

**MARION TOWNSHIP PLANNING COMMISSION  
AGENDA**

REGULAR MEETING

**Due to COVID-19 considerations and consistent with State Policy:  
The Township Planning Commission will meet in person November 23, 2021 at 7:30 pm**

However, there will be virtual access

Instructions to participate in the meeting are posted on [www.mariontownship.com](http://www.mariontownship.com)

Call to Order:

Pledge of Allegiance:

Introduction of Members:

Approval of Agenda for:        November 23, 2021 Regular Meeting

Approval of Minutes from:        October 26, 2021 Regular Meeting

Call to the Public:

Public Hearing:

None

New Business:

- 1) Review Attorney letter on Sections 18, 13, 6, and redo changes
- 2) Review minutes from Attorney, Planner, meeting held October 28, 2021
- 3) Review Attorney proposed Penalty Provisions language
- 4) Review Wind and Solar ordinance information from Fahey Schultz Class

Unfinished Business:

- 1) Continue discussion on hobby kennels
- 2) Review issues with 17.32 home-based business
- 3) Add definition for 'RURAL'
- 4) September 25, 1990 minutes on importance of definition of Lots

Special Orders:

Annual Election of Officer's per Bylaws

Announcements:

Call to the Public:

Adjournment

Approved by: \_\_\_\_\_  
Larry Grunn, Chairperson

Date: \_\_\_\_\_

**MARION TOWNSHIP PLANNING COMMISSION  
IN-PERSON / VIRTUAL MEETING MINUTES  
OCTOBER 26, 2021 / 7:30PM**

**MEMBERS PRESENT:** LARRY GRUNN – CHAIRPERSON (*In-Person*)  
JAMES ANDERSON – VICE CHAIR (*In-Person*)  
CHERYL RANGE – SECRETARY (*In-Person*)  
BOB HANVEY – (*In-Person*)  
BRUCE POWELSON – (*In-Person*)

**OTHERS PRESENT:** DAVE HAMANN – ZONING ADMINISTRATOR (*In-Person*)  
JOHN ENOS – CARLISLE WORTMAN (*In-Person*)

**MEMBERS ABSENT:** NONE

**CALL TO ORDER**

Larry Grunn called the meeting to order at 7:30 p.m.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF OCTOBER 26, 2021 PLANNING COMMISSION MEETING AGENDA**

Jim Anderson made a motion to approve the agenda for the October 26, 2021 Planning Commission meeting. Bruce Powelson seconded. **MOTION CARRIED**

**APPROVAL OF SEPTEMBER 28, 2021 PLANNING COMMISSION MEETING MINUTES**

Bruce Powelson made a motion to approve the September 28, 2021 Planning Commission meeting minutes, as presented. Jim Anderson seconded. **MOTION CARRIED**

**CALL TO THE PUBLIC**

No comments were made.

**NEW BUSINESS**

**1) SPR#02-21 HOWELL STORAGE EXPANSION 4710-02-400-010 JIM ABRAHAM**

Applicant was not present at 7:35pm. Commissioners are going to move on to the next agenda item and will come back to this item if applicant arrives.

**UNFINISHED BUSINESS**

**1) CONTINUE DISCUSSION ON HOBBY KENNELS**

John Enos plans to meet with the attorney and Dave this Thursday, 10/28/2021. Going forward, John Enos hopes to meet with the township once a month to discuss current issues.

Cheryl Range made a motion to postpone discussion on Hobby Kennels until the next meeting on November 23, 2021 after John has met with the attorney. Bruce Powelson seconded. **MOTION CARRIED**

**2) REVIEW ISSUES WITH 17.32 HOME-BASED BUSINESS (UNFINISHED BUSINESS)**

Cheryl Range reviewed the minutes from August 24, 2021 about Home-Based Businesses.

Larry Grunn wanted to address Les Andersen's concerns about non-conforming parcels.

Dave Hamann explained Les's suggestions about non-conforming lots. Lots that are currently a legal non-conforming parcel should not be approved for any future permits.

John Enos explained that a non-conformity cannot change uses and it cannot expand from its original use. Also, if the resident

PLANNING COMMISSION MEETING

MINUTES 10/26/2021

BY: JESSICA TIMBERLAKE

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does not use the structure for ag related business for more than one year, then the township can penalize the resident. The resident would have to build a house that would be the principal use of the property or they would have to start using the structure for ag, like agreed upon.

Les would like some direction on how to notify new buyers/residents of this rule prior to the purchase.

Dave stated that there is currently no language other than the non-conforming ordinance. Jim Anderson would like to speak with the attorney about putting the language somewhere on the deed to make sure that new home buyers are aware of this ordinance.

Cheryl Range made a motion to postpone discussion on Home-Based Businesses until the next meeting on November 23, 2021 after Dave and John have spoken with the attorney. Larry Grunn seconded. **MOTION CARRIED**

### **NEW BUSINESS:**

#### **1) SPR#02-21 HOWELL STORAGE EXPANSION 4710-02-400-010 JIM ABRAHAM**

Jim Abraham arrived to the meeting. Mr. Abraham explained that he would like to leave his parking lot gravel instead of pouring cement/concrete. Doing this would help with some of the drainage issues and will also allow for easier expansion in the future. Mr. Abraham would also like to put in some temporary storage units as well, to offer more storage options for residents. John Enos is OK with leaving the parking lot gravel, but reminded the commissioners that typically cement is the way to go. Jim Abraham also stated that he is no longer going to store campers, only storage units. He also assured the commissioners that snow plowing will not be a problem this winter and he already has a few different options in place. Jim Anderson recommended that Jim Abraham get involved with the DEQ to make sure that he will not be encroaching on any nearby wetlands. Jim Abraham also has a storm septic device that will help with rain storm overflow. There is maintenance done regularly each year to ensure proper operation. They also have a Knox-box and fire extinguishers for emergencies.

Dave Hamann reminded everyone that this is a preliminary site plan review and the commissioners will see this site plan again for a final review. John Enos stated that Phil Westmoreland from Spicer did recommend approval for this, as long as the stated issues were addressed. Bob Hanvey asked Mr. Abraham if he was asking for approval for the temporary units. Mr. Abraham said that he was asking for approval for the temporary and permanent units. John Enos stated that Mr. Abraham may have to go to the ZBA for a variance.

Cheryl Range made a motion to recommend approval to the Board of Trustees for the Howell Storage Expansion SPR# 02-21, with the issues from Spicer and Carlisle Wortman being resolved. Jim Anderson seconded. **MOTION CARRIED**

#### **3) ADD DEFINITION FOR "RURAL" (UNFINISHED BUSINESS)**

John Enos read one of the definitions that he came up with for "Rural Residential".

Dave Hamann said that we need to be able to differentiate between all of the various districts.

- Rural Residential
- Suburban Residential
- Urban Residential

John Enos said that he could wordsmith some intents together for each of the districts.

There was discussion about the various businesses within the township, between Tim Ryan, John Enos and the commissioners. John Enos said that he will get some definitions together for each district along with an intent have everything ready for the next meeting on November 23, 2021.

#### **4) SEPTEMBER 25, 1990 MINUTES ON IMPORTANCE OF DEFINITION OF LOTS (UNFINISHED BUSINESS)**

Dave Hamann came across these minutes from 1990. Mark Wykoff stated that the single most important word in any ordinance is the word "Lots".

### **CORRESPONDENCE AND UPDATES AND DISCUSSION**

Dave Hamann reminded everyone about the "Effective Meetings - Using Parliamentary Procedure" training scheduled for Thursday, November 04, 2021 at 6:30pm.

### **CALL TO THE PUBLIC:**

Les Andersen discussed the definition for suburban district and how certain districts came to be.

**ADJOURNMENT:** Jim Anderson made a motion to adjourn the meeting at 9:22pm. Bruce Powelson seconded. **MOTION CARRIED.**

**IDA TOWNSHIP  
SOLAR ENERGY SYSTEMS DRAFT ORDINANCE**

**Section 2.2: Definitions**

**Decommission:** To remove or retire from active service.

**Photovoltaic Device:** A system of components that generates electric energy from incident sunlight by means of the photovoltaic effect, whether or not the device is able to store the electric energy produces for later use.

**Solar Array:** Any number of Photovoltaic Devices connected to provide a single output of electric energy or other energy.

**Solar Energy Systems, Large-Scale:** An installation of more than one (1) ground-mounted, utility-scale solar energy system where the primary use of the land is to generate electric energy or other energy by converting sunlight, whether by Photovoltaic Devices or other conversion technology, for the sale, delivery or consumption of the generated energy with a capacity greater than one megawatt (MW). Large-Scale Solar Energy Systems are not permitted within any zoning districts allowing residential uses. May also referred to as a Solar Farm.

