

Norvell Township Planning Commission

May 15, 2024, 6:00 p.m.

Regular Meeting

1. Call to order
2. Pledge
3. Roll Call
4. Approval of Agenda (Action)
5. Approval of the April Meeting Minutes (Action)
6. Public Comment - Limit to 3 Minutes
7. Township Board Rep Report
8. Zoning Admin Report
9. ZBA Rep Report
10. Committee Reports
11. Unfinished Business
 - A. Master Plan Update - Timeline (Discussion)
 - B. Solar Ordinance Update - non-commercial ordinance (Discussion)
12. New Business
13. Public Comment - Limit to 3 Minutes
14. Commissioners Comments
15. Adjournment (Action)

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NORVELL TOWNSHIP PLANNING COMMISSION

APRIL 17, 2024, MEETING MINUTES

Meeting held in person at the Township Hall

CALL TO ORDER 6:00 PM

PLEDGE OF ALLEGIANCE

ROLL CALL/VERIFICATION OF A QUORUM (Attendees are listed)

Monika Cook – Commissioner/Chair, **Russell Grimes** – Secretary, **Andrew Haystead**– Township Board Rep, **Amelia Kukla** – Commissioner, **Lynn Waldecker** – Commissioner, **Geoffrey Cripe** – Commissioner

Guest(s) – W. Appleyard, P. Turner, J. Dugan, L. Dugan, S. Kay, B.Sutherland

APPROVAL OF AGENDA

Motion by A. Kukla to approve the regular meeting minutes, 2nd by L. Waldecker. No discussion. Motion Carried

APPROVAL OF March 2024 MEETING MINUTES

Motion by A. Kukla to approve the regular meeting minutes, 2nd by R. Grimes minor minutes discussion. Motion Carried

BOARD REPRESENTATIVE REPORT

- A. Haystead provided electronic and hardcopy report to planning commission. Additional verbal discussion/clarification to meeting attendees.

ZONING ADMINISTRATOR REPORT

- No report

ZBA REPRESENTATIVE REPORT

- Next meeting is on June 5th.

COMMITTEE REPORTS

- No committee reports at this time.

UNFINISHED BUSINESS

- 11a – Master Plan discussion - The Township draft Master Plan that was discussed at the February meeting was forwarded to the Township Board. Currently in the 63 day waiting period.
- 11b – Solar Ordinance Discussion – Need to discuss development of a non-commercial ordinance.

NEW BUSINESS

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- B. Sutherland reviewed and summarized the 2024 CIP plan. He presented a slideshow report for the various items that were in previous plans and potential items to be included in the 2024 Plan.
- The Planning Commission ranked the CIP various items:
 - 1) Ahrens Park improvements
 - 2) Norvell Cemetery improvements
 - 3) 300 Mill Road electronic sign
 - 4) Wamplers Lake Sewer
 - 5) Vinyard Lake Sewer

PUBLIC/COMMISSIONERS COMMENTS

- P. Turner discussed his property in the area Austin and Case. Additionally discussed the Leoni wastewater sewer capacity and how it affects local communities (Napoleon, Grass Lake, Columbia) and additionally how it could affect Norvell Township.

ADJOURNMENT – 6:48 PM

- Motion by R. Grimes to adjourn, 2nd by L. Waldecker. No discussion. Motion Carried.

Next meeting May 15th, 2024 (6:00pm in township hall)

Respectfully submitted by R. Grimes, Secretary

Memo

Norvell Township

To: Norvell Township Planning Commission

From: Trustee Haystead

Date: Monday, May 13th, 2024

Re: May Norvell Township board report

Items covered at the May 8th, 2024, Norvell Township Board Special meeting:

Old Business:

Interview of Applicants for Zoning Administrator/Code Enforcement Officer. Bryan Powers, Dan Goerke, and Jay Truchan. Mr. Powers withdrew his application as he could not commit to having in-office hours.

New Business:

Covered under Voted on agenda items.

Voted on agenda items:

Hiring of Zoning Administrator/Code Enforcement Officer. It was proposed to hire Jay Truchan for the position. Approved 5-0

Pay of \$30 hr. with maximum of 20 hrs. weekly for the ZA/CEO. Approved 5-0

Purchasing of a cell phone for the ZA/CEO. This adds \$39.99 to the current township cell plan. Approved 5-0

Purchasing of new computer for the ZA/CEO at a cost up to \$3,250. Approved 5-0

Training for the ZA/CEO at a cost up to \$1,500. Approved 5-0

Resolution 2024-03, township's release of right of first refusal for tax foreclosed property. Approved 5-0

Parking lot paving and sidewalks for the 300 Mill Rd., at a cost up to \$40,000. Approved 5-0

Moving the network to 300 Mill Rd., at a cost up to \$2,200. Approved 5-0

New phones and installation at 300 Mill Rd., at a cost up to \$4,000. Approved 5-0

Security cameras and installation at 300 Mill Rd., at a cost up to \$3,100. Approved 5-0

Budget Amendments for 3rd. quarter. Approved 5-0

Discussed agenda items:

Update to Municipal Civil Infraction Ordinance Policies and Procedures. Updating was not needed as ZA/CEO powers are already included in the policy.

Public comment:

This report is provided by the Norvell township board representative as an account of the topics and discussions of the Norvell township planning commission meeting. This report is not meant to be interpreted as official Norvell township planning commission meeting minutes.

Memo

Norvell Township

To: Norvell Township Planning Commission

From: Trustee Haystead

Date: Monday, May 13th, 2024

Re: May Norvell Township board special meeting report

Items covered at the May 1st , 2024, Norvell Township Board Special meeting:

Old Business:

New Business:

Interview of applicant for Zoning Administrator/Code Enforcement Officer. The board decided to invite all applicants to the regular board meeting for interviews.

Opening of the sealed bid(s) for the 300 Mill Rd. parking lot. Only 1 bid from M-R Builders was received at the time of the special meeting. A cost of \$32,852.92 was proposed.

Discussion of 2024-25 budget.

Voted on agenda items:

Discussed agenda items:

None

Public comment:

This report is provided by the Norvell township board representative as an account of the topics and discussions of the Norvell township planning commission meeting. This report is not meant to be interpreted as official Norvell township planning commission meeting minutes.

NORVELL TOWNSHIP

ORDINANCE NO. _____

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

The Township of Norvell ordains:

Section 1: Amendment to the Norvell Township Zoning Ordinance

This zoning text amendments will amend the Norvell Township Zoning Ordinance as detailed below:

ARTICLE II DEFINITIONS

Re-label the entire definition section to follow section numbers as detailed below.

Section 2.2 Definitions B

Battery bank: The joining of two or more batteries together into a system for the storage of energy for use during off generation times.

Section 2.19 Definitions S

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.

Solar Energy System, 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 or more. Excluding trial periods (leasing).

Solar Energy Systems, Building Integrated Photovoltaics: A Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.

Solar Energy System, Commercial: 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.

Solar Energy System, Ground Mounted: 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.

Solar Energy System, Private: 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.

Solar Energy System, Roof or Building Mounted: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building, but excluding BIVPs.

ARTICLE IV — ZONING DISTRICT REGULATIONS

Adds Solar Energy Systems, Private as permitted uses allowed to the all zoning districts and Solar Energy Systems, Commercial as conditional uses allowed to the agricultural zoning district. [The amendments read as follows:](#)

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Section 4.1 AG-1 Agricultural District.

b. Permitted Uses:

13. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

c. Conditional Uses

23. Commercial Solar Energy Systems in accordance with Article VI, Section 6.7(CC).

Section 4.2 RS-1 Single-Family Suburban Residential District 1.

b. Permitted Uses:

5. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.2.5 RS-2 Single-Family Suburban Residential District 2.

b. Permitted Uses:

6. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.3 RL-1 Single-Family Lake Residential District 1.

b. Permitted Uses:

6. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.3.5 RL-2 Single-Family Lake Residential District

b. Permitted Uses:

6. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.4 RM-1 Multiple Family Residential District

b. Permitted Uses:

8. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.5 MH-1 Mobile Home Residential District

b. Permitted Uses:

8. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.6 C-1 Local Commercial District 1

b. Permitted Uses:

- 8. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.7 C-2 General Commercial District 2

b. Permitted Uses:

- 15. Private Solar Energy Systems in accordance with Article VIII, Section 8.29.

Section 4.8 1-1 Light Industrial District

b. Permitted Uses:

- 15. Private Solar Energy Systems except Ground Mounted in accordance with Article VIII, Section 8.29.

Article VI. Conditional Uses

Section 6.7 Additional Development Requirements for Certain Uses

CC. Solar Energy Systems, Commercial

In addition to the requirements under section 8.29 (A), Commercial Solar Energy Systems must meet the following requirements.

1. *System and Location Requirements.*

- a. Commercial Solar Energy Systems must be ground mounted.
- b. Commercial Solar Energy Systems are not permitted on any properties smaller than seventy five (75) acres.
- 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 from any front property line, property line with road frontage, or any public or private road right-of-way a minimum of 200 feet and must be a minimum of 100 feet from all other property lines. 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 above the ground 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.

2. *Lot Area Coverage.* No more than 40% of the total lot area may be covered by a Commercial Solar Energy System. Multiple egress points to the property must be provided and clearly documented on the site plan.
3. *Site Usage.* Dual use of the site is highly encouraged. This could include but is not limited to farming on the portion of the lot not covered by the Commercial Solar Energy System or livestock grazing, pollinator gardens, or installation of beehives on the portion of the site with the 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.* 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 screening 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 landscape screening, a decorative fence that is at least 50% opaque and that meets the fence requirements of this Ordinance may be used if approved by the Planning Commission. Fencing and landscaping can be used in conjunction with each other to reduce the landscaping required to screen the project.
6. *Lighting.*
 - a. Lighting of the Commercial Solar Energy System is limited to the minimum light necessary for safe operation.
 - b. Except where used for security purposes, all outdoor lighting shall be turned off between 10:00 p.m. and sunrise, except when necessary for repair or emergency access to the Commercial Solar Energy Systems that is needed after 10:00 p.m. but only for so long as such light is necessary. Lighting proposed for security purposes are encouraged to use a motion detection device which is directed to detect motion within the property.
 - c. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Commercial Solar Energy System.
7. *Glare.* The Commercial Solar Energy System must minimize glare, to the greatest extent possible, which is visible off site including but not limited to, persons on neighboring lots or persons traveling on public or private roads.
8. *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.
9. *Noise.* The noise generated by a Commercial Solar Energy System must not exceed the forty (40) Db_a L_{max}, as measured at the property lines of the project boundary. In addition to these limitations, if an inverter is located on the exterior perimeter of the commercial

solar energy system and is not surrounded by solar panels on an interior portion of the project, a solid decorative masonry wall or an evergreen tree berm, with trees spaced not less than 10 feet apart, must be constructed to reduce noise levels surrounding the inverters. The berm must be no more than ten (10) feet from the inverters, must be at least as tall as the inverters but not more than three (3) feet taller than the height of the inverters.

10. *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 a battery bank is used as part of the Ground Mounted Solar Energy System, they must be placed in a secured container or enclosure. The owner/operator must also supply a containment and an emergency spill plan as part of the hazardous waste plan to be reviewed by the local Fire Department.
11. *Grading.* Minimal changes to site's topography is recommended for any civil site improvements.
12. *Drain Tile Inspections.* [Once operational](#), 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 four years by means of robotic camera, with the first inspection occurring before the Commercial Solar Energy System is in operation. The proof of the inspection shall be included in every other bi-annual report provided 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.
13. *Insurance.* The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount determined by the Township Board as part of the fee schedule.
14. *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 returned to previous condition. This includes removal of all equipment and planting of vegetation.
15. *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 financial security shall be reviewed in the bi-annual report provided to the Township to ensure that the amount remains

adequate. This financial security must be posted within fifteen (15) business days after approval of the conditional land use application.

