?



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LAYING THE GROUNDWORK

Three main avenues for approval:

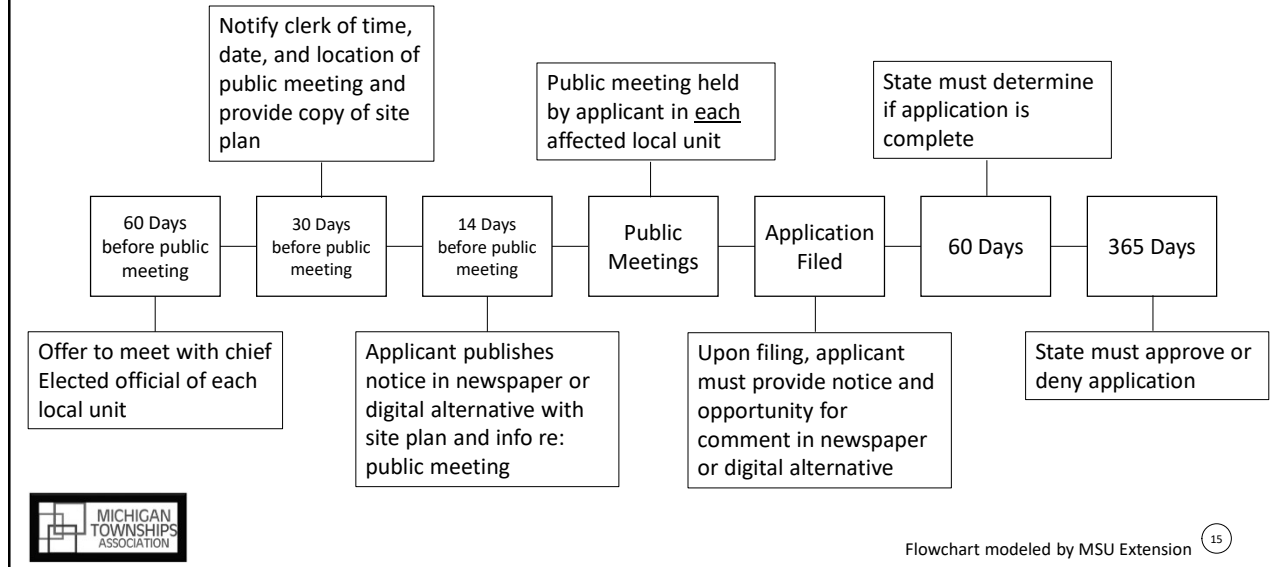
1. Entirely through the State (MPSC)
2. State-Township mix with a CREO
3. Entirely through the Township (non-CREO/"workable")



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MPSC PROCESS (MCL 460.1223)



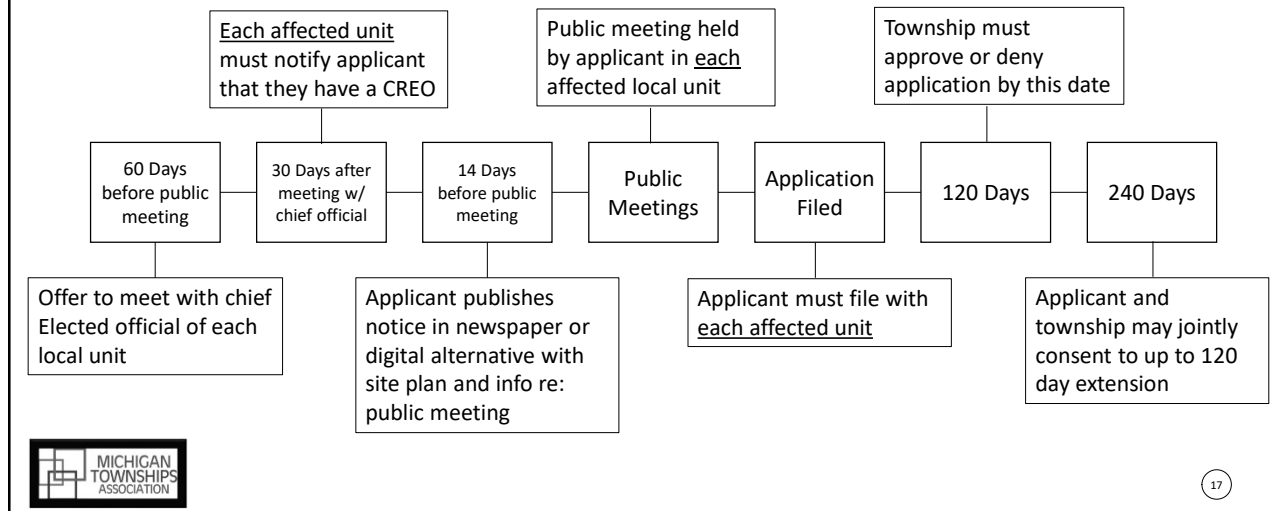
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MONETARY BENEFITS TO LOCAL GOVERNMENTS