**Solar Energy Systems, Personal:** Small-scale solar panels or technologies permitted as accessory structures within all zoning districts. Personal Solar Energy Systems are comprised of a single unit which is installed and solely used for private purposes. These solar structures may be either ground-mounted, or building-mounted.

**Solar Farm:** See Solar Energy Systems, Large-Scale.

**Solar Tracker:** A device which maximizes the solar system's electricity production through panels that move to follow the sun throughout the day. As they are typically used as part of Large-Scale Solar Energy Systems, solar trackers are not to be permitted for use as part of a Personal Solar Energy System.

**Substation:** Part of a Large-Scale Solar Energy System, it is an interconnected network of electrical components comprising of transformers, auxiliaries, switchgear, and other mechanical equipment. The substation regulates incoming electrical energy generated while delivering electricity to consumers through outgoing transmission lines.



## Section 6.48 Solar Energy Systems

A. Purpose: The purpose of this section is to provide regulation for the following permitted types of Solar Energy Systems.

1. *Personal-Scale Solar Energy Systems (Ground-Mounted and Building-Mounted):* Permitted within all zoning districts in the Township of Ida as accessory structures or uses under the conditions that they are located within a rear or side yard, comply with all applicable setback requirements, and are intended to be solely used for private purposes rather than commercial resale.
2. *Large-Scale Solar Energy Systems (Ground-Mounted):* Permitted within all zoning districts, contingent upon receipt of a Special Land Use Permit, except for those districts designated for residential uses.

B. General Standards for All Solar Energy Systems:

1. All Solar Energy Systems must be compliant with all Township Ordinances and other applicable regulation.
2. All Solar Energy Systems shall be installed, maintained, and used only in accordance with the manufacturer's directions. Upon request, a copy of such directions shall be submitted to the Township Building Official prior to installation. The Building Official may inspect the completed installation to verify compliance with the manufacturer's directions.
3. All Solar Energy Systems whether ground-mounted or building-mounted, shall be permanently and safely attached to whatever surface it is mounted to.
4. No building-mounted Solar Energy System shall exceed the dimensional height permitted in the zoning district in which it is located. No ground-mounted Solar Energy System shall exceed the height of the principal structure or fifteen (15) feet in height, whichever is less. Height is to be measured from the average grade at the base of the pole to the highest edge of the system. The Planning Commission may increase the maximum height requirements at their discretion dependent upon location and other factors.
5. All Solar Energy Systems are to be neutral in color to minimize reflectance onto surrounding properties and streets.
6. The following items shall apply to all Solar Energy Systems; however, additional flexibility or stricter regulations may be placed upon the solar energy system dependent upon the

site's location within the Township and the land uses of adjacent parcels per the discretion of the Planning Commission.

a. Electrical fencing is not permitted, unless also housing livestock or similar animals.

b. Personal-Scale Solar Energy Systems are to be screened so that any mechanical equipment used as part of the solar energy system may not be seen from other residentially zoned properties.

c. The perimeter of all sites containing Large-Scale Solar Energy Systems shall be screened and buffered per the direction of the Planning Commission.

C. Additional Standards for Large-Scale Solar Energy Systems: Large-scale Solar Energy Systems where the primary use of the land is to generate electric energy or other energy by converting sunlight for the sale, delivery or consumption of the generated energy with a capacity greater than one megawatt (MW) shall require site plan review, the receipt of a Special Land Use Permit, and fulfill the following standards supplemental to those established in section 6.48B.

1. A Large-Scale Solar Energy System may be located on one or more parcels with an aggregate area of ten (10) acres or greater.
2. Design and operation of all Large-Scale Solar Energy Systems must be compliant with all applicable provisions of local, state, and federal laws and regulations.
3. All Large-Scale Solar Energy Systems shall be subject to the section 7.6 which delineates glare and exterior lighting standards. Lighting on sites housing a Large-Scale Solar Energy System shall be located, designed, and maintained to prevent the reflection and glare of light that would otherwise create a nuisance or safety hazard to operators of motor vehicles, pedestrians and neighboring land uses, and to promote "dark skies" in keeping with the rural character of Ida Township.
4. The Township shall have the right at any reasonable time, to provide same-day notice to the applicant to inspect the premises on which any Large-Scale Solar Energy System is located.
5. The owner or operator of a Large-Scale Solar Energy System shall maintain a current insurance policy with a bond rating acceptable to the Township to cover installation and operation. The amount of the policy shall be established as a condition of Special Land Use approval.
6. Abandonment and Decommissioning:

- a. Abandonment: Any Large-scale Solar Energy System that ceases to produce energy on a continuous basis for twelve (12) months will be considered abandoned. It is the duty of the responsible party or parties to remove all equipment and facilities and completely restore the parcel to its original condition prior to the installation of the solar facility.
  - i. Upon determination of abandonment, the Zoning Administrator shall notify the party or parties responsible that they must remove the Large-Scale Solar Energy System and restore the site to its condition prior to the development of the facility within six (6) months of notice by the Planning Commission or its designee. If the responsible party or parties fail to comply, the landowner is then responsible for removal of the facility.
  - ii. If the facility is not removed and the land restored to its prior condition within the six (6) month time period, the Township or its designee may remove the solar facility, sell any removed materials, and initiate judicial proceedings or take any other steps legally authorized against the responsible parties to recover costs required to remove the solar facility and restore the site to a non-hazardous pre-development condition.
- b. Decommissioning: Following the operational life of the project, the applicant shall perform decommissioning and removal of the Large-Scale Solar Energy System in its entirety. Prior to the issuance of the necessary permit, a decommissioning plan containing the following items must be submitted.
  - i. Anticipated project life;
  - ii. Estimated costs of decommissioning in current dollars;
  - iii. Method(s) of ensuring funds are to be available for the decommissioning of the project including but not limited to activities for the removal of structures, roads, fencing, foundations, etc.
  - iv. Anticipated manner in which the project will be decommissioned, and the site restored.

D. Application Procedures and Approvals: Special Land Use and Site Plan approvals or permits under this Section shall be valid for two (2) year, and if requested by the applicant prior to that expiration date, shall automatically be extended for an additional one (1) year period.

1. Approval Required: Except where noted in this Section, it shall be unlawful to construct, erect, install, or alter any Large-Scale Solar Energy System within Ida Township unless a Special Land Use Permit has been obtained pursuant to this Ordinance.

- a. Application for a Special Land Use Permit required by this Section shall be made on forms provided by Ida Township and shall be subject to the requirements of Section 3.3., Special Land Use. Each application shall be accompanied by the required fees and information as requested in this Ordinance.
2. Site Plan Drawing and Supporting Materials. All applications for Large-Scale Solar Energy Systems must be accompanied by detailed site plans drawn to scale and dimensioned and certified by a registered engineer licensed in the State of Michigan. Site plans shall display the following information:
- a. All requirements for a site plan contained in Section 6.4 of the Ida Township Zoning Ordinance;
  - b. Physical features and land uses of the project area, both before and after construction of the proposed project;
  - c. Proposed setbacks from the Solar Array(s) to all existing and proposed structures within the Large-Scale Solar Energy System;
  - d. Plan(s) showing the location of the proposed Large-Scale Solar Energy System, underground and overhead wiring (including the depth of underground wiring), new drainage facilities (if any), access drives (including width), substations and accessory structures on-site and within 100 feet of all exterior property lines;
  - e. Land elevations for the Solar Array(s) to all existing and proposed structures within the Large-Scale Solar Energy System at a minimum of five (5) foot contours;
  - f. Access driveways within and to the Large-Scale Solar Energy System accompanied with a detailed narrative regarding dimensions, composition, and maintenance of each proposed driveway. All access drives shall be subject to Monroe County Road Commission approval and shall be planned to minimize the use of lands for that purpose;
  - g. Anticipated construction schedule;
  - h. Description of operations, including anticipated regular and unscheduled maintenance, types of maintenance to be performed, and decommissioning and removal procedures;

- i. A complete description of proposed technologies, including type of solar panel and system, fixed mounted versus tracking, number of panels and angles of orientation;
  - j. Proof of all necessary agreements and approvals by all applicable agencies including the Monroe County Road Commission and Monroe County Drain Commission;
  - k. Additional detail(s) and information as required by the Special Land Use requirements of the Ida Township Zoning Ordinance;
  - l. Additional information as required by the Planning Commission including, but not limited to planned security measures, screening, lighting, description of routes to be used by construction and delivery vehicles, etc.
3. Conditions and Modifications: Any conditions and/or changes approved by the Planning Commission shall be recorded in the Planning Commission's meeting minutes. The Planning Commission may, in addition to other reasonable conditions, require additional environmental study, walls, fences, and other improvements that are reasonable in relation to and consistent with the nature of the applicable or adjacent zoning districts.