16. *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.
17. *Bi-Annual Report.* The applicant or operator must submit a report on or before January 1 every 2 years that includes all the following:
 - a. Current proof of insurance;
 - b. Inspection reports of all drain tile at least once every other report by means of robotic camera,
 - c. Review and agreement by the Township and the Owner that the amount of the financial security to ensure property decommissioning of the system remains adequate; and
 - d. A summary of all complaints, complaint resolutions, and extraordinary events.
18. *Inspections.* The Township may inspect a Commercial Solar Energy System at any time by providing 24 hours advance notice to the applicant or operator.
19. *Transferability.* A conditional use permit for a Commercial Solar Energy System is transferable to a new owner or subsidiary of the original 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. If an owner changes its legal name, it must notify the Township.
20. *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 conditional 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.
21. *Application Requirements.* In addition to the requirements for conditional land use permit under this Article and the site plan review and approval under Article VII, The applicant for a Commercial Solar Energy System must provide the Township with all of the following for review and approval:
 - a. Application fee.
 - b. A list of all parcel numbers that will be used by the Commercial Social 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. In addition to the requirement under section 7.5 of the zoning ordinance a site plan application for a commercial solar energy system shall include the following additional information:
 - An aerial map of the area showing the parcel and all parcels within 200 feet of the subject site. This map should also include the dimensions from the property line to the closest adjacent structure and the existing use of the surrounding properties.
 - All proposed structures, panels, equipment, transformers, and substations with sizes and dimensions to the property lines shall be shown on the site plan.
 - All signage, fences, landscaping, greenbelts, screening, drain tiles, easements, floodplains, bodies of water, grading plan, proposed access routes, and road right of ways shall be shown on the site plan.
 - A plan indicates how the Commercial Solar Energy System will be connected to the power grid.
- e. 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.
- f. A written maintenance plan for the use and the subject property. This plan shall include but not be limited to a description of the processes necessary for maintaining the drain tiles and storm water management, equipment and building, landscaping and vegetation, and access points, driveways and roadways.
- g. A decommissioning and land reclamation plan. This plan shall describe the actions necessary following the abandonment or discontinuation of the Commercial Solar Energy System, including but not limited to, 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 back to original condition.
- h. Documentation of the financial security needed to meet the requirements of this Section.
- i. A glare study that provides analysis of the potential glare as viewed from the adjacent parcels, the roadway and other areas where potential glare may be a concern.
- j. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Commercial Solar Energy System. At a minimum the plan shall include the following:
 - The name and phone number of the contact person that is responsible for resolving the complaints.

- The process necessary to file a complaint.
 - A time requirement to address the complaint.
 - A process for compliant resolution.
- k. A plan for managing hazardous waste.
- l. A construction management plan. This plan shall include any phasing of the project and timeframes, a transportation plan for the construction and operation phases of the project. Attached to this plan will be any applicable agreements with federal, state or local agencies such as the County Health Department, County Road Commission and Michigan Department of Transportation.
- m. A legal agreement in the format acceptable to the Township 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.
- n. Proof of environmental compliance, including but not limited to; 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.

ARTICLE VIII — SUPPLEMENTAL REGULATIONS

Section 8.29 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 but not limited to applicable building codes and applicable industry standards.
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. If a Solar Energy System has been abandoned, the property owner must remove the system within one (1) year.

B. Private Solar Energy Systems.

1. Private Solar Energy System BIVPs. Private Solar Energy System BIVPs are permitted in all zoning districts.
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 or extend more than two (2) feet above the surface of the roof, except on a flat roof where the solar energy system may project 5 feet above the roof.
 - b. Solar Energy Systems erected on roof shall not be at a height greater than the maximum structure height of the zoning district in which it is located.
 - c. 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.
 - d. 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.
3. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are allowed in all zoning district as an accessory use, subject to the following requirements:
 - a. A Ground Mounted Private Solar Energy System must not exceed fifteen (15) feet above the ground when oriented at maximum tilt.
 - b. A property where a Ground Mounted Private Solar Energy System is located must have a minimum lot size of one acre.
 - c. A Ground Mounted Private Solar Energy System must not exceed the maximum size of 1,500 square feet on lots between 1 and 10 acres and must not exceed 3,000 square feet on lots 10 acres or larger.
 - d. A Ground Mounted Private Solar Energy Systems must meet the required setbacks for a primary structure of the zoning district in which it is located. On lots under 10 acres a Ground Mounted Private Solar Energy System must be located in the rear or side yard. On lots greater than 10 acres a Ground Mounted Private Solar Energy System may be located in the front yard as long as the Ground Mounted Private Solar Energy System is a minimum of 200 feet from a property line with street frontage.

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- e. 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 to provide for containment in case of leak.
- f. Screening is required between any Ground Mounted Private Solar Energy System and any adjacent property or roadway. The screening 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 maturity, landscaping shall be planted with a minimum spacing of 10 feet between trees and 5 feet between shrubs. The landscape trees and shrubs can be planted in an off-set pattern to appear more naturally occurring. Existing landscaping can be used to provide the screening required. In lieu of a landscape screening, a decorative fence that is at least 50% opaque and that meets the fence requirements of this Ordinance may be used to provide screening. Approval of the screening plan by the zoning administrator is required prior to issuance of the zoning compliance permit.
- g. The lot coverage requirements of the zoning district in which the Solar Energy System is located must be met.
- h. The exterior surfaces of a Ground Mounted Private Solar Energy System must be generally neutral in color and substantially non-reflective of light.

ARTICLE X ADMINISTRATION OF THE ORDINANCE

Section 10.6 Voiding of a Zoning Compliance Permit or Certificate or Occupancy

Any zoning compliance permit or certificate of occupancy granted under this Ordinance shall become null and void if such use, buildings, or structure for which said permit or certificate was issued is found by the Building Inspector to be in violation of this Ordinance. The Building Inspector upon finding such violation shall immediately notify the property owner and the Township Board of said violation and voiding of the zoning compliance permit or certificate of occupancy.

Section 2. Effective Date.

This Ordinance takes effect seven (7) days after the notice of adoption was publication as provided by law.

[86975:00001:7477152-1](#)



Phone: (517) 536-4370

106 E. Commercial Drive
Norvell, MI 49263

To: Planning Commission
From: Scott Pacheco, AICP: SP Urban Planning Services
Date: November 15, 2023
Agenda Item: —
Subject: Solar Energy System Zoning Text Amendment

Project Description:

This Zoning Text Amendment will address large-scale commercial and smaller-scale private solar energy systems within the Township.

The Planning Commission has been diligently working on this ordinance amendment since the spring of 2023. The PC created a subcommittee that drafted the amendments, and at the public meeting of the Planning Commission on October 18, 2023, the commissioners discussed the draft amendment, proposed minor changes, and directed the staff to notify the public about the draft Zoning Text Amendment for a future public hearing.

Since the October 18, 2023, PC meeting, the staff has incorporated the suggested changes into the draft amendment. Additionally, the draft amendment has undergone a review by the township attorney, and the township has received an email from a member of the public with some suggested changes to the draft amendment.

Planning Commission:

The minor change recommended by the Planning Commission at the October PC meeting is as follows:

Under Article VIII Supplemental Regulations, Section 8.29 Solar Energy Systems, items "a" and "d" should be combined into a single regulation for Roof or Building Mounted Private Solar Energy Systems.

This change has been made and is highlighted in purple on page 9 of the draft zoning text amendment.

Township Attorney:

The attorney made some minor changes to the draft amendment, which are indicated in blue throughout the draft zoning text amendment.

Public Correspondence:

The township also received an email from a ZBA member with recommendations on the draft ordinance. The recommendations are listed in **bold** below followed by staff comment:

1) under Article IV first paragraph change "conditions" to "conditional"

This is a typo to the introduction to the proposed changes and has been made.

2) under Article VI 1. c. The State has made an allowance to allow for solar, although it pauses the program for that land. (See attached)

I have attached the Michigan Department of Agriculture and Rural Development Policy for Allowing Commercial Solar Panel Development on PA 116 Lands (attached). The policy from the MDARD is to allow commercial solar facilities on lands with the PA 116 designation if allowed by the local municipality. The PA 116 tax credits are suspended during the period beginning at the time of solar facility's construction and extends until all commercial solar panels and appurtenant structures are removed from the property.

I would suggest removing the regulations under Article VI. Conditional Uses, Section 6.7 Additional Development Requirements for Certain Uses, CC. Solar Energy Systems, Commercial, 1.System and Location Requirements, item C (below) and allow the state to regulate this item.

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

This regulation was sent to the attorney for review and specifically request to address and they stated that this regulation is appropriate if the township wanted to require this item and it would be legally defensible.

I have not removed this regulations from the draft amendment (Exhibit A) but the Planning Commission can consider this item at the November 15, 2023 public hearing.

3) Under Article VI 3. Site usage, limits agriculture to only the land not covered by the CSES. Grazing of sheep is often done under the panels and some actually can grow vegetables that you remove ""on the portions of the lot not covered by the CSES" and add vegetable gardens.

The section that is being referenced in this comment states the following:

Site Usage. Dual use of the site is highly encouraged. This could include farming on the portion of the lot not covered by the Commercial Solar Energy System or livestock grazing, pollinator gardens, or installation of beehives.

Because the wording of this regulations includes the words "could include" the intent was to provide an example of dual usage on the site, not to be a full list of the duel uses that could be possible on a site. I would suggest the wording be changed to the following:

Site Usage. Dual use of the site is highly encouraged. This could include but is not limited to farming on the portion of the lot not covered by the Commercial Solar Energy System or livestock grazing, pollinator gardens, or installation of beehives on the portion of the site with the Commercial Solar Energy System.

This change has already been made to the draft amendment and is shown in purple in Exhibit A.

4) under Article VI 13. there was some questions about this at the meeting because commissioners thought that the developing company would own the land which is often not the case, during which they actually lease the land, making insurance a wise thing to require.

Staff also requested that the township attorney pay specific attention to this regulations and the township attorney did not have any problems with the regulations.

Insurance. The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount determined by the Township Board as part of the fee schedule.

I also do not believe this requirement is necessary as you do not require this for other uses of the property. Is the reasoning for this requirement to protect township inspectors while they are on the property or to protect a private property owner leasing land to a private company? Either way I do not believe this regulations would be necessary and create additional regulations that the township must oversee.

This regulation has not been removed from the draft amendment (Exhibit A) but the Planning Commission can consider this item at the November 15, 2023 public hearing.

5) under Article VI 21.d first bullet replace "closes" with "closest" and under the last bullet "indicate" should be "indicates"

These grammatical changes have been made to the draft amendment (Exhibit A).

6) Under Article VIII Section 8.29 B. Private Solar Energy Systems 2.d. This is actually covered in the Michigan Residential Code and is therefore redundant. If you choose to keep it in you should add the exception that appears in the MRC (R324.7 Exceptions): "detached garages and accessory structures to one and two family dwellings and townhouses....." The codes requirement is concerned with health and safety and an accessory building is a different class than a residence. Note that I have a barn where the panels cover the entire section of the roof or are the roof.

I do not have a copy of the Michigan Residential Code to verify what regulations and exceptions are stated under section R324.7. I have request that the citizen that provided this information send the entire regulation for review. Article VIII Supplemental Regulations, Section 8.29 Solar Energy Systems, 2 2. Roof or Building Mounted Private Solar Energy Systems item d states:

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.

The comment from the ZBA members states that this regulations is already address in the State Building Code and a requirement to leave a 3 foot strip from the edge of the roof is not required for accessory buildings but there is a requirement for residential structure.

If the state building code already address this item I would also suggest the removal of this regulations from the zoning text amendment.

This regulation has not been removed from the draft amendment (Exhibit A) but the Planning Commission can consider this item at the November 15, 2023 public hearing.

7) under Article VIII Section 8.29B 2.f "Plants and can be staggered". Not sure what is meant by this, you might just remove it.

Article VIII Supplemental Regulations, Section 8.29 Solar Energy Systems, 3. Ground Mounted Private Solar Energy Systems item f states

Screening is required between any Ground Mounted Private Solar Energy System and any adjacent property or roadway. The screening 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 maturity, landscaping shall be planted with a minimum spacing of 10 feet between trees and 5 feet between shrubs and plants can be staggered. Existing landscaping can be used to provide the screening required. In lieu of a landscape screening, a decorative fence that is at least 50% opaque and that meets the fence requirements of this Ordinance may be used to provide screening. Approval of the screening plan by the zoning administrator is required prior to issuance of the zoning compliance permit.

Because this wording may be confusing I would suggest the underlined wording above be changed to state the following:

shrubs. The landscape trees and shrubs can be planted in an off-set pattern to appear more naturally occurring.

This change has already been made to the draft amendment and is shown in purple in Exhibit A.

Planning Commission Zoning Amendment Process

Under Article I, Section 1 the Norvel Township Zoning Ordinance refers to the Michigan Zoning Enabling Act; Act 110 of 2006 regulations in regards to amendments of the zoning regulations.

The Zoning Enabling Act requires that the Planning Commission hold a public hearing to review and provide a recommendation of a zoning text amendment to the Township Board (Legislative Body). After the public hearing the Planning Commission's review and recommendation of the zoning text amendment shall be forwarded to the County Planning Commission (District II) for their review and recommendation. Both recommendations and a summary of the discussion and review shall than be forwarded to the Township Board for a final determination. The Township Board can approve or deny the proposed amendment with or without changes. If the Township

Board approves the amendment with a majority vote, then within 15 days of approval a notice of ordinance adoption shall be published in a newspaper of general circulation. Seven days after the notice is published in the paper the ordinance shall take effect.

Planning Commission Decision

In consideration of the zoning text amendment the Planning Commission should consider if the amendment is in compliance with the Norvell Township Master Plan and if the Zoning Text amendment promotes the health, safety, and welfare of the community and its citizens.

