



Livingston County Department of Planning

August 17, 2023

Scott Barb
AICP, PEM
Director

Robert A. Stanford
AICP, PEM
Principal Planner

Martha Haglund
Principal Planner

Cohoctah Township Board of Trustees
c/o Barb Fear, Clerk
10518 Antcliff Rd
Fowlerville, MI 48836

Re: Planning Commission Review of Rezoning Z-27-23

Dear Board Members:

The Livingston County Planning Commission met on Wednesday, August 16, 2023, and reviewed the rezoning file referenced above. The County Planning Commissioners made the following recommendation:

Z-27-23 Approval The proposed text amendments and the addition of a solar Overlay District are appropriate and the standards will reinforce existing ordinance language.

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

Sincerely,

Martha Haglund

Martha Haglund

Enclosures

c: Jessica Buttermore, Chair, Planning Commission
Fredrick Buckner, Township Zoning Administrator

Meeting minutes and agendas are available at:
<https://milivcounty.gov/planning/commission/>

Department Information

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Livingston County Department of Planning

MEMORANDUM

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

FROM: Martha Haglund, Principal Planner

DATE: August 8, 2023

SUBJECT: Z-27-23. Amendments to the Zoning Ordinance 27.01; Solar Energy Systems 13.27

- New Article 27: Intent and Overlay District
- Amend Section 3.01 Zoning Districts
- Addition of Definitions to Article 2
- Addition of New Section 13.27: Solar Energy Systems

Background

Cohoctah Township has worked since December of 2021 developing and updating their Solar Ordinance. A moratorium was adopted (December 22, 2021-December 31, 2022) on Utility Solar to allow their planning commission time to develop their first draft. The planning commission held several public hearings and discussion workshops to develop their first draft which was submitted to Livingston County for review.

Staff reviewed that draft Solar Ordinance October 24, 2022 and generated Livingston County Case Z-37-22, recommending **Approval** for the township's solar ordinance. However, at the November 16, 2022 Livingston County Planning Commission meeting, there was significant public input to not approve the current draft. Taking public input into consideration, the Livingston County Planning Commission (LCPC) recommended to: **Take no Action, Encourage Further Review.**

The moratorium on utility solar was set to expire while the township planning commission went back to revise their solar ordinance. Cohoctah Township Planning Commission recommended to the Cohoctah Township Board to place another moratorium. Livingston County reviewed moratorium ordinance language, Livingston County Case Z-06-23, which recommended: **Approval with Conditions.** The report cited court cases in which lengthy (longer than 6 month) moratoriums can pose legal risk. At the January 18, 2023 LCPC meeting, the Commission recommended: **Take No Action, Encourage Further Review** with regard to adopting another moratorium on utility solar.

At the February 9, 2023 Cohoctah Township Board meeting, they retained new legal counsel. At the same February meeting, the Cohoctah Township Board **Approved** the moratorium on utility solar. The moratorium ordinance was set for

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a length of 12 months and will expire February 9, 2024.

During the current moratorium, the Cohoctah Planning Commission has held several public hearings and workshops to involve the public and take their comments into consideration.

The Cohoctah Township Planning Commission is now proposing to add a solar overlay to their established zoning districts and amend several sections of the Township Ordinance that will add new definitions and modify standards for both private and industrial scale solar facilities.

Staff has reviewed the proposed amendments for accuracy and compatibility with the existing ordinance language and offers the following summary for your review. **Staff comments** are noted throughout the document. Additions and changes to the Ordinance are written in **red**.

ITEM 1: Add New Article 27, entitled “Solar Energy System Overlay District,” is added to the Zoning Ordinance and reads as follows:

Section 27.01 Purpose and Findings

- A. **Purpose.** The Solar Energy System Overlay District (the “District”) is intended to provide suitable location for utility-scale solar energy systems that are otherwise authorized under state law and the Township’s Code of Ordinances and Zoning Ordinance to meet a reasonable demonstrated need for renewable energy land uses in the Township. It is the intent of the Township to permit these systems to the extent a demonstrated need exists for the land use by regulating the siting, design, construction, operation, monitoring, modification, and removal of such systems to protect the public health, safety, and welfare, and to ensure compatibility of land uses in the vicinity of solar energy systems. The Township seeks to preserve its rural character and agricultural heritage. To these ends, the land included in this District are within reasonable proximity to existing electric power transmission infrastructure.
- B. **Findings.** In establishing this overlay district, the Township of Cohoctah finds as follows:
1. It is necessary and reasonable to permit utility-scale solar energy systems in the Township to the extent that there is a demonstrated need for that land use.
 2. Land use for utility-scale solar energy systems beyond a reasonable and legitimate demonstrated need to provide for the Township’s energy needs would have needless adverse effects on surrounding businesses, residences, and agricultural properties, and will be detrimental to the health, safety, welfare, and prosperity of the Township and its residents.
 3. The Township wishes to preserve its existing topography and rural character, maintain property values, and protect and preserve the quality and pace of rural life of its residents, while also preserving the environment and protecting wildlife.
 4. Utility-scale solar energy systems can adversely impact the health, safety, welfare, and prosperity of the community, including existing property values, especially when in proximity to residential uses, farms, and forests.



5. Utility-scale solar energy systems must be carefully managed to reduce the adverse long-term effects such land use can have on the productivity of farmland. See University of Michigan Graham Sustainability Institute & Michigan State University Extension, "Planning & Zoning for Solar Energy Systems."
6. Several Michigan communities have suffered, or are suffering, from fiscal uncertainty due to litigation and rule changes concerning taxation arising from rural renewable energy production and land uses.
7. The Township adopts these land use regulations to balance any demonstrated need for utility-scale solar energy systems in the Township with protection of the public, health, and safety welfare.
8. A utility-scale solar energy system is drastically different than traditional agricultural activities and necessitates more stringent zoning requirements to protect the health, safety, and welfare of township residents.
9. The Township has reviewed its other zoning districts, including the Light Industrial Zoning District, which is small and located near residential homes and found that it is inappropriate for utility-scale solar energy systems. Creating a new utility-scale solar energy system overlay district is a better fit in the Agriculture/Residential Zoning District to both facilitate the land use, but to minimize the impact on the health, safety, and welfare of township residents.

Staff Comments: Overall, these findings summarize and support the proposed zoning amendments and overlay map. A summary of the intent and findings should be incorporated into the next Cohoctah Township's Master Plan if not already done.

Section 27.02 Delineation of the Solar Energy System Overlay District

- A. The Solar Energy System Overlay District overlays existing zoning districts delineated on the official Cohoctah Township Zoning Map, which Township Zoning Map is hereby amended to add the Solar Energy Overlay District described in this section and Depicted on Map A. The boundaries of the Solar Energy System Overlay District are depicted on Map A, incorporated herein by reference, and are generally described as follows:

Tax Payer Identification 4702-08-400-005

SEC 8 T4N R4E BEG S 230 FT FROM E 1/4 COR, TH W 1320 FT, TH N 210 FT, TH W ALG EW 1/4 LINE 2970 FT, TH S 1320 FT, TH W 990 FT, TH S 350 FT, TH E 990 FT, TH S 310 FT, TH E 2970 FT, TH N 1400 FT, TH E 1320 FT, TH N 350 FT TO POB. COMB FROM 08-300-002 & 08-400-004 IN 1983 & SHOULD HAVE INC 08-200-004 WHICH IS NOW KNOWN AS 08-200-009 - THE E 550 FT OF THE W1/2 OF THE NE1/4 SEC 8, ALSO INCLUDING THE WEST 990FT OF THE S 135FT OF THE NW 1/4 OF THE SW1/4 191.29 AC



EXCEPT FOR THE WESTERLY 1000 FEET AND SOUTHERLY 650 FEET OF THE ABOVE-DESCRIBED PARCEL, WHICH IS APPROXIMATELY 134 ACRES AS DEPICTED ON MAP A. Section 27.03. Permitted Uses.