After approval, at least two (2) copies of the final approved Site Plan shall be signed and dated by the Chairman of the Planning Commission and authorized representative of the applicant. One (1) copy shall be kept on file by the Township Clerk, and one (1) copy shall be returned to the applicant's authorized representative.

4. Escrow: An escrow account shall be set up when the applicant applies for a Special Land Use Permit for a Large-Scale Solar Energy System. The monetary amount filed by the applicant with the Township shall be in accordance with the fee schedule set by the Township Board. These funds are used to cover all reasonable costs and expenses associated with the Special Land Use Permit and site plan review and approval process, which costs can include, but are not limited to, fees of the Township Attorney, Township Planner, and Township Engineer, as well as any reports or studies which the Township anticipates it may have done related to the zoning review process for the particular application. At any point during the zoning review process, the Township may require that the applicant place additional monies into escrow with the Township should the existing escrow amount filed by the applicant prove insufficient. If the escrow account needs replenishing and the applicant refuses to do so within fourteen (14) days after receiving notice, the zoning review and approval process shall cease until and unless the applicant makes the required escrow deposit. Any escrow amounts which are in excess of actual costs shall be returned to the applicant.

5. Complaints, Administration and Enforcement: Any complaints by a resident or property owner in the Township regarding any violations of this Ordinance shall be filed with the Township Zoning Administrator or his/her designee. Any and all violations of this Ordinance are subject to the penalties set forth in Section 3.11.



**Carlisle | Wortman**  
ASSOCIATES, INC.

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**TO:** Marion Township Planning Commission  
**FROM:** John L. Enos, AICP, Township Planner  
**DATE:** November 11, 2021  
**RE:** Definitions

At our last PC meeting we discussed the need to add, at a minimum, definitions for rural, suburban and urban to the Zoning Ordinance. The intent was to assist the Zoning Administrator in interpreting uses as well as exploring new uses in the representative zoning districts. Below find draft definitions.

Rural

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Land use comprised of a variety of comparatively low-density residential lifestyles in a manner which preserves expanses of open spaces and natural resources, including woodlands, wetlands, hillsides, and fields, comprise fundamental rural character that residents wish to protect and enhance for future generations. Rural character includes existing farms and recognizes this land use for its important contribution to the local economic base, to the provision of food and fiber for the State's citizens, and for the historical character and open spaces it provides. Rural character does encourage the conversion of agricultural lands to more intensive uses, but to provide opportunities for residential development in a manner compatible with the continuation of agricultural activities.

Suburban

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Land use providing opportunities for higher density residential development typically associated with a higher level of public services. Suburban type development accommodates residential developments of a density of one (1) dwelling unit per .75 acre or greater and is intended to both permit the development of suitable vacant land for residential purposes while also preserving the residential character of existing area neighborhoods.

Urban

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Urban land uses provide for housing densities of a denser character than otherwise permitted in rural and suburban areas. Land uses are established based on the greater availability of public services (public water and sewer facilities) and are capable of accommodating the particular demands of higher density residential land uses. Urban are intended to exist only within the Urban Services District identified in the Marion Township Master Plan as it is only here that the public services are expected to be adequate to accommodate the needs of these higher intensity land uses. Densely populated areas comparable to a City of Village.

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August 13, 2021

Bob Hanvey, Supervisor  
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Larry Grunn, Planning Commission Chair  
larrygrunn@yahoo.com  
Dave Hamann, Zoning Administrator  
za@mariontownship.com  
Township of Marion  
2877 West Coon Lake Road  
Howell, MI 48843

RE: Marion Township  
Review of Proposed Zoning Changes

Dear Supervisor Hanvey, Chairperson Grunn, and Zoning Administrator Hamann:

You have asked that I review the following sections of the Zoning Ordinance proposed for revision by the Planning Commission:

*Development Standards Generally:*

<i>Article VI:</i>	<i>Section 6.19</i>	<i>Access Control</i>
<i>Article XVIII:</i>	<i>Section 18:01</i>	<i>Site Plan Requirements</i>

*Cargo Containers:*

<i>Article I:</i>	<i>Section 3.02</i>	<i>Definition</i>
<i>Article VI:</i>	<i>Section 6.07 (13)</i>	<i>Accessory Uses and Structures</i>

*Short Term Rentals:*

<i>Article III:</i>	<i>Section 3.02</i>	<i>Definition</i>
<i>Article IX:</i>	<i>Section 18</i>	<i>Short Term Rentals</i>

*PUD*

<i>Article XIII:</i>	<i>Section 13.01</i>	<i>PUD: Planned Unit Development Overlay District</i>
	<i>Section 13.05</i>	<i>Notify Zoning Administrator</i>



First, I would like to address the proposed changes to the Development Standards in the Zoning Ordinance. The Zoning Enabling Act (MCL 125.3101 et al) is the authorizing statute that is the basis of all municipal zoning ordinances. MCL 125.3501 is the statutory authority within the Zoning Enabling Act for Site Plan Review Procedures and Requirements, it reads:

*Sec. 501.*

- (1) *The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.*
- (2) *If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance is agreed to by the landowner and the body or official that initially approved the site plan.*
- (3) *The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments.*
- (4) *A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.*
- (5) *A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.*

There is no requirement that a Township provide site plan review process before authorizing land uses under a zoning ordinance, as the statute says “may” in paragraph 1. However, I always recommend a municipality handling its own zoning engage in this function, as it prevents or avoids numerous potential future zoning violations. If the Township determines to require submission and approval of a site plan through a process, then the “requirements and standards” upon which those decisions are made must be contained in the zoning ordinance, according to Section 3. Further, according to Section 4, the Township cannot make a decision rejecting, approving, or conditionally approving a site plan under the Zoning Ordinance unless those “requirements and standards are contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state or federal statutes.”

This begs the question, upon what statutory authority does the Township adopt a “Construction Standard Policy Document”? I am not saying it cannot adopt “Construction Standards,” I am just saying I am not sure we can refer to them by reference in the zoning ordinance for the purpose of site plan review and remove the entire procedure and process from the zoning ordinance. It is my opinion that “other statutorily authorized and properly adopted local unit of government planning documents” refers to generally nationally promulgated codes that the Township is permitted by law to adopt by reference, such as 1) building codes, 2) fire codes, 3) property maintenance codes, or 4) historic preservation codes. Of course, I have not reviewed the policy document in question. Further, even if Township can refer to the development standards by reference, I am of the firm opinion the procedures for site plan review must stay in the Zoning Ordinance, per



paragraph 3. If the Township fails to comply with the Zoning Enabling Act, it runs the very real risk of having the site plan review section of the Ordinance, and maybe the entire Ordinance, overturned. The whole point of the Zoning Enabling Act is to require a public hearing and public input, before a change to something like a site plan review process or standards are implemented. Moving the process outside of the Township's Zoning Ordinance defeats that intent of notice and input. For these reasons, I do not recommend that the Township move the site plan review process or requirements out of the Zoning Ordinance. It might be possible to find some legislative authority to adopt Development Standards by Ordinance in the Township and then reference those standards in a site plan review process contained in the Zoning Ordinance.

Second, as to the issue of cargo containers, in the amendments proposed to define them and permit them in the HS and LI District, I did notice that you have not addressed the issue in the Residential Districts or to permit some sort of temporary allowance for moving PODs. Just some thoughts for consideration.

Third, as to Short Term Rentals, I was provided a definition that appears correct. But the proposed regulation to be added in Article IX, Section 9.01B 18 was blank. Is there a proposed regulation? If not, I can provide some similar ordinances from surrounding communities.