Example Planning Commission Approval Recommendation:

The Planning Commission recommends the approval of the proposed Zoning Text Amendment (ZTA23-___) as presented in Exhibit A. This recommendation is based on the amendment's compliance with the Norvell Township Master Plan and its potential to promote the health, safety, and welfare of the Township and its citizens. The ZTA achieves this by allowing for Solar Energy Systems within the Township, while also implementing new regulations to protect the surrounding properties and the Township's citizens from potential impacts associated with these systems.

Exhibits

Exhibit A: Draft Zoning Text Amendment

Act No. 233
Public Acts of 2023
Approved by the Governor
November 28, 2023
Filed with the Secretary of State
November 29, 2023
EFFECTIVE DATE: November 29, 2024

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Reps. Aiyash, Puri, Brenda Carter, Pohutsky, Rheingans, Hope, O'Neal, Byrnes, Stone, MacDonell, Tsernoglou, Morse, Breen, Martus, Andrews, Steckloff and Wilson

ENROLLED HOUSE BILL No. 5120

AN ACT to amend 2008 PA 295, entitled "An act to require certain providers of electric service to establish and recover costs for renewable energy programs; to require certain providers of electric or natural gas service to establish energy waste reduction programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy waste reduction service companies; to reduce energy waste by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for customer generation and net metering programs and the responsibilities of certain providers of electric service and customers with respect to customer generation and net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service; and to provide for civil sanctions, remedies, and penalties," by amending the title and section 13 (MCL 460.1013), as amended by 2016 PA 342, and by adding part 8.

The People of the State of Michigan enact:

TITLE

An act to require certain providers of electric service to establish and recover costs for renewable energy and clean energy programs; to require certain providers of electric or natural gas service to establish, and recover costs for, energy waste reduction programs; to ensure that costs and savings from renewable energy, clean energy, and energy waste reduction programs are included in the determination of rates; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy waste reduction service companies; to reduce energy waste by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for customer generation and net metering programs and the responsibilities of certain providers of electric service and customers with respect to customer generation and net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service; to authorize certification by this state before the construction of certain wind and solar energy facilities and energy storage facilities; to regulate certain local ordinances; to protect personal property rights; and to provide for civil sanctions, remedies, and penalties.

Sec. 13. As used in this act:

(a) "Site", except as used in part 8, means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway is considered to be contiguous for the purposes of this subdivision.

(b) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

(c) "Utility system resource cost test" means a standard that is met for an investment in energy waste reduction if, on a life cycle basis, using a real societal discount rate based on actual long-term United States Treasury bond yields, the total avoided supply-side costs to the provider, including representative values for electricity or natural gas supply, transmission, distribution, and other associated costs, are greater than the total costs to the provider of administering and delivering the energy waste reduction program, including net costs for any provider incentives paid by customers and capitalized costs recovered under section 89.

(d) "Wind energy conversion system" means a system that uses 1 or more wind turbines to generate electricity and has a nameplate capacity of 100 kilowatts or more.

(e) "Wind energy resource zone" or "wind zone" means an area designated by the commission under section 147.

PART 8.

WIND, SOLAR, AND STORAGE CERTIFICATION

Sec. 221. As used in this part:

(a) "Affected local unit" means a unit of local government in which all or part of a proposed energy facility will be located.

(b) "Aircraft detection lighting system" means a sensor-based system designed to detect aircraft as they approach a wind energy facility and that automatically activates obstruction lights until they are no longer needed.

(c) "Applicant" means an applicant for a certificate.

(d) "Certificate" means a certificate issued for an energy facility under section 226(5).

(e) "Community-based organization" means a workforce development and training organization, labor union, local governmental entity, Michigan federally recognized tribe, environmental advocacy organization, or an organization that represents the interests of underserved communities.

(f) "Compatible renewable energy ordinance" means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.

(g) "Construction" means any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility.

(h) "Dark sky-friendly lighting technology" means a light fixture that is designed to minimize the amount of light that escapes upward into the sky.

(i) "Energy facility" means an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than 1 parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

(j) "Energy storage facility" means a system that absorbs, stores, and discharges electricity. Energy storage facility does not include either of the following:

(i) Fossil fuel storage.

(ii) Power-to-gas storage that directly uses fossil fuel inputs.

(k) "Independent power producer", or "IPP", means a person that is not an electric provider but owns or operates facilities to generate electric power for sale to electric providers, this state, or local units of government.

(l) "Light intensity dimming solution technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.

(m) "Light-mitigating technology system" means an aircraft detection lighting system, a light intensity dimming solution technology, or a comparable solution that reduces the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

(n) “Local unit of government” or “local unit” means a county, township, city, or village.

(o) “Maximum blade tip height” means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height means the actual hub height plus the actual blade length.

(p) “Nameplate capacity” means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

(q) “Nonparticipating property” means a property that is adjacent to an energy facility and that is not a participating property.

(r) “Occupied community building” means a school, place of worship, day-care facility, public library, community center, or other similar building that the applicant knows or reasonably should know is used on a regular basis as a gathering place for community members.

(s) “Participating property” means real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility regardless of whether any part of that energy facility is constructed on the property.

(t) “Person” means an individual, governmental entity authorized by this state, political subdivision of this state, business, proprietorship, firm, partnership, limited partnership, limited liability partnership, co-partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, subchapter S corporation, limited liability company, committee, receiver, estate, trust, or any other legal entity or combination or group of persons acting jointly as a unit.

(u) “Project labor agreement” means a prehire collective bargaining agreement with 1 or more labor organizations that establishes the terms and conditions of employment for a specific construction project and does all of the following:

(i) Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.

(ii) Allows all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.

(iii) Contains guarantees against strikes, lockouts, and similar job disruptions.

(iv) Sets forth the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.

(v) Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.

(vi) Complies with all state and federal laws, rules, and regulations.

(v) “Repowering”, with respect to an energy facility, means replacement of all or substantially all of the energy facility for the purpose of extending its life. Repowering does not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

(w) “Solar energy facility” means a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property. Solar energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures.

(x) “Wind energy facility” means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property. Wind energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

Sec. 222. (1) This part applies to all of the following:

(a) Any solar energy facility with a nameplate capacity of 50 megawatts or more.

(b) Any wind energy facility with a nameplate capacity of 100 megawatts or more.

(c) Any energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more.

(2) Before beginning construction of an energy facility, an electric provider or independent power producer may, pursuant to this part, obtain a certificate for that energy facility from the commission. A local unit of government exercising zoning jurisdiction may request the commission to require an electric provider or independent power producer that proposes to construct an energy facility in that local unit to obtain a certificate for that energy facility from the commission. To obtain a certificate for an energy facility, an electric provider or IPP must comply with the requirements of sections 223 and 224, and then submit to the commission an application as described in section 225.

(3) If the commission has issued a certificate for an energy facility, the electric provider or IPP may make minor changes, as defined by the commission, to the site plan if the changes are within the footprint of the previously approved site plan.

(4) If an energy facility that would otherwise be subject to subsection (2) is located entirely within a city or village, the city or village is exempt from this part as it relates to the energy facility if the city or village is the owner of participating property, is a developer of the facility, or owns an electric utility that will take service from the energy facility.

Sec. 223. (1) An electric provider or independent power producer that, at its option or as required by the commission, proposes to obtain a certificate for and construct an energy facility shall hold a public meeting in each affected local unit. At least 30 days before a meeting, the electric provider or IPP shall notify the clerk of the affected local unit in which a public meeting will be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan as described in section 224 or the address of an internet site where a site plan for the energy facility is available for review. At least 14 days before the meeting, the electric provider or IPP shall publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a comparable digital alternative. The notice shall include a copy of the site plan or the address of an internet site where the site plan is available for review. The commission shall further prescribe the format and content of the notice. For the purposes of this subsection, a public meeting held in a township is considered to be held in each village located within the township.

(2) At least 60 days before a public meeting held under subsection (1), the electric provider or IPP planning to construct an energy facility shall offer in writing to meet with the chief elected official of each affected local unit, or the chief elected official's designee, to discuss the site plan.

(3) If, within 30 days following a meeting described in subsection (2), the chief elected official of each affected local unit notifies the electric provider or IPP planning to construct the energy facility that the affected local unit has a compatible renewable energy ordinance, then the electric provider or IPP shall file for approval with each affected local unit, subject to all of the following:

(a) An application submitted under this subsection shall comply with the requirements of section 225(1), except for section 225(1)(j) and (s). An affected local unit may require other information necessary to determine compliance with the compatible renewable energy ordinance.

(b) A local unit of government with which an application is filed under this subsection shall approve or deny the application within 120 days after receiving the application. The applicant and local unit of government may jointly agree to extend this deadline by up to 120 days.

(c) The electric provider or IPP may submit its application to the commission if any of the following apply:

(i) An affected local unit fails to timely approve or deny an application.

(ii) The application complies with the requirements of section 226(8), but an affected local unit denies the application.

(iii) An affected local unit amends its zoning ordinance after the chief elected official notifies the electric provider or IPP that it has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in section 226(8).

(d) An electric provider or IPP that submits an application to the commission pursuant to this subsection is not required to comply with subsection (1) or section 226(1), or the requirement to submit a summary of community outreach and education efforts pursuant to section 225(1)(j).

(4) If a local unit of government approves an application pursuant to subsection (3), construction of the proposed energy facility must begin within 5 years after the date the permit is granted and any challenges to the grant of the permit are concluded. The local unit of government may extend this timeline at the request of the electric provider or IPP without requiring a new application. The local unit shall not revoke a permit issued under subsection (3) except for material noncompliance with the permit by the electric provider or IPP.

(5) If the commission approves an applicant for a certificate submitted under subsection (3)(c), the local unit of government is considered to no longer have a compatible renewable energy ordinance, unless the commission finds that the local unit of government's denial of the application was reasonably related to the applicant's failure to provide information required by subsection (3)(a).

(6) Nothing in this section shall be construed to limit remedies available to an applicant to appeal a denial by a local unit of government under any other law of this State.

Sec. 224. (1) A site plan required under section 223 or 225 shall meet application filing requirements established by commission rule or order to maintain consistency between applications. The site plan shall include the following:

(a) The location and a description of the energy facility.

(b) A description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity, which may include records of consultation with relevant state, tribal, and federal agencies.

(c) Additional information required by commission rule or order that directly relates to the site plan.

(2) When it submits a site plan required under section 223 or 225 to the commission, an electric provider or independent power producer shall, for informational purposes, submit a copy to the clerk of each affected local unit.

Sec. 225. (1) An application for a certificate submitted to the commission under section 222(2) shall contain all of the following:

(a) The complete name, address, and telephone number of the applicant.

(b) The planned date for the start of construction and the expected duration of construction.

(c) A description of the energy facility, including a site plan as described in section 224.

(d) A description of the expected use of the energy facility.

(e) Expected public benefits of the proposed energy facility.

(f) The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intends to address and mitigate these impacts.

(g) Information on the effects of the proposed energy facility on public health and safety.

(h) A description of the portion of the community where the energy facility will be located.

(i) A statement and reasonable evidence that the proposed energy facility will not commence commercial operation until it complies with applicable state and federal environmental laws, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(j) A summary of the community outreach and education efforts undertaken by the electric provider or independent power producer, including a description of the public meetings and meetings with elected officials under section 223.

(k) Evidence of consultation, before submission of the application, with the department of environment, Great Lakes, and energy and other relevant state and federal agencies before submitting the application, including, but not limited to, the department of natural resources and the department of agriculture and rural development.

(l) The soil and economic survey report under section 60303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.60303, for the county where the proposed energy facility will be located.

(m) Interconnection queue information for the applicable regional transmission organization.

(n) If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why they were not chosen.

(o) If the energy facility is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, a plan to minimize and mitigate that impact. Information in the plan concerning military defense radar is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the commission or the electric provider or independent power producer except pursuant to court order.

(p) A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the electric provider or IPP. The applicant shall make reasonable efforts to consult with the county drain commissioner before submitting the application and shall include evidence of those efforts in its application.

(q) A fire response plan and an emergency response plan.

(r) A decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface facilities and infrastructure that have no ongoing purpose. The decommissioning plan shall include, but is not limited to, financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but excluding cash. The amount of the financial assurance shall not be less than the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning, hired by the applicant. However, the financial assurance may be posted in increments as follows:

(i) At least 25% by the start of full commercial operation.

(ii) At least 50% by the start of the fifth year of commercial operation.

(iii) 100% by the start of the tenth year of commercial operation.

(s) Other information reasonably required by the commission.

(2) Within 60 days after receipt of an application, the commission shall determine whether the application is complete. If the commission determines that the application is incomplete, the commission shall advise the applicant in writing of the information necessary to make the application complete. If the commission fails to timely notify the applicant that an application is incomplete, the application is considered to be complete.

Sec. 226. (1) Upon filing an application with the commission, the applicant shall make a 1-time grant to each affected local unit for an amount determined by the commission but not more than \$75,000.00 per affected local unit and not more than \$150,000.00 in total. Each affected local unit shall 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.