There are no uses permitted by right in the Solar Energy System Overlay District, other than uses permitted by right in the underlying zoning districts.

Section 27.04. Special Land Uses.

The following uses are permitted following approval by the Planning Commission as a Special Land Use in the Solar Energy System Overlay District as regulated by Article 13 (special land uses) and Article 20 (site plan review).

Utility-Scale Solar Energy Systems

Staff Comments on Solar Overlay Map at the end of report

ITEM 2: Section 3.01 of the Zoning Ordinance, entitled "Establishment of Zoning Districts," is amended to read as follows:

The Township is hereby divided into the following zoning districts as shown on the Official Zoning Map on file in the office of the Township Clerk, which together with all explanatory matter shown thereon, is hereby adopted by reference, and declared to be a part of this Ordinance:

Article IV	RD	Resource Development District
Article V	WRD	Waterways Resource Development District
Article VI	AR	Agricultural Residential District
Article VII	RR	Rural Residential District
Article VIII	SR	Suburban Residential District
Article IX	S	Settlement District
Article X	NSC	Neighborhood Service Commercial District
Article XI	LI	Light Industrial District
Article XII	MHR	Mobile Home Residential District
Article XXVI	LRR	Limited Recreation Residential
Article XXVII	SEOD	Solar Energy System Overlay District



ITEM 3: The following definitions are added to Article 2 of the Township Zoning Ordinance, consistent with the existing ordering of definitions in that section:

- A. Building Integrated Photovoltaics (BIPVs): A small, private Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.
- B. Ground Mounted Solar Energy System: A Private or Utility-Scale Solar Energy System that is not attached to or mounted to any roof or exterior wall of any principal or accessory building.
- C. Maximum Tilt: The maximum angle of a solar array (i.e., most vertical position) for capturing solar radiation as compared to the natural or unaltered ground or topography upon which the solar array is installed.
- D. Minimum Tilt: The minimal angle of a solar array (i.e., most horizontal position) for capturing solar radiation as compared to the natural or unaltered ground or topography upon which the solar array is installed.
- E. Private Solar Energy System: A Solar Energy System used exclusively for private purposes and not used for any commercial resale of any energy, except for the sale of surplus electrical energy back to the electrical grid.
- F. Roof or Building Mounted Solar Energy System: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building but excluding BIPVs.
- G. Solar Energy System: Any part of a system that collects or stores solar radiation or energy for the purpose of transforming it into any other form of usable energy, including the collection and transfer of heat created by solar energy to any other medium by any means.
- H. Utility-Scale Solar Energy System: A Solar Energy System in which the principal design, purpose, or use is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.

Staff Comments: There are more definitions listed under 13.27 C(1) Utility Solar: Abandonment, Private Solar Energy System, Decommission, Non-Participating Property, Participating Property. Township may consider consolidating all definitions under Article 2.

ITEM 4: New Section 13.27, entitled “Solar Energy Systems,” is added to the Township’s Zoning Ordinance and reads as follows:

Section 13.27. Solar Energy Systems.

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

1. All Solar Energy Systems must conform to the provisions of this Ordinance and all county, state,



and federal regulations, and safety requirements, including applicable building codes and applicable industry standards, including those of the American National Standards Institute (ANSI).

2. If an applicant, owner, or operator of a Solar Energy System fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke any approvals after giving the applicant notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

B. Private Solar Energy Systems.

1. Administrative Review. Except as provided in subsection (d) below, all Private Solar Energy Systems require administrative approval as follows:
 - a. *Application to Zoning Administrator.* An applicant who seeks to install a Private Solar Energy System must submit an application to the Zoning Administrator on a form approved by the Township Board.
 - b. *Application Requirements.* The application must include:
 1. A site plan depicting setback, panel size, and the location of property lines, buildings, fences, greenbelts, and road right of ways. The site plan must be drawn to scale.
 2. Photographs of the property's existing condition.
 3. Renderings or catalogue cuts of the proposed solar energy equipment.
 4. A certificate of compliance demonstrating that the system has been tested and approved by Underwriters Laboratories (UL) or other approved independent testing agency acceptable to Township.
 5. A copy of the manufacturer's installation directions.
 - c. *Zoning Administrator Authority.* The Zoning Administrator is authorized to approve, approve with conditions, or deny applications for Private Solar Energy Systems. An aggrieved party may appeal the Zoning Administrator's decision to the Zoning Board of Appeals pursuant to Article XXII of the Zoning Ordinance.
 - d. *Exclusions from Administrative Review.* Administrative review is not required for (i) a single solar panel with a total area of less than eight square feet; and (ii) repair and replacement of existing solar energy equipment if there is no expansion of the size or area of the solar energy equipment.
2. Private Solar Energy System BIPVs. Private Solar Energy System BIPVs are



permitted as accessory uses in all zoning districts, subject to administrative approval as set forth in this section. A building permit is required for the installation of BIPVs.

3. 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 administrative approval as set forth in this section and subject to the following requirements:
 - a. *Safety.* A Roof or Building Mounted Private Solar Energy System must be installed, maintained, and used only in accordance with the manufacturer's directions, and it must comply with all applicable codes, including the construction code and electric code.
 - b. *Building Permit.* A building permit is required for installation of a Roof or Building Mounted Private Solar Energy System.
 - c. *Maximum Height.* No part of the Solar Energy System mounted on a roof is permitted to extend more than five feet beyond the peak of the roof or to exceed the maximum building limitation for the zoning district in which it is located. No part of a Solar Energy System mounted on a roof is to project beyond the eaves of the room.
 - d. *Location.* 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. A Solar Energy System mounted on a building wall may not face an adjacent public right-of-way.
 - e. *Appearance.* Roof or Building Mounted Private Solar Energy Systems must be neutral in color and substantially non-reflective of light.
 - f. *Abandonment.* If a Roof or Building Mounted Private Solar Energy System has been abandoned, the property owner must remove it within three months after the date of abandonment.
 - g. *Nonconforming Buildings.* A Roof or Building Mounted Private Solar Energy System installed on a nonconforming building or structure is not considered an expansion of the conformity, but it must meet all height and placement requirements of the zoning district and this section.
 - h. *Inspection.* The Zoning Administrator may inspect a Private Solar Energy System for compliance with this ordinance upon providing reasonable notice to the property owner or occupant.
4. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are permitted in all zoning districts except the Settlement District as an accessory use, subject to administrative approval as set forth in this section and subject to the



following requirements:

- a. *Safety.* A Ground Mounted Private Solar Energy System must be installed, maintained, and used only in accordance with the manufacturer's directions, and it must comply with all applicable codes, including the construction code and electric code. The Ground Mounted Private Solar Energy System must be permanently and safely attached to the ground.
- b. *Building Permit.* A building permit is required for installation of a Ground Mounted Private Solar Energy System.
- c. *Maximum Height.* A Ground Mounted Private Solar Energy System must not exceed the maximum building height for adjacent accessory buildings and must not exceed 10 feet above the ground when oriented at maximum tilt.
- d. *Location.* A Ground Mounted Private Solar Energy System must be located in the rear yard or side yard and meet the applicable setback requirements for the zoning district.
- e. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Ground Mounted Private Solar Energy System to any building or other structure must be located underground. If batteries are used as part of the Ground Mounted Private Solar Energy System, they must be placed in a secured container or enclosure.
- f. *Screening.* Greenbelt screening is required around any Ground Mounted Private Solar Energy System and around any equipment associated with the system to obscure, to the greatest extent possible, the Solar Energy System from any adjacent residences. The greenbelt must consist of shrubbery, trees, and other non-invasive plant species that provide a visual screen. In lieu of a planting greenbelt, a decorative fence that is at least 50% opaque (meeting the requirements of Section 16.29 of this Ordinance applicable to fences) may be used if approved by the Planning Commission.
- g. *Lot Area Coverage.* The area of the Ground Mounted Private Solar Energy System must not exceed 50% of the square footage of the principal building on the property.
- h. *Appearance.* The exterior surfaces of a Ground Mounted Private Solar Energy System must be generally neutral in color and substantially non-reflective of light.
- i. *Abandonment.* If a Ground Mounted Private Solar Energy System has been abandoned, the property owner must notify the Township and remove the system within three months after the date of abandonment.



- j. *Nonconforming Buildings.* A Ground Mounted Private Solar Energy System installed on a nonconforming building or structure is not considered an expansion of the nonconformity, but it must meet all height and placement requirements of the zoning district and this section.
- k. *Inspection.* The Zoning Administrator may inspect a Private Solar Energy System for compliance with this ordinance upon providing reasonable notice to the property owner or occupant.

Staff Comments: Private Solar Energy Systems:

Exclusions from Administrative Review: These clear guidelines will help homeowners know exactly when to seek review from Zoning Administrator and not overwhelm administration with very small projects (less than 8 sq ft). However, we recommend adding a sentence: 'The project is still subject to required building permits.'

The Township should establish and approve, a form for 'Application for Private Solar Energy Systems' alongside the enactment of this proposed ordinance.

Roof or Building Mounted:

Nonconforming Buildings: Typo 'expansion of the ~~conformity,~~ non-conformity'

Ground Mounted:

- **(g) Lot Area Coverage:** The township may consider placing a maximum limit in square feet. Example: up to 2,500 sq. ft.
- **(f) Screening:** Private Ground Mounted systems are often comparable to accessory buildings like pole barns. The required screening seems excessive to require of a private landowner. We recommend that any screening for Ground Mounted Private Solar Energy Systems be comparable to what is required of accessory buildings in the applicable zoning districts.
- **(j) Non-Conforming Buildings:** This is an unnecessary provision for Ground Mounted Solar Energy System. -It would be built on the ground not on a building.

The Private Solar Energy Systems strengthens Cohoctah Township ordinance standards. With solar energy systems becoming more affordable the Cohoctah Township can expect to see an increase in private applications. The draft ordinance clearly outlines requirements, and the steps residents need to take to install Private Solar Energy Systems without encroaching on personal property rights.

ITEM 4: New Section 13.27, entitled "Solar Energy Systems," continued....

C. Utility-Scale Solar Energy Systems. Utility-Scale Solar Energy Systems are permitted by Special Land Use approval in the Solar Energy System Overlay District and require a



special land use permit under Article 13 and site plan approval under Article 20. Utility-Scale Solar Energy Systems are also subject to the following requirements:

1. *Definitions.* For purposes of this Section 13.27, the following terms and words are defined as follows. Should there be any conflict between the definitions of this Section and any other part of this Ordinance, the terms of this Section shall govern.

- a. *Abandonment.* Any solar energy system or facility that is no longer producing power, including damaged panels and non-functioning panels.
- b. *Conceptual Plan.* A map and summary of the proposed development or land use, indicating the lands to be included, a brief description of the proposed project, a timeline for the proposed project, where and how project will connect to the power grid, and any other information Applicant deems necessary to provide the Township with a general overview of the proposed project.
- c. *Decommission.* To remove or retire a solar energy system or facility from active service.
- d. *Height.* The height of a solar energy system and components, measured vertically from the natural grade to its highest point at maximum tilt.
- e. *Non-Participating Property.* A property that is not subject to a Utility Scale Solar Energy System lease or easement agreement at the time an application is submitted for a Special Land Use for the purposes of constructing a Utility Scale Solar Energy System.
- f. *Participating Property.* A property that participates in a lease or easement agreement, or other contractual agreement, with an entity submitting a Special Land Use Permit application for the purpose of developing a Utility Scale Solar Energy System.

2. *Special Land Use Permit Application Requirements.* In addition to the requirements of Article 13, the applicant for a Utility-Scale Solar Energy System must provide the Township with all of the following:

- a. The name of the applicant, any parent company, subsidiary of the parent company, along with any "doing business as" of the parent company.
- b. Application fee in an amount set by resolution or fee schedule approved by the Township Board.
- c. A list of all parcel numbers that will be used by the Utility-Scale Solar Energy System including applicable attachments, establishing ownership of each parcel, with all lease agreements, easements, or purchase agreements for



- the subject parcels. All agreements related to the use of the subject parcels must be recorded with the Livingston County Register of Deeds.
- d. 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.
 - e. A written emergency response plan detailing the applicant's plan for responding to emergencies, including fire emergencies, and analyzing whether adequate resources exist to respond to fires and other emergencies. If adequate resources do not exist, the applicant must identify its plan for providing those resources.
 - f. A written description of the fire suppression system that will be installed, which must identify the manufacturer of the fire suppression system and generally describe its operations and capacity to extinguish fires.
 - g. Current ground and aerial photographs of the participating property, in both a physical and electronic copy of the photographs.
 - h. A copy of the applicant's power purchase agreement or other written agreement, with any exhibits or attachments thereto, with an electric utility showing approval of an interconnection with the proposed Utility-Scale Solar Energy System.
 - i. A written plan for maintaining the subject property, including a plan for maintaining and inspecting drain tiles and addressing stormwater management.
 - j. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the Utility-Scale Solar Energy System, including evidence of proposed commitments with property owners to ensure proper final reclamation, repairs to roads, and other steps necessary to fully remove the Utility-Scale Solar Energy System and restore the subject parcels.
 - k. Financial security that meets the requirements of this ordinance.
 - l. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Utility-Scale Solar Energy System.
 - m. A plan for managing any hazardous waste.
 - n. A transportation plan for construction and operation phases, including any applicable agreements with the Livingston County Road Commission and Michigan Department of Transportation.