Lastly, the issue of the Plan United Development changes. The proposed amendments appear to intend to remove the Procedures for Review and Approval (Section 13.04) from the Zoning Ordinance and relocate them in a set of Development Standards Policy. The amendments also propose to add Section 13.05 regarding how to amend an existing PUD. I see no issue with the proposed amendment to the process of changing an existing PUD. However, I do not believe the Township can remove the Procedures for Review and Approval from the Zoning Ordinance. MCL 125.3503 is the legislative authority to regulate PUDs in the Zoning Enabling Act, which reads:

*Sec. 503.*

- (1) *As used in this section, "planned unit development" includes such terms as cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to accomplish the objectives of the zoning ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.*
- (2) *The legislative body may establish planned unit development requirements in a zoning ordinance that permit flexibility in the regulation of land development, encourage innovation in land use and variety in design, layout, and type of structures constructed, achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities, encourage useful open space, and provide better housing, employment, and shopping opportunities particularly suited to the needs of the residents of this state. The review and approval of planned unit developments shall be by the zoning commission, an individual charged with administration of the zoning ordinance, or the legislative body, as specified in the zoning ordinance.*
- (3) *Within a land development project designated as a planned unit development, regulations relating to the use of land, including, but not limited to, permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density, shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use if*



*equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions. Unless explicitly prohibited by the planned unit development regulations, if requested by the landowner, a local unit of government may approve a planned unit development with open space that is not contiguous with the rest of the planned unit development.*

- (4) *The planned unit development regulations established by the local unit of government shall specify all of the following:  
(a) The body or official responsible for the review and approval of planned unit development requests.  
(b) The conditions that create planned unit development eligibility, the participants in the review process, and the requirements and standards upon which applicants will be reviewed and approval granted.  
(c) The procedures required for application, review, and approval.*
- (5) *Following receipt of a request to approve a planned unit development, the body or official responsible for the review and approval shall hold at least 1 public hearing on the request. A zoning ordinance may provide for preapplication conferences before submission of a planned unit development request and the submission of preliminary site plans before the public hearing. Notification of the public hearing shall be given in the same manner as required under section 103.*
- (6) *Within a reasonable time following the public hearing, the body or official responsible for approving planned unit developments shall meet for final consideration of the request and deny, approve, or approve with conditions the request. The body or official shall prepare a report stating its conclusions, its decision, the basis for its decision, and any conditions imposed on an affirmative decision.*
- (7) *If amendment of a zoning ordinance is required by the planned unit development regulations of a zoning ordinance, the requirements of this act for amendment of a zoning ordinance shall be followed, except that the hearing and notice required by this section shall fulfill the public hearing and notice requirements of section 306.*
- (8) *If the planned unit development regulations of a zoning ordinance do not require amendment of the zoning ordinance to authorize a planned unit development, the body or official responsible for review and approval shall approve, approve with conditions, or deny a request.*
- (9) *Final approval may be granted on each phase of a multiphased planned unit development if each phase contains the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the planned unit development and the residents of the surrounding area.*
- (10) *In establishing planned unit development requirements, a local unit of government may incorporate by reference other ordinances or statutes which regulate land development. The planned unit development regulations contained in zoning ordinances shall encourage complementary relationships between zoning regulations and other regulations affecting the development of land.*

The minimum information that the Township requires to analysis the PUD has been deleted in Section 13.04 (A) (2). This is not permitted, as it is required to be in the Zoning Ordinance under MCL 125.3503 (2), (3), and (4) (b). Like the Site Plan portion of the Zoning Enabling Act, there is a reference only to incorporate by reference "other ordinances or statutes which regulate land development." Again, I do not believe Development Standards are currently an Ordinance, but a policy of the Township. Further, the procedures for application, review and approval must be defined in the Township's Zoning Ordinance, per MCL 125.3503 (4) (C). These are all proposed to be removed from the Zoning Ordinance in this amendment and placed in a "policy." This includes the requirement for a public hearing and notice, which is a specific requirement MCL 125.3503 (5). In short, these provisions must remain in the Zoning Ordinance if the Township is going to permit PUDs under a zoning process.

In making this determination, I am aware that the Michigan Court of Appeals ruled in *Cornerstone Investments, Inc. v Cannon Township*, 239 Mich App 98 (1999), that the Township's escrow application policy, requiring deposit of fees to defray costs incurred in connection with a PUD zoning application, was not an illegal delegation of authority to an administrative body or officials. However, I am of the opinion that it is one thing to set up an escrow policy by reference in the zoning ordinance for PUD review, it is another thing to remove the entire procedure and requirements for PUD approval from the Zoning Ordinance and place them in a Development Standard Policy document. I do not believe the Court would sustain such an action.

Please review this letter and contact me, if you would like to discuss further.

Regards,

  
John L. Gormley

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ZA on Amendments1.wpd

## Penalty provisions.

- (a) *Misdemeanors.* A person convicted of a violation of this Code not designated a civil infraction shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500.00 and the cost of prosecution, or by imprisonment for not more than 90 days, or by both such fines and costs, and imprisonment. Each act of violation and every day upon which such violation shall occur shall constitute a separate offense.
- (b) *Civil infraction.* Civil infractions involving traffic or parking violations are governed by the Michigan Motor Vehicle Code and the Michigan Uniform Traffic Code, both of which are adopted by reference by ordinance of the Township, including the appropriate fees and costs.
- (c) *Municipal civil infraction.* Any person, firm, corporation, or legal entity violating any provision of a Township ordinance not designated a misdemeanor or a civil infraction (traffic) shall be adjudged guilty of a municipal civil infraction as set forth below. Each and every day such violation continues beyond any permissible grace period, constitutes a separate municipal civil infraction.
  - (1) The words "municipal civil infraction" mean an act or omission prohibited by a Township ordinance, but which is not a crime under a Township ordinance nor a civil infraction involving a traffic matter, and for which civil sanctions, including without limitation, fines, damages, expenses and costs, may be ordered, as authorized by Chapter 87 of Act No. 236 of the Public Acts of Michigan of 1961, as amended (MCL 600.8701). A municipal civil infraction is not a lesser included offense of a violation of a Township ordinance designated a misdemeanor.
  - (2) The sanction for a civil infraction shall be a fine in the amount provided by this section, plus costs, damages, expenses, equitable relief and other sanctions, authorized under Chapter 87 of Act No. 236 of the Public Acts of Michigan of 1961, as amended, and other applicable law (MCL 600.8701 et seq.).
    - a. Unless otherwise provided in a Township ordinance, the fine for a municipal civil infraction violation shall not be less than \$50.00, plus costs and other sanctions.
    - b. Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of a Township ordinance. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision:
      - 1. Committed by a person within a six-month period (unless some other period is specifically provided by a Township ordinance); and
      - 2. For which the person admits responsibility or is determined to be responsible.
    - c. Unless otherwise provided in a Township ordinance, the increased fine for a repeat offense shall be as follows:
      - 1. For a first repeat offense not be less than \$250.00, plus costs and other sanctions.
      - 2. For a second or repeat offense or any subsequent repeat offense not be less than \$500.00, plus costs and other sanctions.
  - (3) A "violation" includes any act prohibited or made or declared to be unlawful or an offense, by a Township ordinance, including any omission or failure to act where the act is required by a Township ordinance.
  - (4) The Township Supervisor, zoning administrator, police, and building, electrical, mechanical, or plumbing official shall each have the authority to issue municipal civil infraction citations applicable to a Township ordinance, after an investigation and upon authorization by the Township attorney, pursuant to MCL 600.8702(2).
  - (5) Violations of the following code sections are designated as municipal civil infractions:

Insert here the code sections you want to make MCI

(d) *Nuisance per Se.*

- (1) *Criminal action of nuisance per se.* Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under the Zoning Enabling Act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. The court shall order such nuisance abated and the owner and/or agent in charge of such dwelling, building, structure, tent, mobile home, or land shall be adjudged guilty of maintaining a nuisance per se. Anyone violating any of the provision of this chapter shall upon conviction thereof be subject to a fine of not more than "as per council resolution" and the costs of prosecution thereof, by imprisonment in the county jail for a period not to exceed 30 days, or both. Each day that a violation is permitted to exist from the time of formal citation by the Township shall constitute a separate offense. The imposition of any sentence shall not exempt the offender from compliance with the requirements of chapter 6.
- (2) *Civil action of nuisance per se.* Pursuant to MCL 600.2940, the Township may bring a civil nuisance cause of action in the circuit court to abate a violation of this Township code, including any violation of chapter 6:
  - a. All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance.
  - b. When the plaintiff prevails on a claim based on a private nuisance, he may have judgment for damages and may have judgment that the nuisance be abated and removed unless the judge finds that the abatement of the nuisance is unnecessary.
  - c. If the judgment is that the nuisance shall be abated, the court may issue a warrant to the proper officer, requiring him to abate and remove the nuisance at the expense of the defendant, in the manner that public nuisances are abated and removed. The court may stay the warrant for as long as six months to give the defendant an opportunity to remove the nuisance, upon the defendant giving satisfactory security to do so.
  - d. The expense of abating and removing the nuisance pursuant to such warrant, shall be collected by the officer in the same manner as damages and costs are collected upon execution, excepting that the materials of any buildings, fences, or other things that may be removed as a nuisance, may be sold by the officer, in like manner as goods are sold on execution for the payment of debts. The officer may apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand. If the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.
  - e. Actions under this section are equitable in nature unless only money damages are claimed.
- (3) The Township president or the zoning administrator shall each have the authority to authorize the issuance of civil nuisance per se charge and the Township chief of police shall have the authority to authorize the issuance of a criminal nuisance per se charge. In both cases, the issuance shall be for a violation of an applicable Township ordinance, after an investigation and upon the additional authorization by the Township attorney.