(2) Upon filing an application with the commission, the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the commission. The notice shall be published in a newspaper of general circulation in each affected local unit or a comparable digital alternative. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT _____ FACILITY", with the words "WIND ENERGY", "SOLAR ENERGY", or "ENERGY STORAGE", as applicable, entered in the blank space. The commission shall further prescribe the format and contents of the notice.

(3) The commission shall conduct a proceeding on the application for a certificate as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An affected local unit, participating property owner, or nonparticipating property owner may intervene by right.

(4) The commission may assess reasonable application fees to the applicant to cover the commission's administrative costs in processing the application, including costs for consultants to assist the commission in evaluating issues raised by the application. The commission may retain consultants to assist the commission in evaluating issues raised by the application and may require the applicant to pay the cost of the services.

(5) The commission shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed.

(6) In evaluating the application, the commission shall consider the feasible alternative developed locations described under section 225(1)(n), if applicable, and the impact of the proposed facility on local land use, including the percentage of land within the local unit of government dedicated to energy generation. The commission may condition its grant of the application on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including, but not limited to, the following:

(a) Establishing and maintaining for the life of the facility vegetative ground cover. This subdivision does not apply to an application for an energy facility that is proposed to be located entirely on brownfield land.

(b) Meeting or exceeding pollinator standards throughout the lifetime of the facility, as established by the "Michigan Pollinator Habitat Planning Scorecard for Solar Sites" developed by the Michigan State University Department of Entomology in effect on the effective date of the amendatory act that added this section or any applicable successor standards approved by the commission as reasonable and consistent with the purposes of this subdivision. Seed mix used to establish pollinator plantings shall not include invasive species as identified by the Midwest Invasive Species Information Network, led by researchers at the Michigan State University Department of Entomology and supporting regional partners. This subdivision does not apply to an application for an energy facility that is proposed to be located entirely on brownfield land.

(c) Providing for community improvements in the affected local unit.

(d) Making a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located during construction and operation of the facility.

(7) The commission shall grant the application and issue a certificate if it determines all of the following:

(a) The public benefits of the proposed energy facility justify its construction. For the purposes of this subdivision, public benefits include, but are not limited to, expected tax revenue paid by the energy facility to local taxing districts, payments to owners of participating property, community benefits agreements, local job creation, and any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state. In determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state, the commission may consider approved integrated resource plans under section 6t of 1939 PA 3, MCL 460.6t, renewable energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other proceedings before the commission, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission, as determined relevant by the commission.

(b) The energy facility complies with the standard in section 1705(2) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1705.

(c) The applicant has considered and addressed impacts to the environment and natural resources, including, but not limited to, sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.

(d) The applicant has met the conditions established in section 227.

(e) All of the following apply:

(i) The installation, construction, or construction maintenance of the energy facility will use apprenticeship programs registered and in good standing with the United States Department of Labor under the national apprenticeship act, 29 USC 50 to 50c.

(ii) The workers employed for the construction or construction maintenance of the energy facility will be paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed as determined under 2023 PA 10, MCL 408.1101 to 408.1126, or 40 USC 3141 to 3148, whichever provides the higher wage and fringe benefit rates.

(iii) To the extent permitted by law, the entities performing the construction or construction maintenance work will enter into a project labor agreement or operate under a collective bargaining agreement for the work to be performed.

(f) 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.

(g) The proposed energy facility does not present an unreasonable threat to public health or safety.

(8) An energy facility meets the requirements of subsection (7)(g) if it will comply with the following standards, as applicable:

(a) For a solar energy facility, all of the following:

(i) The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

(ii) Fencing for the solar energy facility complies with the latest version of the National Electric Code as of the effective date of the amendatory act that added this section or any applicable successor standard approved by the commission as reasonable and consistent with the purposes of this subsection.

(iii) Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.

(iv) The solar energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

(v) The solar energy facility will implement dark sky-friendly lighting solutions.

(vi) The solar energy facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

(b) For a wind energy facility, all of the following:

(i) The following minimum setback distances, measured from the center of the base of the wind tower:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and residences on nonparticipating properties	2.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Residences and other structures on participating properties	1.1 times the maximum blade tip height to the nearest point on the outside wall of the structure
Nonparticipating property lines	1.1 times the maximum blade tip height
Public road right-of-way	1.1 times the maximum blade tip height to the center line of the public road right-of-way
Overhead communication and electric transmission, not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height to the center line of the easement containing the overhead line

(ii) Each wind tower is sited such that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions as indicated by industry standard computer modeling.

(iii) Each wind tower blade tip does not exceed the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR part 77.

(iv) The wind energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

(v) The wind energy facility is equipped with a functioning light-mitigating technology. To allow proper conspicuity of a wind turbine at night during construction, a turbine may be lighted with temporary lighting until the permanent lighting configuration, including the light-mitigating technology, is implemented. The commission may grant a temporary exemption from the requirements of this subparagraph if installation of appropriate light-mitigating technology is not feasible. A request for a temporary exemption must be in writing and state all of the following:

- (A) The purpose of the exemption.
- (B) The proposed length of the exemption.
- (C) A description of the light-mitigating technologies submitted to the Federal Aviation Administration.
- (D) The technical or economic reason a light-mitigating technology is not feasible.
- (E) Any other relevant information requested by the commission.

(vi) The wind energy facility meets any standards concerning radar interference, lighting, subject to subparagraph (v), or other relevant issues as determined by the commission.

(vii) The wind energy facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

(c) For an energy storage facility, all of the following:

(i) The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line

(ii) The energy storage facility complies with the version of NFPA 855 “Standard for the Installation of Stationary Energy Storage Systems” in effect on the effective date of the amendatory act that added this section or any applicable successor standard adopted by the commission as reasonable and consistent with the purposes of this subdivision.

(iii) The energy storage facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

(iv) The energy storage facility will implement dark sky-friendly lighting solutions.

(v) The energy storage facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.

(9) The certificate shall identify the location of the energy facility and its nameplate capacity.

(10) If construction of an energy facility is not commenced within 5 years after the date that a certificate is issued, the certificate is invalid, but the electric provider or IPP may seek a new certificate for the proposed energy facility. If the certificate is appealed in proceedings before the commission or to a court of competent jurisdiction, the running of the 5-year period is tolled from the date of filing the appeal until 60 days after issuance of a final nonappealable decision. The commission may extend the 5-year period at the request of the applicant and upon a showing of good cause without requiring a new contested case proceeding.

Sec. 227. (1) The applicant for a certificate shall enter into a host community agreement with each affected local unit. The host community agreement shall require that, upon commencement of any operation, the energy facility owner must pay the affected local unit \$2,000.00 per megawatt of nameplate capacity located within the affected local unit. The payment shall be used as determined by the affected local unit for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.

(2) If an affected local unit refuses to enter into a host community agreement after good-faith negotiations with the applicant, the applicant may enter into a community benefits agreement with 1 or more community-based organizations within, or that serve residents of, the affected local unit. The amount paid by the applicant under this subsection must be equal to, or greater than, what the applicant would pay to the affected local unit under subsection (1). Community benefits agreements shall prioritize benefits to the community in which the energy facility is to be located. The topics and specific terms of the agreements may vary and may include, but are not limited to, any of the following:

(a) Workforce development, job quality, and job access provisions that include, but are not limited to, any of the following:

(i) Terms of employment, such as wages and benefits, employment status, workplace health and safety, scheduling, and career advancement opportunities.

(ii) Worker recruitment, screening, and hiring strategies and practices, targeted hiring planning and execution, investment in workforce training and education, and worker input and representation in decision making affecting employment and training.

(b) Funding for or providing specific environmental benefits.

(c) Funding for or providing specific community improvements or amenities, such as park and playground equipment, urban greening, enhanced safety crossings, paving roads, and bike paths.

(d) Annual contributions to a nonprofit or community-based organization that awards grants.

(3) A host community agreement or community benefits agreement is legally binding and inures to the benefit of the parties and their successors and assigns. The commission shall enforce this requirement, but not the actual agreements, which are enforceable in a court of competent jurisdiction.

Sec. 227a. Before commencing commercial operations, an applicant shall file a completion report certifying compliance with the requirements of this act and any conditions contained in the commission's certificate.

Sec. 228. (1) Except as otherwise provided in this part, information obtained by the commission under this part is a public record under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The commission shall issue orders necessary to protect the information in an application for a certificate, or in other documents required by the commission for the purposes of certification, if the commission reasonably finds the information to be confidential. Information that is confidential under a protective order is exempted from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 229. A commission order relating to a certificate or other matter provided for under this part is subject to review in the same manner as provided in section 26 of 1909 PA 300, MCL 462.26.

Sec. 230. (1) In administering this part, the commission has only those powers and duties granted to the commission under this part.

(2) The commission may consolidate proceedings under this part with contract approval or other certificate of need cases relating to the same energy facility.

(3) This part shall control in any conflict between this part and any other law of this state. However, the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, controls in any conflict with this part.

(4) Commission approval of a certificate does not confer the power of eminent domain and is not a determination of public convenience and necessity for the purposes of the power of eminent domain or a condemnation action filed pursuant to the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75.

Sec. 231. (1) A local ordinance shall not prohibit or regulate testing activities undertaken by an electric provider or independent power producer for purposes of determining the suitability of a site for the placement of an energy facility.

(2) If a certificate is issued for an energy facility under this part, a zoning ordinance or limitation imposed after the electric provider or IPP submitted the application for the certificate to the commission shall not be construed to limit or impair the construction, operation, or maintenance of the energy facility.

(3) If a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate.


(4) If a certificate is not issued, all local policies, practices, regulations, rules, or ordinances relating to the siting of energy facilities, including, but not limited to, the local zoning authority's power to grant variances, remain in full force and effect.

(5) Except as provided in this section, this part does not exempt an electric provider or IPP to whom a certificate is issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by federal law, any other law of this state, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, any rule promulgated under a law of this state, or a local ordinance.

Sec. 232. Section 5 of 1846 RS 1, MCL 8.5, applies to the amendatory act that added this section.

Enacting section 1. This amendatory act takes effect 1 year after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 588 or House Bill No. 5121 of the 102nd Legislature is enacted into law.


Clerk of the House of Representatives


Secretary of the Senate

Approved _____

Governor



What Local Governments Should know about Michigan's New Renewable Energy Siting Policies

Sarah Mills and Madeleine Krol

Center for EmPowering Communities, Graham Sustainability Institute, University of Michigan

(Last revision: 1/12/2024)

This document includes our best current understanding of Michigan's new renewable energy siting policies—HB5120/HB5121, now Public Acts 233 and 234 of 2023. The information in this document is intended for educational purposes only and should not be interpreted as legal advice. Local officials are strongly encouraged to consult with a municipal attorney.

We wish to thank colleagues associated with the Michigan Association of Planning, Michigan Townships Association, Michigan Municipal League, and MSU Extension for providing feedback on the questions and content. We will continuously update these FAQs as we learn more, and will endeavor to find answers to additional questions that arise from communities. If you believe any information contained in this document is incorrect or have additional questions you'd like answered, please don't hesitate to contact us at sbmills@umich.edu.

1) What is Public Act 233 of 2023 about?

- Public Act 233 of 2023, signed by Governor Whitmer on November 28, 2023, makes significant changes to the permitting process for utility-scale renewable energy facilities, including solar, wind, and battery energy storage. The Act creates an option for developers to go directly to the Michigan Public Service Commission (MPSC) to construct a utility-scale renewable energy facility if each affected local unit of government does not have a compatible renewable energy ordinance (hereafter CREO). In communities where the local units of government have adopted a CREO, which is defined as being no more restrictive than the provisions in section 226(8) of the Act¹, the developer must first have its proposed project reviewed at the local level. If the project is denied by any of the local units of government, then the developer may submit the application to the MPSC.
- This law, which is referenced by a new amendment to the Michigan Zoning Enabling Act², resides as a new "Part 8: Wind, Solar, and Storage Certification" in the "Clean and Renewable Energy and Energy Waste Reduction Act"³ which lays out the newly amended renewable energy, energy storage, and energy efficiency targets that utilities must meet.
- The law will take effect November 29, 2024.

¹ Section 221 (f)

² Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 et seq. The amendment was through a companion bill HB 5121 which became PA 234 of 2023.

³ 2008 PA 295, (MCL 460.1013)

2) **What kind of projects does the new permitting process laid out in PA 233 apply to?**

- The new permitting process laid out in PA 233 solely applies to wind, solar, and energy storage projects above the capacity/size thresholds listed in the Act⁴. This refers to 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, and any energy storage facility with a nameplate capacity of 50 megawatts or more *and* an energy discharge capability of 200 megawatt hours or more. Any solar energy, wind energy, or energy storage facilities below these thresholds are subject to conventional local zoning. It is unclear whether the mentioned capacity thresholds refer to AC or DC power, which differ for solar energy.