- o. An attestation that the applicant will indemnify and hold the Township, and its elected and appointed officials, harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Solar Energy System. The Township shall be named as an additional insured for such indemnity under C.23.
 - p. A copy of the manufacturer's directions or instruction manual for installing, maintaining, and using the Utility-Scale Solar Energy System.
 - q. A ground cover vegetation establishment and management plan that complies with this ordinance.
 - r. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. seq.); Part 303, Wetlands (MCL 324.30301 et. seq.); Part 365, Endangered Species Protection (MCL324.36501 et. seq.); and any other applicable laws and rules in force at the time the application is considered by the Township.
 - s. A groundwater analysis of all parcels in the participating property.
 - t. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.
3. *Site Plan Application Requirements.*
- a. *Contents of Site Plan.* In addition to the requirements in Article 20, the applicant must provide a boundary survey by surveyor licensed in the State of Michigan of the project and a detailed site plan draft to a scale of 1" = 200 feet with the following:
 - 1. Location of all existing and proposed dwellings, structures, panels, equipment, electrical tie lines, transmission lines, transformers, inverters, substations, security fencing, and all other components of the Utility-Scale Solar Energy System within the participating property and all dwellings and/or structures within 1000 feet of the property lines of the participating property.
 - 2. Depiction (to scale) of all setbacks, property lines, fences, signs, greenbelts, screening, drain tiles, easements, flood plains, bodies of water, proposed access drives, and road rights of way.
 - 3. Indication of how and where the system will be connected to the power grid.



4. Plan for any land clearing and grading required for the installation and operation of the system.
5. Plan for ground cover establishment and management.
6. Plan for providing a wildlife corridor that provides access for wildlife to navigate through the development.
7. Description of measures to be taken to support the flow of rainwater and/or stormwater management.
8. Security plan detailing measures to prevent unauthorized trespass and access during the construction, operation, removal, maintenance, or repair of the Utility-Scale Solar Energy System.
9. A maintenance plan, including landscaping upkeep, regular checks, and maintenance for the equipment, and decommissioning and removal. The description shall include maintenance schedules, types of maintenance to be performed, and decommissioning and removal procedures and schedules if the Utility-Scale Solar Energy System is decommissioned. The maintenance plan must include a plan for maintaining all setback areas in the project.
10. Anticipated construction schedule including timeline to completion and scope of work.
11. Sound modeling study including sound isolines extending from the sound sources to the property lines.
12. Any additional studies requested by the Planning Commission, including but not limited to the following:
 - a. Visual Impact Assessment: A technical analysis by a third-party qualified professional acceptable to the Township of the visual impacts of the proposed project, including a description of the project, the existing visual landscape, and important scenic resources, plus visual simulations that show what the project will look like (including proposed landscaping and other screening measures), a description of potential project impacts, and mitigation measures that would help to reduce the visual impacts created by the project.
 - b. Environmental Analysis:
 - i. The applicant shall have a third-party qualified professional, acceptable to the Township, conduct an



analysis to identify and assess any potential impacts on the natural environment including, but not limited to, wetlands and other fragile ecosystems, historical and cultural sites, and antiquities. The applicant shall take appropriate measures to minimize, eliminate, or mitigate adverse impacts identified in the analysis.

- ii. The applicant shall identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts. The applicant shall comply with applicable parts of the Michigan Natural Resources and Environmental Protection Act (Act 451 of 1994, MCL 324.101 et seq.) including but not limited to Part 31 Water Resources Protection (MCL 324.3101 et seq.), Part 91 Soil Erosion and Sedimentation Control (MCL 324.9101 et seq.), Part 301 Inland Lakes and Streams (MCL 324.30101 et seq.), Part 303 Wetlands (MCL 324.30301 et seq.), Part 323 Shoreland Protection and Management (MCL 324.32301 et seq.), Part 325 Great Lakes Submerged Lands (MCL 324.32501 et seq.), and Part 353 Sand Dunes Protection and Management (MCL 324.35301 et seq.).
- c. Stormwater Study: An analysis by a third-party qualified professional acceptable to the Township studying the proposed layout of the Utility-Scale Solar Energy System and how the spacing, row separation, and slope affects stormwater infiltration, including calculations for a 100-year rain event. Percolation tests or site-specific soil information must be provided to demonstrate infiltration on-site without the use of engineered solutions.
- d. Glare Study: An analysis by a third-party qualified professional acceptable to the Township to determine if glare from the Utility-Scale Solar Energy System will be visible from nearby residents and roadways. If required, the analysis will consider the changing position of the sun throughout the day and year and its influences on the utility-scale solar energy system.
- e. Wildlife Impact: A wildlife impact study, including an analysis of the impact on the properties within one mile of the project.
- f. Utility-scale solar energy systems are not permitted on property enrolled in the Farmland and Open Space Preservation Act, being in PA 116, of 1974, now codified in Part 361 of the Natural Resources and Environmental Protection Act, PA 451 of



1974, as amended.

- b. *Conceptual Layout Plan.* Applicants may submit an optional conceptual layout plan for review prior to submission of a formal site plan. The conceptual site plan may be reviewed by the Planning Commission to allow for discussion and feedback.
 - c. *Approvals from Other Agencies.* Final site plan approval may be granted only after the applicant receives (1) all required federal and state approvals, and (2) approval by the local fire chief, county drain commissioner, county road commission, local airport zoning authority (if applicable), county building department, and any other federal, state or local agency having jurisdiction or authority to grant permits related to the Utility-Scale Solar Energy System.
4. *Application Items as Substantive Requirements.* The information, plans, documents, and other items identified as application requirements in this ordinance, including the site plan and special land use permit, are substantive requirements for obtaining approval for a Utility-Scale Solar Energy System. The Planning Commission will review the sufficiency of the application materials. If the Planning Commission determines that the substance of any application item is insufficient to protect the public health, safety, and welfare, the Planning Commission may deny approval on that basis.
5. *System and Location Requirements.*
- a. Utility-Scale Solar Energy Systems are only permitted within the Solar Energy System Overlay District.
 - b. Utility-Scale Solar Energy Systems must be ground mounted.
 - c. Utility-Scale Solar Energy Systems (including all solar panels, structures, and equipment) must be set back at least 250 feet from the property line of any Non-Participating Property at the time of application. In addition, if a non-participating dwelling is within 500 feet of said setback, the setback must be increased to maintain 500 feet from said dwelling. If a single Utility-Scale Solar Energy System is located on more than one lot, or if the adjacent parcel is owned by the same owner as the property on which the Utility-Scale Solar Energy System is located, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots. All property in the setback areas, if not farmed, shall be maintained as defined in a maintenance setback plan acceptable to the Township.
 - d. Utility-Scale Solar Energy Systems must be set back at least 100 feet from the edge of any wetland, shoreline, or drain easement. The Planning Commission may increase this setback requirement up to 200 feet if the Planning Commission determines that such a setback is necessary to protect the public health, safety, and welfare.



- e. The height of the Utility-Scale Solar Energy System and any mounts, buildings, accessory structures, and related equipment must not exceed 10 feet when oriented at maximum tilt. The Planning Commission may allow a height of up to 16 feet if the applicant establishes that the lot is used for grazing by farm animals in a manner that requires increasing the height limit. Lightning rods shall not exceed 20 feet in height and shall not be any greater than necessary to protect the Utility-Scale Solar Energy System from lightning.
- f. The ground mounting of panels must be by screw or a similar system that does not require a footing, concrete, or other permanent mounting, to minimize soil compaction. No pounding of panels posts is permitted.

6. *Permits.* All required county, state, and federal permits must be obtained before final site plan approval and before the Utility-Scale Solar Energy System begins operating.