(e) *Miscellaneous.*

- (1) The penalties provided in this section, unless another penalty is expressly provided, shall apply to this Code without the necessity of providing for a penalty in the ordinance making the revision.
- (2) Notwithstanding subsections (a) and (b), the Township may also bring an action for an injunction or other process against a person to restrain, prevent, or abate any violation of this Code.

- (3) The remedies and penalties provided herein are cumulative and in addition to any other remedies provided by law.





## Carlisle | Wortman

ASSOCIATES, INC.

117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

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TO: Marion Township Planning and Development Team

FROM: John L. Enos, AICP, Township Planner

DATE: November 2, 2021

SUBJECT: October 28<sup>th</sup> Meeting

1. Kennels reviewed current language looking to create language to allow "Kennels" housing more than 11 animals as a special use. In addition, the language will tie-bar the County Ordinance on kennels so that those with less than 11 and more than 3 will be required to receive a County license. Options for language could include a sliding scale based on acreage for the number of dogs permitted.
2. Language will be provided to the PC prohibiting dangerous animals rather than exotic animals. These include but are limited to large carnivores such as lions, tigers and bears...oh my. (I had to). It appears however we may be covered already with EXISTING language below.
  - a. *Wild animals: No wild animal nor vicious animal shall be kept permanently or temporarily in any district in the Township except in a bona fide public zoo or bona fide licensed circus, or by a person licensed by the State of Michigan to temporarily harbor and treat injured animals or animals designated as belonging to an endangered species until release into a permanent habitat is possible.*
3. Attorney Gormley will provide the Township language to implement a misdemeanor process for zoning or other violations. The County will be the appointed body to decide and receive fines on all cases ticketed.
4. The attorney will comment on the legality or if this is a use variance for Section 19.05 Change in Nonconforming Uses Irrespective of other requirements of this Article, if no structural alterations are made, any nonconforming use of a structure and premises may be changed to another nonconforming use of the same or a more restricted classification, provided that the Zoning Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards



in accord with the purpose and intent of this Article. Where a nonconforming use of a structure, land or structure and land in combination is hereafter changed to a more restrictive classification, it shall not thereafter be changed to a less restricted classification.

5. The Township Treasurer will explore connecting via BS&A requested land use permits with back taxes and/or violations.
6. The Township Attorney will provide an opinion that legally non-conforming uses may be granted land use and other permits including but not limited to home-based businesses.
7. Zoning will explore amending permit application to more details as expected number of employees on site.
8. Planner will provide draft definitions of rural, urban and suburban to Jessica for PC discussion.

# Fahey Schultz Burzych Rhodes

EXPERT COUNSEL



REAL SOLUTIONS

## Local Officials Workshop

# Wind And Solar Ordinances – 7 Common Questions

Attorneys Matthew Kuschel and Kyle O'Meara  
FAHEY SCHULTZ BURZYCH RHODES PLC

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### I. Solar and Wind Energy Projects

- A. Townships can typically categorize these projects as either: (1) utility-scale; or (2) individual property uses.
- B. *Utility-scale projects* are intended to generate electricity for use by off-site customers (e.g., residents throughout the state). Typically, townships with zoning regulate these as special land uses and develop regulations in ordinances with provisions related to: (1) noise; (2) shadow flicker (wind); (3) glare (solar); (4) decommissioning; (5) setbacks from other land uses; and (6) complaint resolution processes to minimize nuisances.
- C. *Individual property uses* provide electricity for an on-site customer (e.g., a home or farm). They typically consist of solar panels you may see on the roof of a home or business or a small individual wind turbine, perhaps on a single farm field. Many communities with zoning will regulate these as accessory land uses and may subject them to certain standards such as setbacks, but do not require landowners to obtain a special land use permit, etc.

### II. Why do we need a wind and/or solar ordinance?

- A. There are many factors incentivizing the development of utility-scale solar and wind energy projects such as pledges from utility companies, renewable energy portfolio requirements, and various tax credits. Regardless of how a township may feel about these policies, the policies provide demand for such projects.
- B. Since utility scale wind and solar energy projects require large amounts of land, many townships become the ideal locations for such developments.

- C. Accordingly, townships should be prepared for developers proposing such projects. An ordinance (whether zoning or police power) governing utility-scale solar and wind projects will provide certainty related to standards that your township believes are appropriate to regulate these projects. If a township does not have appropriate ordinances, it may be unprepared to address a situation when a developer wants to site a project. It is typically much more contentious to develop a utility-scale wind or solar ordinance after a developer is planning a project in your township.
- D. As with other ordinances, if your community has utility-scale wind and solar energy ordinances, it may be a good idea to review those provisions to see if they remain current, address recent developments, and remain applicable to the community needs.
  - o This is especially true if the prior ordinance predates recent project growth.
  - o If you are in a township subject to county zoning, you may want to review county zoning ordinance provisions to determine whether they are appropriate for your community.

### III. Does a wind or solar ordinance need to be a zoning ordinance amendment?

- A. No. MCL 41.181 and MCL 42.15 allow townships to adopt police power ordinances to regulate activities for the public health, safety, and general welfare.
  - o Police power ordinances apply (generally) throughout an entire township and there is no “grandfathering” of prior activities (they operate uniformly).
- B. Most wind and solar ordinances throughout Michigan are zoning ordinance amendments under the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*
  - o These will usually make utility scale projects subject to special land use permit and site plan review.
  - o Turbines and solar panels for on-site use (farms and homes) will typically be accessory uses.
- C. **Caution:** A township police power ordinance more strictly regulating standards (e.g., noise) that are already addressed by a county zoning ordinance may be unenforceable. *Forest Hill Energy-Fowler Farms, LLC v Twp of Bengal*, unpublished opinion of the Court of Appeals, issued December 4, 2014 (Docket No. 319134), 2014 WL 6861254, p \*5
  - o If solar and wind energy projects become an important issue in your township, and your township is subject to county zoning, you may want to consider adopting a zoning ordinance to impose specific regulations appropriate for your community.

### IV. What types of issues do solar and wind energy ordinances regulate?

- A. Ordinances governing solar and wind energy projects, especially utility-scale projects, will contain various regulations to attempt to minimize any associated nuisances. These are typically referred to as “performance standards” and examples include:
  - o I. *Noise (both solar and wind)*: Standards governing appropriate noise levels generated by wind turbines, solar projects, and associated improvements. Many ordinances measure these from either buildings used by humans or from a property line.

- *Shadow Flicker (wind)*: “Shadow Flicker” is when a wind turbine blade casts a shadow on a property much like a ceiling fan. Ordinances typically regulate this by setting a maximum number of hours per year that a building used by humans can be subject to shadow flicker.
- *Glare (solar)*: Glare standards usually relate to a solar project impacting sightlines of adjacent properties and roadways. An ordinance can regulate glare by including language stating that it cannot impact adjacent roadways or properties.
- *Decommissioning (both solar and wind)*: Decommissioning relates to what happens at the end of the life of a solar or wind energy project. For example, many ordinances require the removal of improvements (e.g., wind turbines or solar arrays) by the owner of a project while also requiring some financial security from which a township can draw to remove such improvements if necessary.
- *Screening (solar)*: Many modern solar ordinances will require screening around the perimeter of a utility-scale solar project with either fencing and/or evergreen plantings. This helps avoid glare and aesthetic concerns associated with solar projects.
- *FAA Lighting (wind)*: Due to their height, most utility-scale wind turbines will require blinking lights imposed by the Federal Aviation Administration (“FAA”) to ensure airspace safety. A relatively new technology called an “Aircraft Detection Lighting System (“ADLS”) manages blinking lights on turbines when aircraft are not nearby and can be a requirement of a wind ordinance.