3) **Are there only two pathways for permitting applicable projects: at the local level through a CREO, or at the state level through the MPSC?**

- The short answer is probably not.
- This law gives developers the *option* to go through the state-level process⁵. Developers may still choose to go through the local process, whether or not the local government has a CREO, and the law makes clear that local policies, including zoning, are in “full force and effect” for projects where the MPSC has not issued a certificate through this new state-level process.⁶ There is some uncertainty, however, about whether any developers will choose to go through a non-CREO but “workable” local ordinance.
- Adopting a CREO, though, is the only option that guarantees the developer must first go through the local process.⁷ Said another way, local governments that have existing zoning ordinances in place may keep those ordinances even if they don’t meet the definition of a CREO. However, if the developer finds the ordinance is unworkable or just prefer getting a certificate through the MPSC, then they are able to follow the rules laid out in the Act to initiate approval by the MPSC, which, while requiring notice and a public meeting⁸ in each affected local unit, need not comply with local zoning.

4) **Will local communities be notified if a developer is proposing a project?**

- Yes, the Act requires the developer to hold a public meeting in each local unit of government in which the project is being proposed.⁹ 60 days before the meeting, the developer needs to offer to meet with the chief elected official, or their designee, in each affected local unit of government.¹⁰ 30 days before the public meeting, the developer needs to notify the clerk in each affected local unit of government about the meeting, and at least 14 days before the meeting, the developer needs to publish notice of the meeting in a newspaper or online.¹¹

⁴ Section 222 (1)

⁵ Section 222 (2)

⁶ Section 231 (4)

⁷ Section 223 (3)

⁸ Section 223 (1)

⁹ Section 223 (1)

¹⁰ Section 223 (2)

¹¹ Section 223 (1)

5) **Will there be "rule-making" for this process? If so, what is likely to be addressed and what timeline can be expected?**

- It's not expected that there will be formal rule-making for this process, but there will likely be stakeholder engagement as the MPSC thinks through the implementation of the law. The Act is clear that the MPSC will clarify things like what additional information developers will need to submit in applications to the state¹², more details about "the format and content" of public notice for the public meeting¹³, and potentially other aspects of the state-level process. In so doing, it may make clearer some of the areas that are currently "gray" for local governments.
- It's not clear yet what the MPSC's timeline is for this process, but stakeholder engagement is likely to be announced sometime in the next month or two.

Questions on setting up CREOs:

6) **Where is PA 233 clear and where is there gray area, particularly about what communities seeking to have a Compatible Renewable Energy Ordinance (CREO) can and can't do?**

- For communities seeking to develop and adopt a Compatible Renewable Energy Ordinance (CREO), PA 233 compels regulations in CREOs to not be more restrictive than the provisions outlined in Section 226 (8) of the Act¹⁴. This section includes setbacks and sound standards for each technology, plus some technology-specific standards, including height limits for wind and solar, fencing requirements for solar, and flicker standards for wind. The Act is clear that CREOs may not be stricter on these elements. Most people we've talked to believe that ordinances that place additional *types* of setbacks (e.g. setbacks from participating property lines) or noise standards (e.g. noise limits at participating property lines) not explicitly specified in the Act would render an ordinance non-compatible.
- It is not clear from the Act whether adding additional regulations which are common in existing renewable energy projects, such as landscaping and screening, may be included in a CREO. It's also not clear if a restriction on geography (e.g. in which zoning districts or overlay zones energy facilities can be constructed) renders an ordinance as "too restrictive" and therefore non-compatible.
- Other elements that are common in existing local regulations, including site plan application requirements and decommissioning, are not included in Section 226 (8) but the law allows for CREOs to require these and "other information necessary to determine compliance."¹⁵ As a result, one reading of the law is that a local government may regulate things not explicitly covered by Section 226 (8) of the Act. On the other hand, if the local government denies an application that complies with Section 226 (8), the developer can then submit the application to the MPSC,¹⁶ which may suggest that a CREO can only compel the requirements laid out in

¹² Section 225 (1) s

¹³ Section 223 (1)

¹⁴ Section 221 (f)

¹⁵ Section 223 (3) a

¹⁶ Section 223 (3) c(ii)

Section 226 (8). Because the apparent legislative intent was to address overly restrictive ordinances, any regulation not addressed in Section 226 (8) should be carefully vetted by an attorney until more is known about what else may be permissible in a CREO.

- Finally, it is also not clear from the law what happens if the local government and developer disagree about whether the local ordinance is a CREO.¹⁷

7) **The law states that the developer must first go through the local process if the chief elected official in each affected local unit of government notifies the developer that they have a CREO.¹⁸ Affected local units of government are defined as “a county, township, city, or village”¹⁹ “in which all or part of a proposed energy facility will be located.”²⁰ Why is this important?**

- It not only has ramifications for projects that cross township borders, but also for projects within a single township.
- For projects that cross township/city borders, in order for either of those communities to guarantee that the developer has to first go through local zoning, both of the townships/cities must declare they have CREOs.
- But more fundamentally, since both townships and counties are listed as affected local units of government, even if a proposed project will only be in a single township, both the township and county must be notified and must both declare that they have a CREO in place if they wish to prevent the developer from going to the MPSC. However, these cannot both be zoning ordinances since the Michigan Zoning Enabling Act only gives counties zoning jurisdiction in areas not under township zoning.²¹ This suggests that at least one of the entities will need to enact a regulatory CREO (rather than a zoning CREO).

8) **Is a Compatible Renewable Energy Ordinance (CREO) a regulatory (police power ordinance) or zoning ordinance? Can unzoned jurisdictions pass a CREO?**

- The definition of a CREO in the law does not stipulate what sort of ordinance it must be.²²
- The reason this matters is because it implicates whether unzoned townships and townships that are under county or joint zoning authorities are able to pass their own (regulatory) CREO ordinances.²³ It also has implications for what form a county CREO would take if there is otherwise no county zoning.
- This is one the courts or MPSC will likely need to clarify.

¹⁷ Section 223 (3)

¹⁸ Section 223 (3)

¹⁹ Section 221 (n)

²⁰ Section 221 (a)

²¹ 2006 PA 110, MCL 125.3101 et seq.

²² Section 221 (f)

²³ Section 223 (3)

9) **If a local unit has compatible regulations for one type of energy system (e.g. solar), but not the other two (e.g., wind and energy storage), does the ordinance still count as a CREO?**

- That is unclear.
- The intent of the law seems to be to prevent a local government from blocking the type of renewable energy project that the developer wishes to construct. So, for example, if the developer wishes to construct a solar farm and the regulations for solar are compatible, but not the regulations for wind or energy storage, it would seem that the local official could tell the developer they have a CREO.²⁴
- However, throughout the law, references to a local unit's CREO are only made in the singular: "...an ordinance that provides for the development of energy facilities..."²⁵ (emphasis added).
- It may be safest to assume that a CREO will need to include provisions for all three types of renewable energy facilities.

10) **What are the consequences if a jurisdiction with a Compatible Renewable Energy Ordinance (CREO) denies a project?**

- If a community with a CREO fails to timely approve or deny an application,²⁶ denies an application that complies with section 226 (8)²⁷, or amends its zoning ordinance to be more restrictive after the local government notifies the developer that it has a compatible ordinance,²⁸ the developer may submit their application to the MPSC²⁹. But in that case, the developer does not need to³⁰:
 - i) Hold a new public meeting,³¹ nor
 - ii) Grant each local affected unit of governments funds for the local intervenor compensation fund (which may be a combined total of up to \$150,000 for affected local units).³²
- Further, if the MPSC approves a project that the local government previously denied via the CREO process, the local government loses its ability to have a CREO in the future.³³ Once a local unit has lost its CREO designation, it is unclear if it is lost forever (even if the local unit amends its ordinance), if it is lost just for the type of energy facility that was being contemplated/reviewed by the MPSC, or if it applies to the local unit's entire ordinance, including the other technologies.

²⁴ Section 223 (3)

²⁵ Section 221 (f)

²⁶ Section 223 (3) c(i)

²⁷ Section 223 (3) c(ii)

²⁸ Section 223 (3) c(iii)

²⁹ Section 223 (3) c

³⁰ Section 223 (3) d

³¹ Section 223 (1)

³² Section 226 (1)

³³ Section 223 (5)

Community Host Agreements

11) For projects that go through the MPSC, is there a clear understanding of which unit(s) of government will receive the \$2k/MW payment and what it can go toward?

- Projects that go through the state process must enter into a host community agreement with each affected local unit. The agreement requires a one-time payment of \$2,000/MW paid by the project owner “upon commencement of any operations”.³⁴ So if a 100 MW project has 75 MW in Township A and 25 MW in Township B, Township A gets \$2k*75 and Township B gets \$2k*25. If both townships are in County Y, County Y also would get \$2k/MW = \$2k*100.
- While the general consensus is that this is the proper reading of the language in the bill, it’s not clear that that was the intention of the drafters.
- This arises because 1) the law calls for the project owner to pay \$2k/MW when “located within the affected local unit,”³⁵ 2) the definition of local units of government includes a county, township, city or village³⁶ and 3) all land in Michigan is in both a county and either a city or township [and sometimes a county, township, and village]. Most lawyers we’ve consulted agree that each “affected local unit” would receive \$2k/MW, and so that a developer would pay at minimum \$4k/MW: \$2k/MW to each the county and [city or township]. It could be as much as \$6k/MW for any part of a project that is placed in a village, since village land is also within a township and county.
- These funds “shall be used:
 - i) as determined by the affected local unit for police, fire, public safety, or other infrastructure,
 - ii) or for other projects as agreed to by the local unit and the applicant.”³⁷ It is not clear whether there is any restriction on the use of funds so long as it is “agreed to by the local unit and the applicant”.³⁸ It is so far unclear whether there are concerns about the parties needing to find an “essential nexus” for the use of the funds – one of the legal tests to determine appropriateness of community compensation in development projects.³⁹ It’s also unclear how the use of funds will be enforced.
- If the local unit does not want to, or cannot, expend the funds on the first bullet above, and cannot come to an agreement with the applicant on the second bullet above, the applicant would then enter into an agreement with community-based organizations within, or that serve residents of, the affected local unit.⁴⁰

³⁴ Section 227 (1)

³⁵ Section 227 (1)

³⁶ Section 221 (n)

³⁷ Section 227 (1)

³⁸ Section 227 (1)

³⁹ A good explainer is in The Federal Highway Administrations’ 2021 publication “[Essential Nexus, Rough Proportionality, and But-For Tests](#)”

⁴⁰ Section 227 (2)

12) **How do host community benefits work if a project is permitted through a Compatible Renewable Energy Ordinance (CREO) at the local level or in unzoned local units of government?**

- The \$2k/MW host community agreement⁴¹ that is required for projects that are approved by the MPSC does not appear to be guaranteed for communities that approve projects at the local level either through a CREO or other “workable” local zoning ordinance, or in an unzoned community where there is no local government zoning approval. Local units of government may be able to secure monetary benefits through community host agreements, but if they are mandatorily required, they would need to clearly define rough proportionality and a reasonable/essential nexus. Communities who wish to enter into such agreements outside of the MPSC process should consult their municipal attorney.

Thinking through pros and cons of the different paths

13) **Why might a developer prefer to apply for permitting at the local level rather than opting for the MPSC path?**

- To save time: the MPSC has up to a year to act once the application is complete,⁴² whereas CREOs have 120 days – and up to 240 days upon mutual agreement – to act once the site plan is filed (it may not be complete).⁴³
- To save money: at the MPSC process, a developer must fund a local intervenor compensation fund (\$75k or more like \$150k),⁴⁴ plus pay the host community agreement \$2k/MW (or potentially \$4k or \$6k/MW).⁴⁵
- Because compliance with labor requirements in the MPSC process⁴⁶ may add project cost and may be difficult for out-of-state developers who do not have existing relationships with local labor organizations.
- So, in some cases, local governments may have some negotiating room to ask for things in their ordinances, or accept additional benefits voluntarily offered by the developer, if it means that they can save the developer time/money.

14) **What’s a “workable”, non-CREO ordinance?**

- To be clear, the law does not refer to a “workable” ordinance; it’s a concept we’re using to help suggest what might be another option for local communities.
- A “workable” zoning ordinance is one that doesn’t satisfy the definition of a CREO (i.e., it may have larger setback distances or lower noise levels than in PA 233), but is one that a developer finds allows them to build a viable project. Indeed, most of the existing wind and solar farms in the state have been built under “workable” local zoning ordinances that include regulations that

⁴¹ Section 227 (1)

⁴² Section 226 (5)

⁴³ Section 223 (3) b

⁴⁴ Section 226 (1)

⁴⁵ Section 227 (1)

⁴⁶ Section 226 (7) e

extend to topics beyond what is listed in Section 226(8) and/or which have different setback or noise thresholds.

- “Workable” ordinances, though, hinge on “reasonableness”: they provide enough land and not-too-excessive regulations (e.g., for screening or landscaping) to make a project viable. The point at which such provisions become too burdensome in the opinion of an energy developer is the practical point at which the developer will apply to the MPSC for a certificate instead of seeking zoning approval at the local level.
- Also, note, that what might be “workable” for one developer may not be “workable” for all.