7. *Screening.* Greenbelt screening is required around any Utility-Scale 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, as described below:

- a. The screening shall be installed to obscure the Utility Scale Solar Facility and shall contain two rows of staggered evergreen trees planted not more than twelve (12) feet apart trunk to trunk, and the two rows shall be no greater than ten (10) ft apart. The Township may consider an alternative landscape buffer as a part of the special land use approval, provided the alternative provides adequate screening.
- b. Plantings shall be least eight (8) feet tall at time of planting and shall reach a height of ten (10) feet within three (3) growing seasons.
- c. The trees may be trimmed but must maintain a height of at least eighteen (18) feet.
- d. Evergreen trees shall be Norway Spruce or such alternative approved by the Township.
- e. Good husbandry techniques shall be followed with respect to vegetation, including but not limited to, proper pruning, proper fertilizing, and proper mulching, so that the vegetation will reach maturity as soon as practical and will have maximum density in foliage. Dead or diseased vegetation shall be removed and must be replanted in a manner consistent with this Section at the next appropriate planting time.
- f. Front, side, and rear yard screening is required if the Utility Scale Solar Energy System is adjacent to a non-participating property.



8. *Appearance.* The exterior surface of the Utility-Scale Solar Energy System must be generally neutral in color and substantially non-reflective of light.
9. *Agricultural Preservation and Habitat Impact.* Land clearing and clear cutting trees and other vegetation shall be limited to what is minimally necessary for installation and operation of the system and to ensure all-season access to solar resources given the topography of the land. Topsoil distributed during preparation shall be retained on site. In addition, access drives shall be designed to minimize extent of soil disturbance, water run-off, and soil compaction.
10. *Lighting.* Lighting of the Utility-Scale Solar Energy System must be down facing and is limited to the minimum light necessary for safe operation. Lighting shall not be more than 4 feet taller than the maximum height of any panel and in no case shall lighting be taller than 20 feet. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Utility-Scale Solar Energy System. The Utility-Scale Solar Energy System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads. Flashing, intermittent, and motion lights are prohibited.
11. *Signage.* Signage is not permitted except as required in this subsection and for purposes of posting information that may be necessary for electrical operations and the safety and welfare of the public. An information sign shall be posted and maintained at the entrance(s) listing the name, address, and phone number of the operator.
12. *Security Fencing.* Security fencing may be required around all electrical equipment related to the Utility-Scale Solar Energy System, including any transformers and transfer stations in the discretion of the Planning Commission and to provide for the movement of wildlife. Appropriate warning signs must be posted at safe intervals at the entrance and around the perimeter of the Utility-Scale Solar Energy System. Required fencing must be at least seven feet tall and be composed of wood post and woven farm wire fencing. The Township may allow or require a fence design to allow for the passage of wildlife upon a finding that adequate access control and visual screening will be preserved.
13. *Noise.* The noise generated by a Utility-Scale Solar Energy System (which shall not be averaged over time, but instead shall be instantaneous) must not exceed the following limits:
 - a. 40 dBA L_{max}, as measured at the property line, between the hours of 7:00 a.m. and 9:00 p.m.
 - b. 35 dBA L_{max}, as measured at the property line, between the hours of 9:00 p.m. and 7:00 a.m.
 - c. In addition to the above limitations, an evergreen tree berm, with trees spaced not more than 12 feet apart, may be required to reduce noise levels surrounding all inverters and substations. The berm must be no more than 10 feet from all inverters, must be at least as tall as all inverters but not more than three feet taller than the height of all inverters.



14. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Utility-Scale 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.

15. *Drain Tile Inspections.* The applicant or operator must inspect all drain tile at least once every three years by means of robotic camera, with the first inspection occurring before construction of any part of the Utility-Scale Solar Energy System occurs. The applicant or operator must submit proof of the inspection to the Township and Livingston County Drain Commission. Any damaged or inoperable tile shall be repaired prior to construction. After the Utility-Scale Solar Energy System is operational, the owner or operator must repair any damage or failure of the drain tile within 30 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. Documentation of repairs shall be submitted to the property owner, the township, and the Livingston County Drain Commission and must indicate the location, nature, and satisfactory completion of the repairs.

16. *Groundwater Analysis.* The operator of the Utility-Scale Solar Energy System must provide a groundwater analysis for all parcels within the participating properties annually during the life of the project and for five years after abandonment or decommissioning.

17. *Access Routes.* Access drives are subject to the approval of the Livingston County Road Commission and the Township Planning Commission. Access drives must be adequately maintained for emergency vehicle use, even in winter.

18. *Construction.* Construction or maintenance of the Utility-Scale Solar Energy System may only occur between 7:00 a.m. and 6:00 p.m. Monday through Friday, excluding federal holidays. Any material damages to a public road located within the Township shall be repaired from the construction, maintenance, or operation of a Utility Scale Solar Energy System shall be repaired at the Applicant's expense.

19. *Fire Suppression.* The Utility-Scale Solar Energy System must include a fire suppression system that is specifically designed to immediately suppress and extinguish fires in any part of the Solar Energy System, including the panels, electrical equipment, transformers, and transfer stations. The applicant or operator must provide documentation establishing the effectiveness of the fire suppression system and the results of a third-party independent inspection acceptable to the Township of the fire suppression system.

20. *Ground Cover.* The lot on which the Utility-Scale Solar Energy System is located must be covered with vegetation until decommissioning. To meet this requirement, the lot must include one or more of the following:

- a. Pollinator Habitat: A site designed to have vegetation that will enhance pollinator populations, including a diversity of flowering plants and wildflowers, and meets a score of 76 or more on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.



- b. **Conservation Cover:** A site designed with practices to restore native plants, grasses, and prairie with the aim of protecting specific species or providing specific ecosystem services, such as carbon sequestration or soil health. The site must be designed in partnership with a conservation organization or approved by the Livingston Conservation District.
 - c. **Forage/Grazing:** Sites that incorporate rotational livestock grazing and forage production as part of a vegetative maintenance plan.
 - d. **Agrivoltaics:** Sites that combine raising crops for food, fiber, or fuel, and generating electricity within the project area to maximize land use.
21. **Wildlife Corridor.** Utility Scale Solar Energy Systems shall have access corridors for wildlife to navigate through the development.
22. **Signs.** Signs are permitted but must comply with Article 19. The lot must include at least one sign identifying the owner and providing a 24-hour emergency contact telephone number.
23. **Insurance.** The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least \$10 million per occurrence. All insurance policies shall name the Township as an additional insured and shall include the indemnity provisions of C.2.o.
24. **Decommissioning.** If a Utility-Scale Solar Energy System is abandoned or otherwise nonoperational for a period of 90 days, the property owner or the operator must notify the Township and must remove the system within six months after the date of abandonment. The site must be filled and covered with topsoil and restored to a state compatible with the surrounding vegetation. 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 requirements of this subsection also apply to a Utility-Scale Solar Energy System that is never fully completed or operational if construction has been halted for a period of one year. Should the Applicant fail to meet its obligations to decommission the site, the Township may utilize the security being held for this purpose to enter the site and decommission in accordance with the last approved plan.
- a. The decommissioning plan shall be written to provide financial security to the Township for 125% of the cost to remove and dispose of all panels, wiring, and restoration of the land to its original conditions. The value of decommissioning shall be determined by a third-party financial consultant or engineer selected by the Township and paid for by the developer. The decommissioning financial security shall be paid in cash to the Township. Once value of decommissioning is determined, it shall be updated on a periodic basis of not less than every 2 years and additional financial security may be required on the basis of the average inflation rate of the preceding 2 years.