**V. Can our township prohibit solar and wind energy ordinances by ordinance?**

- A. It depends.
- B. Generally, a township can draft an ordinance that would make development of utility-scale wind and solar energy projects unattractive, which often causes potential developers to look elsewhere.
- C. If a developer believes an ordinance becomes too “restrictive,” a developer may argue that a township (if it has zoning) is too “restrictive” and is unlawfully “exclusionary” under MCL 125.3207. In that case, a developer would need to prove that there is a demonstrated need of the land use in the township or surrounding area, that a township zoning ordinance is totally prohibiting the land use, and that appropriate locations exist within a township for the land use. These are relatively difficult burdens for a developer to prove.
  - For townships that adopt “too restrictive” police power ordinances, a developer may argue that the ordinances are invalid (such as due to a conflict with a county zoning ordinance).
- D. To avoid challenges to ordinances, a township should have a reasonable basis to defend provisions in its ordinance.
- E. A township (with zoning) also needs to remember that special land use approval often requires the evaluation of discretionary factors (e.g., is the proposed project

compatible with adjacent land uses), which become important (in addition to other ordinance provisions) if a project is not appropriate for a community.

**VI. How can a township (especially with limited or no staff) enforce ordinances with technical requirements?**

- A. Solar and wind energy ordinances often regulate complex subject-matter such as sound and shadow flicker that may require certain equipment (e.g., to accurately measure sound). Even with limited staff, a township can enforce ordinance provisions by:
1. Requiring an escrow deposit from the developer. This money from a developer covers township costs of hiring consultants (planners, engineers, and attorneys) to review a project application and require additional information, including studies, to ensure compliance with ordinance standards.
  2. Impose a requirement that makes a developer submit a “complaint-resolution plan” for approval by a township that would facilitate a process for a developer to resolve resident complaints (e.g., noise violation). Developers have an incentive to meet ordinance requirements to avoid legal action from a township that could cause a project to stop operating.
  3. Township ordinances can make developers complete post-construction studies related to items such as noise and shadow flicker once a project is constructed to ensure ordinance compliance.
  4. A township ordinance can also require an ordinance enforcement escrow account (again, monies by a developer) to fund a township to investigate ordinance violations if a complaint resolution process fails.

**VII. Where can a township get objective information for ordinance drafting?**

- A. A township may receive “studies” and other materials from individuals for and against a particular project (solar and wind) when there is a proposed project. These “studies” can lack a basis for any claims made and are often slanted to either advocate for one position or the other.
- B. Some ideas to find objective information are:
- E-letters from your favorite law firm:
    - Solar (2017) - <https://fsbriaw.com/2017/09/29/does-your-township-need-a-solar-ordinance/>
    - Wind (2015) - <https://fsbriaw.com/2015/05/29/how-to-regulate-wind-energy-projects/>
  - Academic Planning and Zoning Resources
    - Michigan State University Extension – Planning

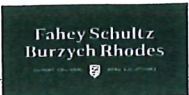
- University of Michigan – Graham Sustainability Institute
- Talking to other elected officials with or without projects in their jurisdiction.
- Discussing technical topics (sound, shadow flicker, etc.) with a certified land use planner or engineer.

**VIII. How can our township regulate “personal” wind turbines and solar panels?**

- A. These smaller and less intense land uses are usually more straightforward since they have significantly less nuisance risk, which is generally concentrated at the person’s own property.
- B. When a township has zoning, often they can regulate as an accessory use.
- C. A township should define these types of uses to exclude utility-scale projects (usually by requiring them to not provide electricity to off-site customers).
- D. A township can then require administrative review of such uses by a zoning administrator and impose more limited standards to mitigate any potential uses by requiring governing items such as heights and setbacks.



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# Wind And Solar Ordinances – 7 Common Questions

ATTORNEYS MATTHEW KUSCHEL AND KYLE O'HEARA  
NOVEMBER 9, 2021

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## Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation or wind or solar energy project and/or ordinance.
- Please contact an attorney if you need assistance related to a specific legal issue.



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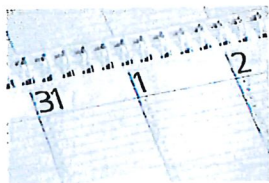
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## Presentation Goals

1. Briefly outline the basics of the developments at issue.
2. Answer common questions related to wind and solar ordinances.
  - Most will relate to utility-scale developments.
3. Provide ample time to answer questions from local officials.
4. Share resources on the topic.



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## Solar and Wind Energy Projects



### Utility-Scale Wind Projects

- Often consist of wind turbines, collection lines, meteorological towers, substations, and other uses throughout a large area.
- Improvements usually located on lands owned by a variety of property owners.

### "Personal" Wind Turbines

- Typically, accessory uses that are usually located on a parcel/farm for electricity generation for the property on which it is located.

### Utility-Scale Solar Projects

- Often consist of multiple improvements like wind projects (arrays, inverters, substations), but tend to be located on fewer parcels.

### "Personal" Solar Panels

- Typically, accessory uses of stand-alone solar panels and related equipment to provide power to an individual property.




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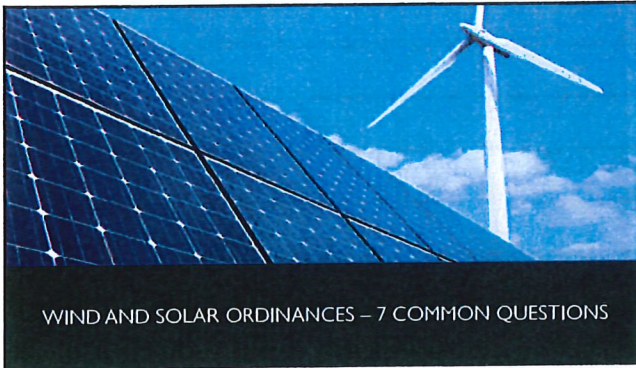
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WIND AND SOLAR ORDINANCES – 7 COMMON QUESTIONS

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## I. Why do we need a wind and/or solar ordinance?



- There are numerous incentives for utility-scale renewable energy projects in Michigan driving demand for such projects including:
  - Pledges by Major Michigan Utility Companies to have 25% of Energy Come from Renewable Sources by 2030
  - September 23, 2020, Governor's Executive Directive (2020-10) – Carbon Neutral by 2050
  - Financial Benefits to Property Owners (Leases)
  - MDARD Policy that Solar and Wind Developments are Consistent with PA 116 Farmland Preservation
  - Federal Tax Credits (COVID Relief Bills and Others)
- This results in demand for development of renewable energy projects!
- Developers often look to townships for these projects due to spacing requirements.
- Not having ordinances (or not having up-to-date ordinances) results in uncertainty if a developer comes to your community.




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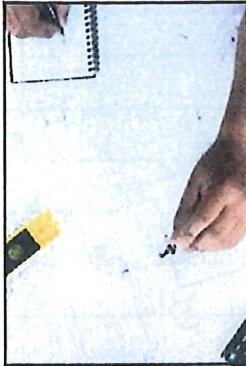
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## 2. Does a wind or solar ordinance need to be a zoning ordinance amendment?

### Not necessarily

#### Police Power vs. Zoning

- **Police Power:** Regulations to govern "activities" necessary to provide for the public health, safety and general welfare. See MCL 41.181 and MCL 42.15. These apply throughout an entire township and there is generally no "grandfathering" of prior activities.
- **Zoning:** Authorized under the Michigan Zoning Enabling Act to generally provide for the orderly development of land uses in a township. See MCL 125.3101 et. seq. Zoning can allow placing certain land uses in specific areas of a township (zoning district) and can subject land uses to "special land use permits" and "site plan" review including reasonable conditions imposed by a township.

**Exercise caution when enacting police power ordinances if your township is subject to county zoning!**

- A township police power ordinance more strictly regulating standards (e.g., noise) that are addressed by a county zoning ordinance are likely to be held by a court as unenforceable. *Forest Hill Energy-Fowler Farms, LLC v Twp of Rego*, unpublished opinion of the Court of Appeals, issued December, 4, 2014 (Docket No. 319134), 2014 WL 6851254, p \*5

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## 3. What types of issues do these ordinances regulate?

### "Performance Standards" vs "Review Materials"

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| <ul style="list-style-type: none"> <li>• "Performance Standards" -- Regulations that will last the life of the project (e.g., glare standards)</li> <li>• "Review Materials" -- Regulations that will apply to a project upon application</li> </ul> | <ul style="list-style-type: none"> <li>• Setbacks (Both)</li> <li>• Districts or Overlay Where Improvements are Allowed (Both)</li> <li>• Site Plan Materials (Both)</li> <li>• Adequate Permits from Other Agencies (Both)</li> <li>• Proof of Land Rights (Both)</li> <li>• Initial Studies (Noise, Shadow Flicker, Environmental) (Both)</li> </ul> |
|--|--|

### Examples of Performance Standards

- Noise (Both)
- Shadow Flicker (Wind)
- Glare (Solar)
- Decommissioning Security (Both)
- Screening (Solar)
- Lighting Including ADLS (Wind)




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## 4. Can our township prohibit these projects by ordinance?