15) From a local jurisdiction’s perspective, what are the advantages and disadvantages of adopting a Compatible Renewable Energy Ordinance (CREO) compared to instead adopting a “workable” ordinance?

- CREOs and “workable” ordinances suffer from some of the same drawbacks in that the guaranteed monetary host community agreements for the local governments are less clear than in the MPSC process.
- CREOs preclude the developer from going straight to the MPSC and instead forces them to first go through local permitting, but if the local government ultimately denies the application, there may be some unpleasant consequences for the local unit (see Question 10 above). However, because each affected local unit must have a CREO in order to guarantee the project not go directly to the MPSC (see Question 7), the CREO path only works if there is collaboration between the township and county. For renewable energy projects that cross township, village, or city boundaries—as these large projects often do—this may also require collaboration with neighbors since each must have a CREO to forestall a project going directly to the MPSC.⁴⁷
- A “workable” ordinance doesn’t necessarily require this collaboration with other units of government. However, choosing to create a “workable” ordinance means there’s no guarantee that a developer won’t instead opt for the MPSC process (which begins with providing local notice and holding a public hearing)⁴⁸ at some point in the local permitting process. If a project application in a non-CREO jurisdiction is denied and the developer only then chooses to go to the MPSC, there are mixed opinions about whether, in this case, the local government would face the same penalties they would have if they declared their ordinance a CREO. Also, to be clear, a local government that denies a project through a “workable” ordinance likely had an ordinance that was not “workable” for the developer.
- Ultimately, which is better – CREO or “workable” ordinance – hinges a bit on how much and what type of risk the community is willing to assume, how its neighbors plan to act, and also whether CREOs can include regulations beyond Section 226 (8). If neighboring jurisdictions and the county aren’t also planning to develop CREOs, then there are few to no benefits of a single jurisdiction developing a CREO in isolation. If a CREO may include a number of components that satisfy community preferences (e.g., screening, groundcover for solar, some geographical

⁴⁷ Section 223 (3)

⁴⁸ Section 223 (1)

restrictions), then there isn't too much lost by going the CREO route. If CREOs are more limited, though, a community may instead use the knowledge that they may hold some negotiating power to develop a "workable" ordinance that allows them to better match community preferences to something that may go beyond Section 226 (8), but which the developer still considers "workable". This path does introduce risk, though, which should be discussed with a knowledgeable attorney.

16) From a local jurisdiction's perspective, what are the pros/cons of just doing nothing—either not changing their non-CREO/non-workable ordinance to be compliant or, if their ordinance is silent on energy, not addressing these energy technologies at all?

- The benefit of staying the course is that the local unit does not need to invest resources (both time and money) into developing planning and zoning, and can effectively push any controversy that a renewable proposal might bring to the community onto state policymakers.
- The drawback of such an approach is that, if the local unit does want to intervene before the MPSC⁴⁹, not having thought through renewable energy facilities within the context of their overall land use planning (e.g., where renewable energy compliments or conflicts with future land use plans) may put them at a disadvantage.

17) What should a community do right now (January 2024)?

- At this moment, we see three options: adopting a CREO, having a "workable" ordinance in place, or not acting (which, in most cases, would mean projects would go to the MPSC). Each strategy has pros and cons, and comes with different risks as laid out in the questions above.
- Regardless, the first thing that you should do is start a conversation with your county and neighboring local governments about how they plan to act. If your jurisdiction is interested in adopting a CREO but neighbors are not, you may want to consider a different option since each local government in a proposed project needs to have a CREO in order to unlock the "guaranteed" benefits of the CREO option over a "workable" option.
- If you choose a path that requires amending your zoning ordinance (i.e., CREO or "workable"), then you should figure out how soon you must act. Any amendments to the master plan will need to follow the procedures of the Michigan Planning Enabling Act⁵⁰ and any amendments to the zoning ordinance will need to follow the procedures of the Michigan Zoning Enabling Act.⁵¹ You will need to consider how frequently your planning commission and jurisdiction's board/council meets to understand when you must start the process to be ready for when the law goes into effect on November 29, 2024.
- Also, get your planner/lawyer on retainer now. Nearly every jurisdiction will be in the process of planning and zoning for renewables this summer and fall, so if you share a planner or lawyer with other jurisdictions, you'll want to talk to them soon about their schedule.

⁴⁹ Section 226 (1) and Section 226 (3)

⁵⁰ 2008 PA 33, MCL 125.3801 et seq.

⁵¹ 2006 PA 110, MCL 125.3101 et seq.

18) **How can I tell if my ordinance is CREO or “workable”?**

- Based on analysis of EGLE’s [renewable energy zoning database](#)⁵², we believe most wind zoning ordinances and about half of the solar ordinances in the state are not compliant with even the most generous definition of CREO because the setbacks, noise limits, and height limits do not comply with Section 226 (8).
- If limiting geography (e.g., saying you can allow wind or solar in some districts, but not in others) or adding in other stipulations (e.g., screening, groundcover) renders an ordinance a non-CREO, then practically no existing ordinances in Michigan are CREO.
- Furthermore, more than 70% of communities lack a solar ordinance and there are practically no existing energy storage ordinances in the state, so if CREO compatibility requires having all three technologies sufficiently addressed, practically speaking, all communities in the state can be assumed not to have CREOs.
- However, many ordinances in the state may be “workable”. We’re thinking through ways to help communities self-assess what might be “workable” in light of the Act. The trick in assessing what is “workable” is that it differs from developer to developer. But for now, the best advice is that if your community has been approached by a renewable energy developer at some point in the recent past, you probably have a sense of whether or not your ordinance is “workable”.

⁵²<https://energyzoning.org/maps/mi/divisions>



What Local Governments Should know about Michigan's New Renewable Energy Siting Policies

Sarah Mills and Madeleine Krol

Center for EmPowering Communities, Graham Sustainability Institute, University of Michigan

(Last revision: 1/12/2024)

This document includes our best current understanding of Michigan's new renewable energy siting policies—HB5120/HB5121, now Public Acts 233 and 234 of 2023. The information in this document is intended for educational purposes only and should not be interpreted as legal advice. Local officials are strongly encouraged to consult with a municipal attorney.

We wish to thank colleagues associated with the Michigan Association of Planning, Michigan Townships Association, Michigan Municipal League, and MSU Extension for providing feedback on the questions and content. We will continuously update these FAQs as we learn more, and will endeavor to find answers to additional questions that arise from communities. If you believe any information contained in this document is incorrect or have additional questions you'd like answered, please don't hesitate to contact us at sbmills@umich.edu.

1) What is Public Act 233 of 2023 about?

- Public Act 233 of 2023, signed by Governor Whitmer on November 28, 2023, makes significant changes to the permitting process for utility-scale renewable energy facilities, including solar, wind, and battery energy storage. The Act creates an option for developers to go directly to the Michigan Public Service Commission (MPSC) to construct a utility-scale renewable energy facility if each affected local unit of government does not have a compatible renewable energy ordinance (hereafter CREO). In communities where the local units of government have adopted a CREO, which is defined as being no more restrictive than the provisions in section 226(8) of the Act¹, the developer must first have its proposed project reviewed at the local level. If the project is denied by any of the local units of government, then the developer may submit the application to the MPSC.
- This law, which is referenced by a new amendment to the Michigan Zoning Enabling Act², resides as a new "Part 8: Wind, Solar, and Storage Certification" in the "Clean and Renewable Energy and Energy Waste Reduction Act"³ which lays out the newly amended renewable energy, energy storage, and energy efficiency targets that utilities must meet.
- The law will take effect November 29, 2024.

¹ Section 221 (f)

² Michigan Zoning Enabling Act, 2006 PA 110, MCL 125.3101 et seq. The amendment was through a companion bill HB 5121 which became PA 234 of 2023.

³ 2008 PA 295, (MCL 460.1013)

2) **What kind of projects does the new permitting process laid out in PA 233 apply to?**

- The new permitting process laid out in PA 233 solely applies to wind, solar, and energy storage projects above the capacity/size thresholds listed in the Act⁴. This refers to 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, and any energy storage facility with a nameplate capacity of 50 megawatts or more *and* an energy discharge capability of 200 megawatt hours or more. Any solar energy, wind energy, or energy storage facilities below these thresholds are subject to conventional local zoning. It is unclear whether the mentioned capacity thresholds refer to AC or DC power, which differ for solar energy.

3) **Are there only two pathways for permitting applicable projects: at the local level through a CREO, or at the state level through the MPSC?**

- The short answer is probably not.
- This law gives developers the *option* to go through the state-level process⁵. Developers may still choose to go through the local process, whether or not the local government has a CREO, and the law makes clear that local policies, including zoning, are in “full force and effect” for projects where the MPSC has not issued a certificate through this new state-level process.⁶ There is some uncertainty, however, about whether any developers will choose to go through a non-CREO but “workable” local ordinance.
- Adopting a CREO, though, is the only option that guarantees the developer must first go through the local process.⁷ Said another way, local governments that have existing zoning ordinances in place may keep those ordinances even if they don’t meet the definition of a CREO. However, if the developer finds the ordinance is unworkable or just prefer getting a certificate through the MPSC, then they are able to follow the rules laid out in the Act to initiate approval by the MPSC, which, while requiring notice and a public meeting⁸ in each affected local unit, need not comply with local zoning.

4) **Will local communities be notified if a developer is proposing a project?**

- Yes, the Act requires the developer to hold a public meeting in each local unit of government in which the project is being proposed.⁹ 60 days before the meeting, the developer needs to offer to meet with the chief elected official, or their designee, in each affected local unit of government.¹⁰ 30 days before the public meeting, the developer needs to notify the clerk in each affected local unit of government about the meeting, and at least 14 days before the meeting, the developer needs to publish notice of the meeting in a newspaper or online.¹¹

⁴ Section 222 (1)

⁵ Section 222 (2)

⁶ Section 231 (4)

⁷ Section 223 (3)

⁸ Section 223 (1)

⁹ Section 223 (1)

¹⁰ Section 223 (2)

¹¹ Section 223 (1)

5) **Will there be "rule-making" for this process? If so, what is likely to be addressed and what timeline can be expected?**

- It's not expected that there will be formal rule-making for this process, but there will likely be stakeholder engagement as the MPSC thinks through the implementation of the law. The Act is clear that the MPSC will clarify things like what additional information developers will need to submit in applications to the state¹², more details about "the format and content" of public notice for the public meeting¹³, and potentially other aspects of the state-level process. In so doing, it may make clearer some of the areas that are currently "gray" for local governments.
- It's not clear yet what the MPSC's timeline is for this process, but stakeholder engagement is likely to be announced sometime in the next month or two.

Questions on setting up CREOs:

6) **Where is PA 233 clear and where is there gray area, particularly about what communities seeking to have a Compatible Renewable Energy Ordinance (CREO) can and can't do?**

- For communities seeking to develop and adopt a Compatible Renewable Energy Ordinance (CREO), PA 233 compels regulations in CREOs to not be more restrictive than the provisions outlined in Section 226 (8) of the Act¹⁴. This section includes setbacks and sound standards for each technology, plus some technology-specific standards, including height limits for wind and solar, fencing requirements for solar, and flicker standards for wind. The Act is clear that CREOs may not be stricter on these elements. Most people we've talked to believe that ordinances that place additional *types* of setbacks (e.g. setbacks from participating property lines) or noise standards (e.g. noise limits at participating property lines) not explicitly specified in the Act would render an ordinance non-compatible.
- It is not clear from the Act whether adding additional regulations which are common in existing renewable energy projects, such as landscaping and screening, may be included in a CREO. It's also not clear if a restriction on geography (e.g. in which zoning districts or overlay zones energy facilities can be constructed) renders an ordinance as "too restrictive" and therefore non-compatible.
- Other elements that are common in existing local regulations, including site plan application requirements and decommissioning, are not included in Section 226 (8) but the law allows for CREOs to require these and "other information necessary to determine compliance."¹⁵ As a result, one reading of the law is that a local government may regulate things not explicitly covered by Section 226 (8) of the Act. On the other hand, if the local government denies an application that complies with Section 226 (8), the developer can then submit the application to the MPSC,¹⁶ which may suggest that a CREO can only compel the requirements laid out in

¹² Section 225 (1) s

¹³ Section 223 (1)

¹⁴ Section 221 (f)

¹⁵ Section 223 (3) a

¹⁶ Section 223 (3) c(ii)

Section 226 (8). Because the apparent legislative intent was to address overly restrictive ordinances, any regulation not addressed in Section 226 (8) should be carefully vetted by an attorney until more is known about what else may be permissible in a CREO.