- b. Continuing Obligations: Failure to keep any required financial security in full force and effect at all times while a Utility Scale Solar Energy System exists or is in place shall constitute a material and significant violation of the Special Land Use Permit and this Ordinance, and will subject the Utility Scale Solar Energy System Applicant, owner and operator to all remedies available to the Township, including any enforcement action, civil action, request for injunctive relief, and revocation of the Special Land Use Permit.

25. *Complaint Resolution Protocol.* Applicant shall provide a Complaint Resolution protocol at time of submission of final site plan. The operator of the project or its assigns shall initially respond within 10 business days to complaints from neighboring property owners arising from and related to the operation of the Utility Scale Solar Energy System. Any resolution shall include lawful and reasonable solutions consistent with the Zoning Ordinance, which shall also be provided to the Township Zoning Administrator.

26. *Extraordinary Events.* If the Utility-Scale 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. Any damaged or inoperable panels must be repaired within 30 days after discovery and the applicant or operator must submit proof of the repair to the Township. Add language to show cause for additional time.

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

- a. Amount of electric generation;
- b. Current proof of insurance;
- c. Verification of financial security; and
- d. A summary of all complaints, complaint resolutions, and extraordinary events.
- e. Number of panels removed, replaced, repaired, or other improvements.

Additionally, a representative of the applicant or operator must appear before the Township Board at least once every three years to report on the Utility-Scale Solar Energy System and address questions or concerns from the Planning Commission.

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

29. *Transferability.* A special use permit for a Utility-Scale Solar Energy System is transferable to a new owner or operator. The new owner or operator 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.

30. *Lease.* If the participating property is proposed to be leased, instead of owned, by the owner or applicant of the Utility-Scale Solar Energy Project, all property within the project boundary must be included in a recorded easement(s), lease(s), or consent agreement(s) specifying the applicable uses for the duration of the project. All necessary leases, easements, or other agreements between the utility scale solar energy owners or applicant and the property owners must be in place prior to commencing construction.

31. *Site Plan Amendments.*

a. Site plan amendments may be permitted pursuant to Article XX of the zoning ordinance, except the following shall not be considered a minor amendment by the Planning Commission:

1. Changes of the location of arrays, fencing, buildings, or ancillary equipment by 10 feet or more.

2. Any increase in the height of solar panels.

b. The Planning Commission may consider the following to be minor amendments:

1. Changes of the location of arrays, fencing, buildings, or ancillary equipment by less than 10 feet.

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

33. *No Battery Storage.* No on-site power storage, battery storage, PV Array, or device storage is permitted.

34. The applicant must certify and guarantee that the utility-scale solar energy system will comply with 47 CFR Part 15, subpart B and not produce any radio frequency interference or electrical magnetic interference at the property line of all non-participating property owners within 1,000 feet of the project.

Validity and Severability.

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

Repealer.



Section 13.17 of the Township Zoning Ordinance pertaining to “solar buildings” is repealed. All other ordinances inconsistent with the provisions of this Ordinance are repealed to the extent necessary to give this Ordinance full force and effect.

Effective Date.

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

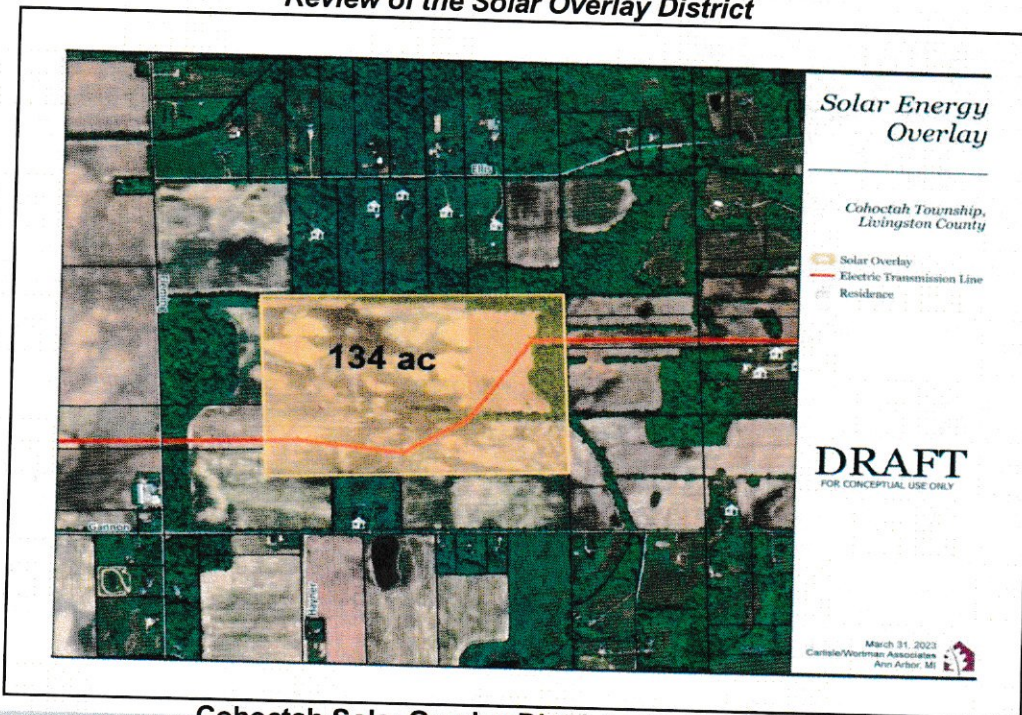
Staff Comments Utility Solar Energy Systems:

13.27 (5)c: Utility-Scale Solar Energy Systems (including all solar panels, structures, and equipment) must be set back at least 250 feet from the property line of any Non-Participating Property at the time of application. *In addition, if a non-participating dwelling is within 500 feet of said setback, the setback must be increased to maintain 500 feet from said dwelling. If a single Utility-Scale Solar Energy System is located on more than one lot, or if the adjacent parcel is owned by the same owner as the property on which the Utility-Scale Solar Energy System is located, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots. All property in the setback areas, if not farmed, shall be maintained as defined in a maintenance setback plan acceptable to the Township.*