- It depends.
- **Exclusionary Zoning:**
  - A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful. MCL 125.3207.
- Should have a reasonable basis to defend provisions in any ordinance.
- Also remember, subjecting such projects to the special land use process outlines "discretionary" factors to consider a project.




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## 5. How can a township enforce an ordinance or review an application with technical subject matter?



- 1. Application Escrow Accounts:** Monies that would be deposited in escrow with a township to retain third-party experts (planners, engineers, attorneys) to assist with reviewing a special land use permit and site plan application. See MCL 125.3406 and *Forner v Allendale Charter Twp Supervisor*, unpublished opinion of the Court of Appeals, issued March, 21, 2019 (Docket No. 339073), 2019 WL 1302094, p \*5.
- 2. Approved Complaint Resolution Process:** An approved process by a township for a developer to receive complaints from the public related to ordinance standards and to resolve such complaints (if applicable).
- 3. Post-Construction Studies:** An applicant would pay a township to retain a third-party expert to ensure that a development is meeting certain standards when constructed such as noise, glare, and shadow flicker.
- 4. Ordinance Enforcement Escrow:** Monies that would be deposited in escrow with a township that would remain through the life of a project so a township can investigate any complaints related to ordinance violations with a third-party expert (e.g., a sound consultant).



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## 6. What are some tips to engage stakeholders?

1. Ideally, start the ordinance drafting process before a developer is considering a project in your community.
2. Appoint individuals with different ideas on a township planning commission to hear input that may be brought from the community.
3. Perhaps hold a joint work-session with the township board and planning commission to review materials and initially discuss solar and wind ordinances.
4. Try to be as transparent as you can with ordinances you are considering.
5. Impose a moratorium while studying the issue/drafting an ordinance.
6. If you are thinking of drafting a survey, consider doing research to ensure that results are representative of your township as a whole.



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## 7. Where can we get objective information for ordinance drafting?



- Because both solar and wind ordinances can sometimes become politicized with advocates on both sides (both pro and anti), a township may have a difficult time finding objective information for ordinance drafting. Here are some ideas to find objective information:
  - FSRB Ordinance Drafting E-Letters
    - Solar (2017) - <https://fisher.wisc.edu/2017/02/23/does-your-township-need-a-solar-ordinance/>
    - Wind (2015) - <https://fisher.wisc.edu/2015/05/28/how-to-regulate-wind-energy-projects/>
  - Academic Planning and Zoning
    - Michigan State University Extension - Planning
    - University of Michigan - Graham Sustainability Institute
  - Technical Information (e.g., how to regulate/measure noise)
    - They want to consult with a subject matter expert such as a planner or engineering firm with experience with such projects.
  - Ask other elected officials with (and without) projects in their jurisdiction
  - It's not easy to find what is appropriate for your community



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## 8. (Bonus) How can our township regulate "personal" wind turbines and solar panels?

- There are various ways, but generally such uses are permitted as an accessory use to principal uses in a township (e.g., a farm or residence).
- As accessory uses, remember that a township is unlikely to draft regulations requiring ordinance enforcement escrows (or other related issues) as it may for utility-scale projects.
- Thus, you should consider mitigating the "nuisance" impacts (sound, shadow flicker, glare, etc.) through ordinary means such as setbacks and potential site plan review performed administratively by a zoning administrator.



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## Our Ordinance Drafting Resources



- Does Your Township Need a Solar Ordinance? (2017 E-Letter)**
  - Discusses how to draft a solar ordinance.
  - <http://fsbriaw.com/2017/09/29/does-your-township-need-a-solar-ordinance/>
- How to Regulate Wind Energy Projects (2015 E-Letter)**
  - Discusses how to draft a wind energy ordinance.
  - <http://fsbriaw.com/2015/05/29/how-to-regulate-wind-energy-projects/>
- Renewable Energy Projects – Getting Past Go (2021 E-Letter)**
  - This E-letter discusses important issues for how to consider a project, assuming a township has an ordinance in place.
  - <https://fsbriaw.com/2021/02/26/renewable-energy-projects-getting-past-go/>
  - These include:
    - Retaining experts
    - Evaluating township conflicts of interest
    - Special land use permit and site plan review
    - Ensuring compliance with ordinance provisions



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## Questions



Kyle O'Meara and Matthew Kuschel  
Fahey Schulz Burzych Rhodes PLC  
4151 Okemos Rd., Okemos, MI 48864  
Tel: 517-381-0100  
[komeara@fsbriaw.com](mailto:komeara@fsbriaw.com)  
[mkuschel@fsbriaw.com](mailto:mkuschel@fsbriaw.com)  
[www.fsbriaw.com](http://www.fsbriaw.com)

The presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation. Please contact an attorney if you need assistance related to a specific legal issue.



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**Dave Hamann**

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**From:** John Enos <jenos@cwaplan.com>  
**Sent:** Tuesday, May 22, 2018 4:14 PM  
**To:** Dave Hamann  
**Subject:** Solar

Dave

We recently wrote some language for Berlin Township. You can find it on Muni-Code site. Below is language I clipped out that you could attach to the use as an accessory structure/use until we draft our own.

• (c)

*Ground-mounted solar energy collector requirements.* A single, ground-mounted solar energy collector may be permitted as an accessory use in the AG, I-1, or I-2 zoning districts only, and subject to the following requirements:

(1)

Single ground-mounted solar energy collectors may be located in the rear yard and the side yard, but must meet the required side and rear yard setbacks of the district in which they are located.

(2)

Ground-mounted solar energy collectors shall not exceed fifteen (15) feet in height, measured from the ground at the base of such equipment.

(3)

Ground-mounted solar energy collectors shall be permanently and safely attached to the ground. Proof of the safety and reliability of the means of such attachment shall be submitted to the township and shall be subject to the building official's approval.

(4)

Ground-mounted solar energy collectors shall be installed, maintained, and used only in accordance with the manufacturer's directions. A copy of such directions shall be submitted with the building permit application.

(5)

The exterior surfaces of ground-mounted solar energy collectors shall be neutral in color and substantially non-reflective of light.

(6)

Ground-mounted solar energy collectors, and the installation and use thereof, shall comply with the township construction code, the electrical code and other applicable township construction codes.

John L. Enos, AICP  
Principal  
117 North First Street  
Suite 70

# NOTICE OF ADOPTION PUTNAM TOWNSHIP, LIVINGSTON COUNTY, MICHIGAN

## Amendments to Putnam Township Code of Ordinances

Pursuant to the Michigan Zoning Enabling Act, Michigan Public Act 110 of 2006, as amended, Ordinance Z-92 regulating the development and use of land has been adopted by the Putnam Township Board, Livingston County, Michigan which amends Chapter 340 Article III General Provisions, Article V A-O Agricultural/Open Space District and Article XIII Special Land Uses of the Putnam Township Code of Ordinances, as summarized below:

### Chapter 340-39 Alternative energy systems

#### Part I: Wind energy conversion systems. (Current 340-39 A-H to remain as-is)

#### Part II: Solar energy systems.

A. Purpose. This section establishes requirements and procedures by which the installation and operation of an on-site solar energy system shall be governed within Putnam Township.

B. Definitions.

C. General Requirements.

D. Private Solar Energy Systems.

1) Private Solar Energy System BIVPs. Private Solar Energy System BIVPs shall be permitted in all zoning districts, provided such BIVPs conform to applicable County, State and Federal regulations and safety requirements, including the Michigan Building Code. A Putnam Township Zoning Compliance Permit and Livingston County Building Permit shall be required for the installation of any BIVPs.

2) Roof or Building Mounted Private Solar Energy Systems. Roof or building mounted Private Solar Energy Systems shall be considered an accessory use in all zoning districts and are subject to additional requirements.

3) Ground Mounted Private Solar Energy Systems. Ground mounted Private Solar Energy Systems shall be considered an accessory use in all zoning districts and are subject to additional requirements.

E. Commercial Solar Energy Systems. Commercial Solar Energy Systems shall only be allowed in the A-O Agricultural/Open Space zoning district as a Special Land Use approved by the Planning Commission and the Township Board. In addition to any other requirements for Special Land Use approval, Commercial Solar Energy Systems shall be ground mounted and are subject to additional requirements.

### Chapter 340-47 Table of uses

<b>Table 5: Table of Uses – A-O District</b>	<b>A-O</b>
Commercial solar energy systems	SLU

### Chapter 340-145.2 Commercial solar energy systems

Please refer to Section 340-39, Part II, Paragraph E for specific use requirements.