- Finally, it is also not clear from the law what happens if the local government and developer disagree about whether the local ordinance is a CREO.¹⁷

7) **The law states that the developer must first go through the local process if the chief elected official in each affected local unit of government notifies the developer that they have a CREO.¹⁸ Affected local units of government are defined as “a county, township, city, or village”¹⁹ “in which all or part of a proposed energy facility will be located.”²⁰ Why is this important?**

- It not only has ramifications for projects that cross township borders, but also for projects within a single township.
- For projects that cross township/city borders, in order for either of those communities to guarantee that the developer has to first go through local zoning, both of the townships/cities must declare they have CREOs.
- But more fundamentally, since both townships and counties are listed as affected local units of government, even if a proposed project will only be in a single township, both the township and county must be notified and must both declare that they have a CREO in place if they wish to prevent the developer from going to the MPSC. However, these cannot both be zoning ordinances since the Michigan Zoning Enabling Act only gives counties zoning jurisdiction in areas not under township zoning.²¹ This suggests that at least one of the entities will need to enact a regulatory CREO (rather than a zoning CREO).

8) **Is a Compatible Renewable Energy Ordinance (CREO) a regulatory (police power ordinance) or zoning ordinance? Can unzoned jurisdictions pass a CREO?**

- The definition of a CREO in the law does not stipulate what sort of ordinance it must be.²²
- The reason this matters is because it implicates whether unzoned townships and townships that are under county or joint zoning authorities are able to pass their own (regulatory) CREO ordinances.²³ It also has implications for what form a county CREO would take if there is otherwise no county zoning.
- This is one the courts or MPSC will likely need to clarify.

¹⁷ Section 223 (3)

¹⁸ Section 223 (3)

¹⁹ Section 221 (n)

²⁰ Section 221 (a)

²¹ 2006 PA 110, MCL 125.3101 et seq.

²² Section 221 (f)

²³ Section 223 (3)

9) **If a local unit has compatible regulations for one type of energy system (e.g. solar), but not the other two (e.g., wind and energy storage), does the ordinance still count as a CREO?**

- That is unclear.
- The intent of the law seems to be to prevent a local government from blocking the type of renewable energy project that the developer wishes to construct. So, for example, if the developer wishes to construct a solar farm and the regulations for solar are compatible, but not the regulations for wind or energy storage, it would seem that the local official could tell the developer they have a CREO.²⁴
- However, throughout the law, references to a local unit's CREO are only made in the singular: "...an ordinance that provides for the development of energy facilities..."²⁵ (emphasis added).
- It may be safest to assume that a CREO will need to include provisions for all three types of renewable energy facilities.

10) **What are the consequences if a jurisdiction with a Compatible Renewable Energy Ordinance (CREO) denies a project?**

- If a community with a CREO fails to timely approve or deny an application,²⁶ denies an application that complies with section 226 (8)²⁷, or amends its zoning ordinance to be more restrictive after the local government notifies the developer that it has a compatible ordinance,²⁸ the developer may submit their application to the MPSC²⁹. But in that case, the developer does not need to³⁰:
 - i) Hold a new public meeting,³¹ nor
 - ii) Grant each local affected unit of governments funds for the local intervenor compensation fund (which may be a combined total of up to \$150,000 for affected local units).³²
- Further, if the MPSC approves a project that the local government previously denied via the CREO process, the local government loses its ability to have a CREO in the future.³³ Once a local unit has lost its CREO designation, it is unclear if it is lost forever (even if the local unit amends its ordinance), if it is lost just for the type of energy facility that was being contemplated/reviewed by the MPSC, or if it applies to the local unit's entire ordinance, including the other technologies.

²⁴ Section 223 (3)

²⁵ Section 221 (f)

²⁶ Section 223 (3) c(i)

²⁷ Section 223 (3) c(ii)

²⁸ Section 223 (3) c(iii)

²⁹ Section 223 (3) c

³⁰ Section 223 (3) d

³¹ Section 223 (1)

³² Section 226 (1)

³³ Section 223 (5)

Community Host Agreements

11) For projects that go through the MPSC, is there a clear understanding of which unit(s) of government will receive the \$2k/MW payment and what it can go toward?

- Projects that go through the state process must enter into a host community agreement with each affected local unit. The agreement requires a one-time payment of \$2,000/MW paid by the project owner “upon commencement of any operations”.³⁴ So if a 100 MW project has 75 MW in Township A and 25 MW in Township B, Township A gets \$2k*75 and Township B gets \$2k*25. If both townships are in County Y, County Y also would get \$2k/MW = \$2k*100.
- While the general consensus is that this is the proper reading of the language in the bill, it’s not clear that that was the intention of the drafters.
- This arises because 1) the law calls for the project owner to pay \$2k/MW when “located within the affected local unit,”³⁵ 2) the definition of local units of government includes a county, township, city or village³⁶ and 3) all land in Michigan is in both a county and either a city or township [and sometimes a county, township, and village]. Most lawyers we’ve consulted agree that each “affected local unit” would receive \$2k/MW, and so that a developer would pay at minimum \$4k/MW: \$2k/MW to each the county and [city or township]. It could be as much as \$6k/MW for any part of a project that is placed in a village, since village land is also within a township and county.
- These funds “shall be used:
 - i) as determined by the affected local unit for police, fire, public safety, or other infrastructure,
 - ii) or for other projects as agreed to by the local unit and the applicant.”³⁷ It is not clear whether there is any restriction on the use of funds so long as it is “agreed to by the local unit and the applicant”.³⁸ It is so far unclear whether there are concerns about the parties needing to find an “essential nexus” for the use of the funds – one of the legal tests to determine appropriateness of community compensation in development projects.³⁹ It’s also unclear how the use of funds will be enforced.
- If the local unit does not want to, or cannot, expend the funds on the first bullet above, and cannot come to an agreement with the applicant on the second bullet above, the applicant would then enter into an agreement with community-based organizations within, or that serve residents of, the affected local unit.⁴⁰

³⁴ Section 227 (1)

³⁵ Section 227 (1)

³⁶ Section 221 (n)

³⁷ Section 227 (1)

³⁸ Section 227 (1)

³⁹ A good explainer is in The Federal Highway Administrations’ 2021 publication “[Essential Nexus, Rough Proportionality, and But-For Tests](#)”

⁴⁰ Section 227 (2)

12) **How do host community benefits work if a project is permitted through a Compatible Renewable Energy Ordinance (CREO) at the local level or in unzoned local units of government?**

- The \$2k/MW host community agreement⁴¹ that is required for projects that are approved by the MPSC does not appear to be guaranteed for communities that approve projects at the local level either through a CREO or other “workable” local zoning ordinance, or in an unzoned community where there is no local government zoning approval. Local units of government may be able to secure monetary benefits through community host agreements, but if they are mandatorily required, they would need to clearly define rough proportionality and a reasonable/essential nexus. Communities who wish to enter into such agreements outside of the MPSC process should consult their municipal attorney.

Thinking through pros and cons of the different paths

13) **Why might a developer prefer to apply for permitting at the local level rather than opting for the MPSC path?**

- To save time: the MPSC has up to a year to act once the application is complete,⁴² whereas CREOs have 120 days – and up to 240 days upon mutual agreement – to act once the site plan is filed (it may not be complete).⁴³
- To save money: at the MPSC process, a developer must fund a local intervenor compensation fund (\$75k or more like \$150k),⁴⁴ plus pay the host community agreement \$2k/MW (or potentially \$4k or \$6k/MW).⁴⁵
- Because compliance with labor requirements in the MPSC process⁴⁶ may add project cost and may be difficult for out-of-state developers who do not have existing relationships with local labor organizations.
- So, in some cases, local governments may have some negotiating room to ask for things in their ordinances, or accept additional benefits voluntarily offered by the developer, if it means that they can save the developer time/money.

14) **What’s a “workable”, non-CREO ordinance?**

- To be clear, the law does not refer to a “workable” ordinance; it’s a concept we’re using to help suggest what might be another option for local communities.
- A “workable” zoning ordinance is one that doesn’t satisfy the definition of a CREO (i.e., it may have larger setback distances or lower noise levels than in PA 233), but is one that a developer finds allows them to build a viable project. Indeed, most of the existing wind and solar farms in the state have been built under “workable” local zoning ordinances that include regulations that

⁴¹ Section 227 (1)

⁴² Section 226 (5)

⁴³ Section 223 (3) b

⁴⁴ Section 226 (1)

⁴⁵ Section 227 (1)

⁴⁶ Section 226 (7) e

extend to topics beyond what is listed in Section 226(8) and/or which have different setback or noise thresholds.

- “Workable” ordinances, though, hinge on “reasonableness”: they provide enough land and not-too-excessive regulations (e.g., for screening or landscaping) to make a project viable. The point at which such provisions become too burdensome in the opinion of an energy developer is the practical point at which the developer will apply to the MPSC for a certificate instead of seeking zoning approval at the local level.
- Also, note, that what might be “workable” for one developer may not be “workable” for all.

15) From a local jurisdiction’s perspective, what are the advantages and disadvantages of adopting a Compatible Renewable Energy Ordinance (CREO) compared to instead adopting a “workable” ordinance?

- CREOs and “workable” ordinances suffer from some of the same drawbacks in that the guaranteed monetary host community agreements for the local governments are less clear than in the MPSC process.
- CREOs preclude the developer from going straight to the MPSC and instead forces them to first go through local permitting, but if the local government ultimately denies the application, there may be some unpleasant consequences for the local unit (see Question 10 above). However, because each affected local unit must have a CREO in order to guarantee the project not go directly to the MPSC (see Question 7), the CREO path only works if there is collaboration between the township and county. For renewable energy projects that cross township, village, or city boundaries—as these large projects often do—this may also require collaboration with neighbors since each must have a CREO to forestall a project going directly to the MPSC.⁴⁷
- A “workable” ordinance doesn’t necessarily require this collaboration with other units of government. However, choosing to create a “workable” ordinance means there’s no guarantee that a developer won’t instead opt for the MPSC process (which begins with providing local notice and holding a public hearing)⁴⁸ at some point in the local permitting process. If a project application in a non-CREO jurisdiction is denied and the developer only then chooses to go to the MPSC, there are mixed opinions about whether, in this case, the local government would face the same penalties they would have if they declared their ordinance a CREO. Also, to be clear, a local government that denies a project through a “workable” ordinance likely had an ordinance that was not “workable” for the developer.
- Ultimately, which is better – CREO or “workable” ordinance – hinges a bit on how much and what type of risk the community is willing to assume, how its neighbors plan to act, and also whether CREOs can include regulations beyond Section 226 (8). If neighboring jurisdictions and the county aren’t also planning to develop CREOs, then there are few to no benefits of a single jurisdiction developing a CREO in isolation. If a CREO may include a number of components that satisfy community preferences (e.g., screening, groundcover for solar, some geographical

⁴⁷ Section 223 (3)

⁴⁸ Section 223 (1)

restrictions), then there isn't too much lost by going the CREO route. If CREOs are more limited, though, a community may instead use the knowledge that they may hold some negotiating power to develop a "workable" ordinance that allows them to better match community preferences to something that may go beyond Section 226 (8), but which the developer still considers "workable". This path does introduce risk, though, which should be discussed with a knowledgeable attorney.

16) From a local jurisdiction's perspective, what are the pros/cons of just doing nothing—either not changing their non-CREO/non-workable ordinance to be compliant or, if their ordinance is silent on energy, not addressing these energy technologies at all?

- The benefit of staying the course is that the local unit does not need to invest resources (both time and money) into developing planning and zoning, and can effectively push any controversy that a renewable proposal might bring to the community onto state policymakers.
- The drawback of such an approach is that, if the local unit does want to intervene before the MPSC⁴⁹, not having thought through renewable energy facilities within the context of their overall land use planning (e.g., where renewable energy compliments or conflicts with future land use plans) may put them at a disadvantage.

17) What should a community do right now (January 2024)?

- At this moment, we see three options: adopting a CREO, having a "workable" ordinance in place, or not acting (which, in most cases, would mean projects would go to the MPSC). Each strategy has pros and cons, and comes with different risks as laid out in the questions above.
- Regardless, the first thing that you should do is start a conversation with your county and neighboring local governments about how they plan to act. If your jurisdiction is interested in adopting a CREO but neighbors are not, you may want to consider a different option since each local government in a proposed project needs to have a CREO in order to unlock the "guaranteed" benefits of the CREO option over a "workable" option.
- If you choose a path that requires amending your zoning ordinance (i.e., CREO or "workable"), then you should figure out how soon you must act. Any amendments to the master plan will need to follow the procedures of the Michigan Planning Enabling Act⁵⁰ and any amendments to the zoning ordinance will need to follow the procedures of the Michigan Zoning Enabling Act.⁵¹ You will need to consider how frequently your planning commission and jurisdiction's board/council meets to understand when you must start the process to be ready for when the law goes into effect on November 29, 2024.
- Also, get your planner/lawyer on retainer now. Nearly every jurisdiction will be in the process of planning and zoning for renewables this summer and fall, so if you share a planner or lawyer with other jurisdictions, you'll want to talk to them soon about their schedule.