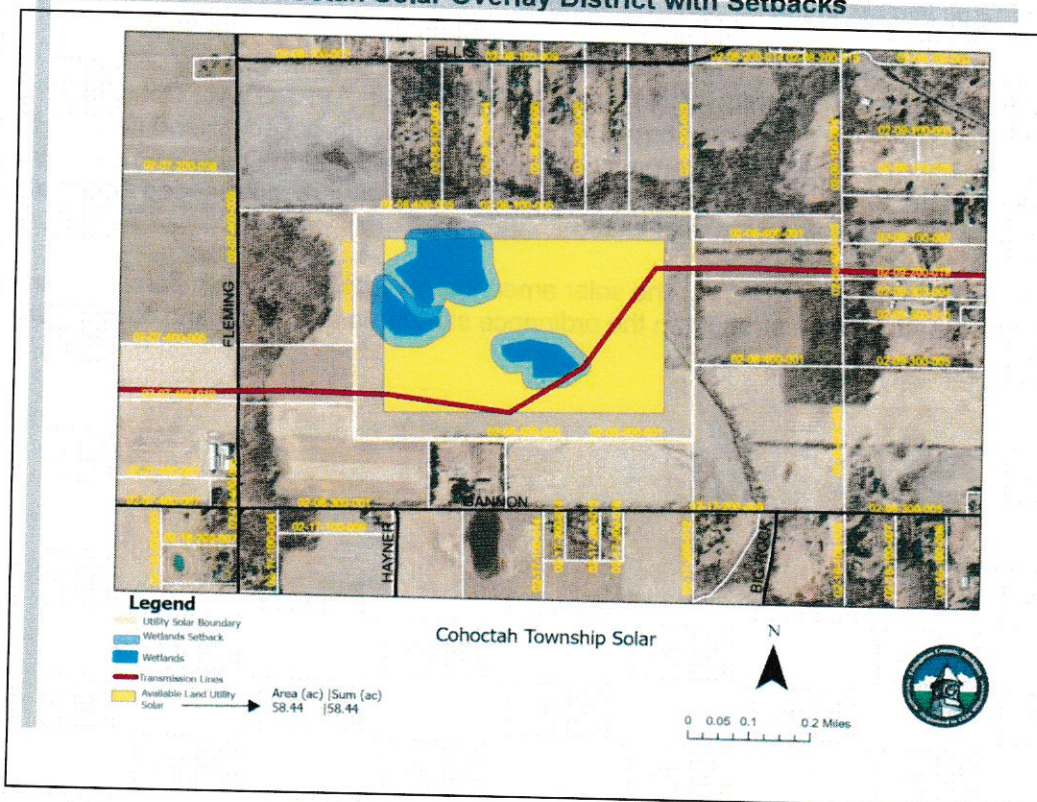
- The above was an addition made at the July 6, 2023, Planning Commission Meeting. Property lines are used for setback placement because they are not easily moved and modified. Whereas setting ‘dwellings’ as a point for setbacks can pose some future issues and challenges because they can be constructed and moved more easily. We would recommend deleting the 500 ft setback requirements set at dwellings for the potential future issues it may cause.
- 13.27 (3) a.1 Application Fee: should be set prior or alongside the enactment of this proposed ordinance.
- Other than the above suggestions, the proposed ordinance is concise and thoroughly reviewed by the township attorney. While solar ‘farming’ is considered a use by the Michigan Department of Agriculture and Rural Development (MDARD) and the Farmland and Open Space Preservation Act (MCL 324.36101 et seq.), Cohoctah Township is choosing to prohibit any commercial solar energy facilities on PA 116 lands which is allowed within local zoning controls that are in place with the Township Ordinance. We believe that the amendments that are proposed at this time will proactively protect the community while allowing this renewable energy source Cohoctah Township.



Review of the Solar Overlay District



Cohoctah Solar Overlay District with Setbacks





Staff Comments Overlay District

As noted in the above graphics, with the 250-foot setback from non-participating properties and 100-foot setbacks from wetlands applied to the 134 acre Overlay; there are 58 remaining acres. This does not consider the 500-foot setback for dwellings, that would further decrease the available acreage. The township needs to decide if that amount of area aligns with the Townships' demonstrated need per 27.01 (7)

The Solar Overlay and buildable acreage is limited. Further, it is a possibility that a landowner could choose: to develop something else or sell the land to a residential developer, the overlay area may become unavailable in the future.

The current owner of the 4702-08-400-005 is Consumers Energy. We would inquire if the landowner has been notified about the placement of the solar overlay.

It would be in the best interests for the Cohoctah Planning Commission to begin looking at other properties that could be added to the overlay should the current overlay become unavailable. If not done prior to the enactment of this proposed ordinance than during the next Master Plan review. We recommend these suggestions so the township does not find themselves excluding a land use should the overlay become developed or sold. Excluding a land use is prohibited under Zoning Act Enabling Act (MLC 125.3207).

If additional parcels are needed to avoid exclusionary zoning the township should be confident in the standards laid out in the proposed ordinance.

TOWNSHIP PLANNING COMMISSION RECOMMENDATION: APPROVAL, Cohoctah Township Planning Commission recommended approval of the proposed amendments at their July 6, 2023, public hearing. There were no comments for or against the proposed amendments prior to recommend approval. 'Public comment was received' after recommended approval, with no indication what the public comments were.

RECOMMENDATION: APPROVAL. The solar amendments to the Cohoctah Zoning Ordinance are well written and serve to strengthen the ordinance standards for private and commercial solar energy systems.



Livingston County Department of Planning

LIVINGSTON COUNTY PLANNING COMMISSION MEETING

Wednesday, August 16, 2023 – 6:30 p.m.

Administration Building, Board of Commissioners Chambers
304 East Grand River, Howell, MI 48843

Please note that this is a hybrid meeting with County Planning Commissioners and staff meeting in-person. Audience participants are welcome to attend in-person or via Zoom by using the meeting link at the bottom of the agenda.

Scott Barb
AICP, PEM
Director

Robert A. Stanford
AICP
Principal Planner

Martha Haglund
Principal Planner

Agenda

1. Call to Order
2. Pledge of Allegiance to the Flag
3. Roll and Introduction of Guests
4. Approval of Agenda – August 16, 2023
5. Approval of Meeting Minutes – July 19, 2023
6. Call to the Public
7. Zoning Reviews
 - A. Z-26-23: Green Oak Township Rezoning, Section 34 – Residential Farming to Rural Estates
 - B. Z-27-23: Cohoctah Township Text Amendment, Article 27 Solar Energy Overlay District; Section 13.27 Solar Energy Systems
 - C. Z-28-23: Genoa Township Text Amendment, Article 11 Solar Energy Systems
8. Old Business
9. New Business: BB lunch and learn event at Genoa Township Hall 8/15/23
10. Reports:
11. Call to the Public
12. Adjournment

Department Information

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

•
(517) 546-7555
Fax (517) 552-2347

•
Web Site

<https://milivcounty.gov/planning/>

Via Zoom (on-line meetings):

<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

Via the Zoom app

Join a meeting, with meeting number: **399 700 0062**

Enter the password: **LCBOC** (ensure there are no spaces before or after the password)

Meeting ID: **399 700 0062**

DALTON TOMICH

719 Griswold St. • Suite 270 • Detroit, Michigan 48226
P: 313-859-6000 F: 313-859-8888 www.daltontomich.com

August 14, 2023

Livingston County Planning Commission
304 E Grand River Ave
Suite 206
Howell, MI 48843

Re: Proposed Cohoctah Township Solar Ordinance

Dear Planning Commissioners:

My office represents Hopkins Hectares, LLC and Mr. Robert Hopkins, a landowner in Cohoctah Township. Please enter this correspondence into the official record for this proposed ordinance. Thank you for serving on the County Planning Commission and considering our comments on this vital issue.

The proposed solar ordinance currently before the Planning Commission should not be approved. The proposed ordinance is a naked attempt to zone out utility-scale solar development, it is not in the best interest of the Township, and it is unlikely to withstand judicial scrutiny.

Public Policy

While the proposed ordinance gives the appearance of permitting solar developments in Cohoctah Township, it contains two (2) "poison pills" which make it virtually impossible for a utility-scale solar development to be located in the Township if the proposed ordinance is adopted.

First, the proposed ordinance prevents land enrolled in the Farmland and Open Space Preservation Act ("PA 116") from being used for a utility-scale solar development. This is directly opposed to State of Michigan policy regarding solar power developments and PA 116 land.

From an economic perspective, banning solar energy developments on farmland preservation program land in the Township would have severe ramifications. The adoption of solar energy represents a significant opportunity for local economic growth. It attracts investments, creates jobs, and stimulates the development of a green economy. Restricting these developments would curtail potential sources of revenue for the Township and the State, hindering economic progress and limiting job creation in the renewable energy sector.