This amendment to the Putnam Township Code of Ordinances is hereby declared adopted by the Putnam Township Board at a meeting held on the 16th day of May, 2018 and ordered to be given publication in accordance with the statutes made and provided. This Code of Ordinances amendment shall take effect and shall be in force from and after seven (7) days after publication.

PUTNAM TOWNSHIP BOARD  
Sally D. Guyon, CMC, CMMC  
Putnam Township Clerk

Arrangements to inspect or purchase the full text of the amendment may be made by contacting the Putnam Township Clerk at 3280 West M-36, Pinckney, MI 48169, or by telephone at (734) 878-3131 during normal business hours.

(05-23-2018 DAILY 342714)

Tony said he was not going to be honored alone while his father, part of a generation of Vietnam veterans who weren't honored when they came home, stood by.

Instead, the two, who were in the 7th Army Battalion during service in Europe, 31 years apart, were honored together at Tony's Brighton home.

In remarks at the ceremony, Tony and state Sen. Joe Hune pointed to the poor treatment Vietnam vets received upon their return from service more than 40 years ago.

"On behalf of our citizens, I say, 'I'm sorry,'" Hune said as he recognized the elder Lollo. "We are a few generations late in saying thank you."

He also expressed his gratitude to Tony, saying, "Thank you for your service, honor and valor, and for the sacrifice of your



Marco Lollo and son Anthony were honored with Sen. Joe Hune at Anthony's Brighton home.

family, we appreciate your service."

Marco, 69, the son of a World War II veteran, laughed when he said it wasn't a big decision to join the Army. He came up No. 8 in the draft lottery, so he enlisted in 1970. He was assigned to the 165th aviation group in Europe and, as a Mohawk plane crew chief, flew recon missions in Vietnam from 1971-72.

His family and friends fully accepted and welcomed him home, unlike some other Vietnam veterans, he said. He worked for Ford for a short time after leaving the service before founding his own business, which he still runs, Mar-Lo Trucking and Excavation.

The Howell resident has been married to his wife, Sharon, for 39 years. Tony is the oldest of their three children.

When asked what motivated him to join the military, Tony responded, "It runs in the family, and I was a terrible student."

His dad laughs. "Tony has a brilliant mind, he's very intelligent, but he doesn't go down the middle of the road," Marco said.

Tony joined the Army in late 1997 and was assigned as a scout in 1999 with the 3rd Brigade in the 101st Airborne Division, which deployed in support of the United Nations mission in Kosovo. In November 2000, he was reassigned to the 7th Army Battalion in Europe, and he was in Germany during the Sept. 11 terrorist attacks. His company oversaw rifle and light machine gun training for 20,000 re-

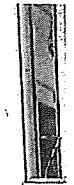
### CITY OF BRIGHTON CITY COUNCIL MEETING SYNOPSIS May 17, 2018

The Study Session and Regular Meeting of the Brighton City Council were held on Thursday, May 17, 2018 at 6:30 p.m. at the City of Brighton City Hall, 200 N. First Street, Brighton, Michigan 48116. Members present: Bohn, Emaus, Gardner, Muzzin, Pipoly, Pettengill, and Tobbe. The following actions were taken during the Regular Meeting:

Approval of the minutes from the Budget Sessions of April, 10, 12, and 17, 2018 and minutes from the Study Session and Regular Meetings of April 19, 2018, approval to rescind resolutions 17-28, 17-29, 17-30, and 17-31 previously approved during the November 2, 2017 City Council Meeting for alcohol sales by Dan Cheresko of Cheresko Development, LLC, D/B/A, Main St. Steak House Located at 317 W. Main St. and Wynwood's Located at 311 W. Main St. in the City of Brighton, approval of alcohol sales by Dan Cheresko of Main St. Steak House, Inc., D/B/A, Main St. Steak House Located at 317 W. Main St/ and Wynwood's, Inc., D/B/A Wynwood's Located at 311 W. Main Street, Brighton, approval of the release of funds to A Taste of Brighton, and approval to award the bid for the N. Second Street Road and Utility Improvements to Fonson Company for unit pricing in the total amount of \$2,195,085.13 with a ten percent construction contingency. The adopting the Proposed Fiscal Year 2018/2019 Fee Schedule was tabled. The meeting was adjourned at 8:46 p.m.

TARA BROWN  
CITY CLERK

(05-23-2018 DAILY 342791)



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## Dave Hamann

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**From:** Bob Hanvey <supervisor@mariontownship.com>  
**Sent:** Thursday, November 08, 2018 11:17 AM  
**To:** Dave Hamann  
**Subject:** FW: Something is standing in the way of solar power in Michigan - but you can help

Hi Dave – should this go to the PC?  
Bob Hanvey

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**From:** Nicole Pomish, Michigan Environmental Council [mailto:[nicole@environmentalcouncil.org](mailto:nicole@environmentalcouncil.org)]  
**Sent:** Thursday, November 08, 2018 9:01 AM  
**To:** Bob Hanvey <supervisor@mariontownship.com>  
**Subject:** Something is standing in the way of solar power in Michigan - but you can help



Bob --

More and more Michigan home and business owners are tapping into the benefits of solar energy, which includes saving money on energy bills, boosting local solar jobs, and contributing to cleaner air. With these benefits and solar power technology getting cheaper every day, it's no wonder that small-scale and rooftop solar installations increased by 28 percent in Michigan last year. The trend is clear: Michiganders want access to solar energy. Unfortunately, our patchwork tax laws are holding us back.

Michigan currently has an uneven property taxation system when it comes to small-scale solar. For example, in some Michigan communities, residents see property tax increases when they install rooftop solar while others do not. This confusion and ambiguity is not necessary.

That is why we are urging Michigan state senators to vote yes on House Bills 5143 and 5860. Together, these bills would eliminate uncertainty by ensuring Michigan applies the same system of taxation for small-scale solar across the state and clarifying that existing tax exemptions apply to these installations. They would also ensure that a homeowner who installs solar would not be hit with a big property tax increase.

The bills will be coming up for a vote soon in the Michigan Senate and we are working to make sure they pass. But we need your help.

**Tell your state senator you support tax relief for small-scale solar.**  
**Click here to sign on to our petition**

The tax laws of Michigan need to catch up with the demands of the public, our need for more renewable energy, and the pace of technological development. In order to make solar energy accessible to everyone, our patchwork taxation system for small scale solar needs to be changed. Sign on to our petition to urge your state senator to vote yes on HB 5143 and HB 5680.

Sincerely,

Kate Madigan  
Energy and Climate Specialist  
Michigan Environmental Council

Charlotte Jameson  
Energy Policy and Legislative Affairs  
Director  
Michigan Environmental Council

Director  
Michigan Climate Action Network



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Michigan Environmental Council  
602 W. Ionia Street, Lansing, MI 48933  
517-487-9539 | [environmentalcouncil.org](http://environmentalcouncil.org)



This email was sent to [supervisor@mariontownship.com](mailto:supervisor@mariontownship.com). To stop receiving emails from us, [click here](#).

Last month, Walden became the first town in Colorado to try to reduce energy consumption by going solar on water. The town installed a rack of panels—called floating solar photovoltaic—on ponds operated by the water treatment plant.

Walden is the seat of Jackson County government, which also supports North Park School District facilities on top of its own.

The idea of implementing floating solar was identified as a budget-neutral efficiency measure in the town's June 2017 audit by Ireland-based tech company Johnson Controls. The company is an approved vendor of the Colorado Energy Office and performs energy audits for local governments across the state.

“This is a monumental project for our town and will help to further our reputation as a leader in sustainability,” said Mayor Jim Dustin in the announcement. “This project is a testament of what can be achieved with a little bit of sun, multiple state agencies and private industries working together for one common goal—and provides a great example for other towns across the state and country to emulate.”

The town's water treatment facility is the largest energy-producing facility and provided the perfect location for a voltaic. Roof space was limited, but grey water ponds offered a space for floating solar.

What's more, the floating voltaic has water quality benefits—decreasing evaporation and preventing algae growth.

In total, the project costed \$400,000 including the audit, but Walden secured a \$200,000 grant from the Colorado Department of Local Affairs. The rest of the money will be covered through energy savings, an estimated 2.5 million kilowatt hours a year for 20 years.

Johnson Controls is eyeing similar projects across the state moving forward.

“I think Colorado has a strong potential for floating solar because of the vast surface water reservoirs ... owned by irrigation districts ... that would be able to use that water on site,” Rowena Adams, Performance Infrastructure account executive at Johnson Controls, told *Route Fifty*.