⁴⁹ Section 226 (1) and Section 226 (3)

⁵⁰ 2008 PA 33, MCL 125.3801 et seq.

⁵¹ 2006 PA 110, MCL 125.3101 et seq.

18) **How can I tell if my ordinance is CREO or “workable”?**

- Based on analysis of EGLE’s [renewable energy zoning database](#)⁵², we believe most wind zoning ordinances and about half of the solar ordinances in the state are not compliant with even the most generous definition of CREO because the setbacks, noise limits, and height limits do not comply with Section 226 (8).
- If limiting geography (e.g., saying you can allow wind or solar in some districts, but not in others) or adding in other stipulations (e.g., screening, groundcover) renders an ordinance a non-CREO, then practically no existing ordinances in Michigan are CREO.
- Furthermore, more than 70% of communities lack a solar ordinance and there are practically no existing energy storage ordinances in the state, so if CREO compatibility requires having all three technologies sufficiently addressed, practically speaking, all communities in the state can be assumed not to have CREOs.
- However, many ordinances in the state may be “workable”. We’re thinking through ways to help communities self-assess what might be “workable” in light of the Act. The trick in assessing what is “workable” is that it differs from developer to developer. But for now, the best advice is that if your community has been approached by a renewable energy developer at some point in the recent past, you probably have a sense of whether or not your ordinance is “workable”.

⁵²<https://energyzoning.org/maps/mi/divisions>

Henrietta Township	Township	Jackson County	2607537700	http://www.henrietownship/city/village	11/7/2023	https://energy	Not CREO
Rives Township	Township	Jackson County	2607568920	http://www.rivestownship/city/village	6/25/2022	https://energy	Silent
Tompkins Township	Township	Jackson County	2607579980	http://www.tompkiTownship/city/village	7/21/2023	https://energy	Not CREO
Springport Township	Township	Jackson County	2607575880	https://www.springTownship/city/village	11/7/2023	https://energy	Not CREO
Leoni Township	Township	Jackson County	2607546980	http://www.leonitcTownship/city/village	6/25/2022	https://library.mu	https://energy Silent
Blackman Township	Township	Jackson County	2607508760	http://www.blackmTownship/city/village	8/1/2022	https://energy	Not CREO
Sandstone Township	Township	Jackson County	2607571500	https://sandstonetTownship/city/village	6/25/2022	https://sandstone	https://energy Not CREO
Parma Township	Township	Jackson County	2607562760	https://parmatwp.rTownship/city/village	8/1/2022	https://parmatwp	https://energy Not CREO
Grass Lake Township	Township	Jackson County	2607534500	http://www.grasslaTownship/city/village	7/21/2023	https://energy	Not CREO
Summit Township	Township	Jackson County	2607577200	http://www.summiTownship/city/village	6/25/2022	https://codelibrar	https://energy Not CREO
Spring Arbor Township	Township	Jackson County	2607575640	https://springarborTownship/city/village	6/25/2022	https://springarb	https://energy Silent
Concord Township	Township	Jackson County	2607517760	https://concordtowTownship/city/village	6/25/2022	https://codelibrar	https://energy Silent
Napoleon Township	Township	Jackson County	2607556640	http://www.napoleTownship/city/village	8/1/2022	https://energy	Silent
Norvell Township	Township	Jackson County	2607559180	http://www.norvellTownship/city/village	8/1/2022	https://energy	Silent
Liberty Township	Township	Jackson County	2607547360	http://www.libertyTownship/city/village	6/25/2022	https://energy	Silent
Hanover Township	Township	Jackson County	2607536400	http://hanover-twpTownship/city/village	8/1/2022	https://energy	Silent
Pulaski Township	Township	Jackson County	2607566440	https://pulaskitowrTownship/city/village			No Data
Columbia Township	Township	Jackson County	2607517400	http://www.twp.coTownship/city/village	6/25/2022	https://energy	CREO



Phone: (517) 536-4370

106 E. Commercial Drive
Norvell, MI 49263

To: Planning Commission
From: Scott Pacheco, AICP: SP Urban Planning Services
Date: May 15, 2024
Agenda Item: _____
Subject: Master Plan Update

On March 20, 2024, the Township distribution letters to the contiguous municipal legislative bodies, county planning, and the public utilities and posted the draft master plan on the Township website.

This letter starts the 63-day review period, which will be up on May 22, 2024. To date the township has not received any comments regarding the proposed amendments.

The following is the next steps:

- 1) Address any comments received.
- 2) Schedule and notice a Planning Commission public hearing on the revisions to the Master Plan.
 - a. At the public hearing the township's planning consultant will present the proposed revisions to the public and the Planning Commission and the public will have an opportunity to submit comments in writing prior to and in writing or verbally at the public hearing.
- 3) If comments from the public are received and the Planning Commission believes the comments warrant and response, the comments can be addressed at the meeting or the Planning Commission can continue the meeting and allow the planning consultant time to address the comments either by suggesting revisions to the master plan amendments or by prepare statements on why the comments should not be addressed.
- 4) After all items are ready the Planning Commission must, by resolution, vote to approve the amendments to the master plan. The resolution on the amendment needs a 2/3 vote in favor.
- 5) Because the Township Board has adopted a resolution to assert its right to approve or reject the plan; after the Planning Commission has approved the amendments to the Master Plan they are forwarded to the Township Board for approval along with the Planning Commission resolution.
- 6) The Township Board can approve the amendments to the plan or reject the amendments to the plan and submit a statement to the Planning Commission explaining the objections.
- 7) If the Township Board approves the amendments to the plan the approved master plan shall be sent to the interested agencies.



Phone: (517) 536-4370

106 E. Commercial Drive
Norvell, MI 49263

To: Planning Commission
From: Scott Pacheco, AICP: SP Urban Planning Services
Date: May 15, 2024
Agenda Item: 1
Subject: Solar Energy System Zoning Text Amendment (Exhibit A)

Project Description and History:

This Zoning Text Amendment will address large-scale commercial and smaller-scale private solar energy systems within the Township.

The Planning Commission has been diligently working on this ordinance amendment since the spring of 2023. The PC created a subcommittee that drafted the amendments, and at the public meeting of the Planning Commission on October 18, 2023, the commissioners discussed the draft amendment, proposed minor changes, and directed the staff to notify the public about the draft Zoning Text Amendment for a future public hearing.

After the October 18, 2023, PC meeting, staff incorporated the suggested changes into the draft amendment, the draft amendment was reviewed by the township attorney, and the draft was noticed for a public hearing on November 15, 2023. Prior to the November 15th PC meeting an email correspondence from a member of the public with some suggested changes to the draft amendment was also reviewed and some changes were incorporated into the final draft zoning text amendment.

At the November 15, 2024 PC public hearing the Planning Commission was informed of the likely approval by the State of Michigan of public act 233 of 2023 that would restrict local control of large scale renewable energy systems. The Planning Commission tabled the discussion of the draft solar energy regulations to allow a more complete understanding of the new Michigan regulations prior to making a final recommendation on the proposed solar energy zoning text amendment.

Attached to this report are the November 15, 2024 Staff Report (Exhibit B), this report address the proposed draft zoning text amendment regarding the solar regulations. The review of this report (Exhibit B) and the draft zoning text amendment (Exhibit A) will allow the Planning Commissioners the opportunity to familiarize themselves with where they were with the draft regulations.

Tonight’s report will reopen the discussion on the solar energy regulations. It will also discuss the new State law regarding larger renewable energy systems and compare these regulations to the proposed regulations that the township is considering.

State Regulations

In November 2023 the state of Michigan approved Public Acts 233 (Exhibit C) that included regulations regarding solar and wind energy systems. Public Acts 233 of 2023, preempt existing local siting authority, set statewide siting standards, and granted siting authority for utility-scale renewable energy facilities to the Michigan Public Service Commission (MPSC). These regulations will take effect on Nov. 29, 2024.

This legislation applies to all solar projects of 50 megawatts or greater, wind projects of 100 megawatts and energy storage facilities with a capacity of 50 megawatts or more. This legislation does not address projects under these limits.

Example of Size of Projects:

- 50MW solar = 250-500 acres
- 100MW wind = 38 turbines
- 50MW storage = 5 acres

For a Township to require a developer to go through township review on the projects listed above, the township must have a “compatible renewable energy ordinance” (CREO) that complies with statewide standards such as setbacks, decibel levels and height. A renewable energy ordinance is not considered compatible if it is more restrictive than the statewide standards. If the township has a CREO and the developer is required to go through the Township review process the period of time to review and make a decision on the project is limited to a period of 120 days with a possible extension of up to 120 days ONLY if mutually agreed upon by the township and the developer. If the township reviews the project and denies or fails to act on the proposal, the Michigan Public Service Commission (MPSC) would then receive the application.

If the Township does not have a CREO, the developer would apply directly to the MPSC which would have 60 days to review the application to determine if it is complete and one year to approve or deny the application. Additionally, while MPSC shall consider the impact on the local land use, including the percentage of land within the local unit of government dedicated to energy generation, the legislation does not limit the overall land that can be utilized in a local unit for said purposes. A one-time \$2,000 per megawatt payment is provided from the energy facility owner to the local unit for public safety and infrastructure purposes; however, both parties must agree on how the funds can be spent.

State Regulation compared to Proposed Township Regulations

	PA 233: State Regs	Proposed Township Regs
Setbacks:		
Commercial Solar Facilities:		
Front:	50 feet	200 feet

Property Line: Neighboring House:	50 feet 300 feet	100 feet NA
Height: At full tilt	25 feet	15 feet
Noise	55 DbA at nearest dwelling	40 DbA at property line
Fencing	Required to comply with the latest version of the National Electric Code.	Required
Lighting	Dark Skys Friendly	Regulated to where necessary for safe operation; off between 10:00 PM and Sunrise, lighting for security shall be on motion sensors; and lighting must not extend beyond perimeter of the lot.
Minimum property size	NA	75 Acres
Lot Coverage	NA	40%
Screening	NA	Required
Underground Transmission	NA	Required
Grading	NA	Shall be Minimized
Drain Tile Inspection	NA	Required
Insurance	NA	Required
Decommissioning	Required 25% of cost of decommissioning at start of operation, 50% by fifth year of operation and 100% by 10th year of operation.	Required 125% of the cost to decommissioning prior to permitting
Report	N/A	Bi-Annual

The regulations above are the regulations regulated under the state law. It is unclear and not addressed within the Act whether local governments can add additional regulations which are common in many existing renewable energy projects, such as landscaping and screening, into a CREO. Also unclear is whether the local municipalities can regulate the location of these alternative energy project.

Although the items listed above are unclear, the state law (section 222(2)) gives developers the option to go through the state-level process. Developers may still choose to go through the local process, whether the local government has a CREO or not. Because developers have the choice not to go through the local review it would appear that if a developer does not agree with a regulation in the local regulations, they could just opt to go the MPSC for review of their project. I am unclear how this process would exactly work?

I have searched for examples of CREOs but these documents and tested approved CREOs have not yet been created as far as I can tell. I have multiple emails into the MTA, MML, and UofM Sustainability Institute and have not received responses.

I will continue to take classes and go to seminars regarding the new state law PA233 as the municipalities and the state continue to flesh out what is and is not allowed.

The township will want to determine how they would like to move forward with alternative energy regulation regarding these larger alternative energy facilities by the time the new law goes into effect on November 24, 2024.

Draft Solar Regulations

The existing draft solar regulations that were created and originally reviewed by the Planning Commission at the end of 2023 can be approved and inserted into the existing township zoning ordinances.

I will be reorganizing, revising, and adding important regulations to the Norvell Township Zoning Ordinance over the next year. I will likely include alternative energy (solar, wind and battery storage) regulations into the revised zoning ordinance. If the township wishes to implement a CREO it will also be included in the Ordinance revisions.

Planning Commission Zoning Amendment Process

Under Article I, Section 1 the Norvell Township Zoning Ordinance refers to the Michigan Zoning Enabling Act; Act 110 of 2006 regulations in regards to amendments of the zoning regulations.

The Zoning Enabling Act requires that the Planning Commission hold a public hearing to review and provide a recommendation of a zoning text amendment to the Township Board (Legislative Body). After the public hearing the Planning Commission's review and recommendation of the zoning text amendment shall be forwarded to the County Planning Commission (District II) for their review and recommendation. Both recommendations and a summary of the discussion and review shall then be forwarded to the Township Board for a final determination. The Township Board can approve or deny the proposed amendment with or without changes. If the Township Board approves the amendment with a majority vote, then within 15 days of approval a notice of ordinance adoption shall be published in a newspaper of general circulation. Seven days after the notice is published in the paper the ordinance shall take effect.

Planning Commission Decision

The Planning Commission should consider all the information presented at tonight's meeting and determine how they would like to move forward with this project.

Exhibits

Exhibit A: Draft Zoning Text Amendment

Exhibit B: November 2023 Planning Commission Staff Report

Exhibit C: PA233 of 2023

Exhibit D: Additional Information on the State Regulations