 <p>INTERVENOR FUND</p> <ul style="list-style-type: none"> • Up to \$75,000 (to be determined by MPSC, likely much lower) • Deposited into special fund <u>only</u> for use in challenging application during MPSC process 		 <p>HOST COMMUNITY AGREEMENT</p> <ul style="list-style-type: none"> • One-time, \$2,000 per megawatt payment to the Township • Must be used for police, fire, public safety, infrastructure. Can be used for other projects if applicant consents • If Township refuses to enter agreement/take money, applicant can give the money to community groups instead
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CREO PROCESS (MCL 460.1223(3))

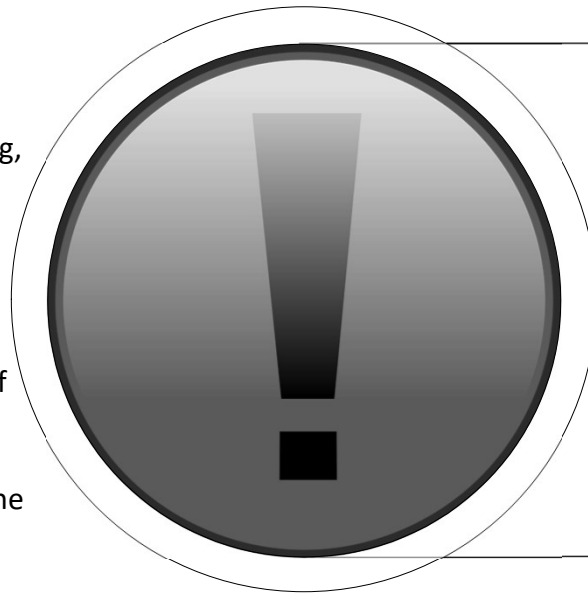


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CREO DANGERS

If Township does any of the following, the applicant can take the “streamlined” MPSC path (discussed on next slide)

- Township fails to act on the application within 120 days
- Application meets requirements of 226(8) but is wrongly denied
- Local unit amends ordinance after notifying applicant of CREO, and the new ordinance is more restrictive than 226(8)



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STREAMLINED MPSC PROCESS

Similar to regular process except:

- Your ordinance is declared invalid for all current and future projects;
- Applicant does not need to hold any public meetings in the Township and does not need to publish or provide any notices of activity;
- Applicant does not need to give any intervenor funds to local government.



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NON-CREO "WORKABLE" PROCESS

- Township adopts ordinance that it knows is not a CREO: sets standards above statute and/or regulates what State does not allow
- Developer voluntarily chooses to follow this local ordinance instead of MPSC
- Why would developer voluntarily choose this route?
 - Township may offer streamlined process; better value; more community support
- Caution: Developers are likely to be very wary of this option
 - It will not get them a state certificate
 - Presents serious risks: Township could be uncooperative or volatile, no statutes
 - State process will naturally appear much more secure for their huge investments



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WHAT NEXT?

What power is left? What should we do now?



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IMPORTANT NEXT STEPS

1. Consult with your attorney and planner
 - These issues are complicated, not everyone agrees on interpretation
2. Decide whether you want to follow MPSC, CREO, or “workable”
3. If CREO: Talk to neighboring governments and County soon
 - Everybody needs to be on the same page for a CREO to work
4. Keep timelines for CREO adoption in mind
 - If it is a zoning ordinance – need time to draft, PC hearings, Board hearings
 - Need to provide notices of meetings, adoption, etc.
 - Extra time needed to collaborate with County and neighboring jurisdictions



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LOCAL AUTHORITY REMAINS, BUT LIMITED

- Can still regulate small scale utility projects
 - Those under megawatt limitations from earlier slide
- Can regulate roof-mounted or ground-mounted solar systems as accessory uses on property



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CONCLUSION

Miscellaneous questions; final thoughts



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MANY QUESTIONS REMAIN

- What exactly can be included in a CREO?
- What level of collaboration/consistency will be required between local units?
- Do “workable” ordinances really have a chance?
- How will the State handle these issues?
- What will Township input at the State level really look like?



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WORK IS ONGOING

- Attorneys at our office and elsewhere are carefully reviewing language
- MTA is seeking clarifications from the MPSC
- MPSC and State offices should be reviewing and drafting guidance and procedures
- Developers are reviewing all available options to move projects forward
- Township officials are educating themselves, consulting with neighbors



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AUDIENCE QUESTIONS



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THANK YOU

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January 2024

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