Solar energy projects have the potential to generate substantial tax revenue, contributing to the funding of public services and infrastructure improvements. By banning such developments, the Township would forgo these additional resources, potentially burdening taxpayers and impeding local economic development.

Preserving farmland is undoubtedly crucial for sustainable agriculture and food security. However, combining farmland preservation with the integration of renewable energy sources, such as solar power, can lead to more sustainable land use practices. By allowing solar energy developments on protected farmland, the Township can achieve a dual-purpose objective: conservation and renewable energy generation.

Solar energy is a clean and abundant source of power, contributing to the reduction of greenhouse gas emissions and mitigating the effects of climate change. By prohibiting solar energy developments on protected farmland, the Township may inadvertently discourage the transition to renewable energy sources, impeding progress towards environmental sustainability goals. It is imperative to strike a balance between land preservation and meeting energy needs through sustainable means.

A ban on solar energy developments on farmland preservation program land in the Township may have significant social consequences. Access to clean energy is an essential component of a sustainable future. By limiting the availability of solar energy, the Township would impede progress towards reducing reliance on fossil fuels, which are associated with negative health effects and environmental degradation. It also impedes the State's clear stated goals of increasing renewable energy sources.

Furthermore, embracing solar energy developments can have positive community impacts. Solar farms can serve as educational tools, raising awareness about renewable

energy and fostering community engagement. They can also provide opportunities for partnerships with educational institutions, creating research and learning opportunities for those interested in sustainable energy technologies.

In sum, it is directly against public policy for a Michigan Township to pass an ordinance banning solar energy developments on land enrolled in PA 116. The economic, environmental, and social consequences of such a ban are substantial. By impeding economic growth, hindering environmental sustainability efforts, and limiting access to clean energy, the Township would be neglecting its responsibility to promote public welfare. Striking a balance between farmland preservation and renewable energy integration is crucial to ensure sustainable development, foster economic growth, and meet the energy demands of the future.

The interests of the County also counsel against approval of this ordinance. If Livingston County wishes for its residents to experience the benefits of clean and renewable energy, it cannot encourage townships to pass backwards and draconian ordinances such as the ordinance proposed by Cohoctah Township.

Exclusionary Zoning

Second, the proposed ordinance establishes an "overlay district" of only 134 acres. As the staff comments note, when considered in conjunction with the onerous setback requirements, there are only 54 remaining acres for a utility-scale development. This could be further reduced in the future with the new 500-foot setbacks for dwellings. Combined with the ban on PA 116 land, this makes the proposed ordinance an example of illegal exclusionary zoning. Initially by judicial declaration, *Kropf v Sterling Heights*, 391 Mich 139, 155–156, 215 NW2d 179 (1974), and shortly after by statute (now codified as MCL 125.3207), Michigan prohibits what has become nationally known as exclusionary zoning. The ZEA provision reads, in its entirety, as follows:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

The Michigan Court of Appeals has stated "we know from our precedents that a community cannot effectively zone out legal businesses." *Truckor v Erie Twp*, 283 Mich App 154, 164, 771 NW2d 1 (2009).

Here, the proposed ordinance would (and is intended to) "effectively zone out" utility-scale solar developments. Consequently, the proposed ordinance would not survive judicial scrutiny since there is a demonstrated need for alternative energy sources, including solar, in the State of Michigan.¹

Conclusion

In sum, the proposed ordinance is a startlingly clear attempt to zone utility-scale solar developments out of the Township. This action is not in the best interests of the residents of Cohoctah Township or Livingston County. Excluding solar energy deprives the Township and its residents of the many benefits of solar developments. Further, the proposed ordinance is unlikely to withstand judicial scrutiny and opens the Township and potentially the County to the many negative effects that flow from that result.

My clients urge the Planning Commission to recommend denial of the proposed ordinance. The rural character of the Township and the interests of adjacent property owners can be protected by more reasonable regulations than the scheme currently before the Commission.

Please do not hesitate to contact me with questions or concerns. Thank you.

Very truly yours,

DALTON & TOMICH, PLC

/s/ Lawrence Opalewski

¹ Specifically, the State of Michigan has a [stated goal](#) of generating 60% of electricity from renewable sources, such as solar, by 2030.

August 16, 2023

Livingston County Planning Commission,

The following is part of my letter read during last month's planning commission meeting:

Upon review of the staff comments of the Conway Township solar ordinance, I can appreciate and thank you for most of the recommendations and guidance suggested. One area noted that concerns me are the staff comments to the specific professional qualifications or experience for the studies listed for the applicant to attain compliance. I think item 9. of that section should read: Any additional studies requested, and experts chosen by the Planning Commission. If the developers are allowed to hire the experts to perform these very important studies, how could the township officials confidently depend on the presented results? This is like asking the fox to guard the hen house.

The following is the comment included in the review notes provided to Conway Township:

"Sara Porter, Conway Township, wants additional studies for proposed developments and wants it included in the ordinance."

Does this sound like the previous paragraph I just read? I specifically stated that the experts should be chosen by the township, not that I wanted more studies included in the ordinance. I even provided my written comments at the end of the meeting. Am I pointing this out because I, Sarah Porter, need to be accurately cited in Livingston County Planning Commission minutes? Please be assured, the answer is no.

I completely understand that my comments at the end of the day, are just that, my comments. My right to free speech and making my opinions and concerns heard. However, the comments the commissioners make, do matter, which is the entire reason this process exists. So much so that some people take notes, writing everything that was said in order to properly review the ordinance for the suggested changes that need to be evaluated. Sometimes, your comments are even videoed and referenced later to make sure the information that was written was accurate.

I am pointing this out because the comments made by the commissioners were also not accurately reflected in the review notes provided to Conway Township. Specifically, commissioner Call was missing three comments, commissioner Bowdoin was missing one comment, and commissioner Funk was missing two comments. Additionally, it would be very helpful if the review notes included the page and section numbers referenced by each commissioner when they speak. For example, Commissioner Call made a comment about permits and stated it was "page 7, number 2". The review comments state "Commissioner Call inquired about building permits by county or zoning administrator." Without the referenced page and section number there is no way to know if the commissioner was inquiring about Private, Rooftop, or Utility Scale Solar in this instance. If the commissioner's comments are included as stated, with all the pages and sections referenced, the provided review comments will be more beneficial to the townships you are serving.

You may feel that if every detail from a meeting is important, then people should attend the meetings to make sure they hear everything that is said. I cannot argue with that. Certainly, body language and facial expressions provide information that are sometimes missed and would never be captured in the

minutes of a meeting. For example, Commissioner Ikle's eyebrows often tell a story all on their own. I completely understand that in the past these meetings were virtually empty. My guess is aside from the gentlemen that I would bet is sitting over my left shoulder at the back of the room, there was no one here to verify the comments made to the next month's minutes. This board may feel like many other boards we are encountering that cannot wait for the day we retreat to our "normal lives." However, times are changing and there are people in this room that will forever be involved in the governments of their local community. When times change, policies and procedures must change, or we produce subpar results. This is true in business, and it is true in life. If the job of this board is to serve the local municipalities, then the minutes simply must accurately reflect all the comments made by each commissioner.

I have included copy of my letter from last month along with a list of the omitted comments for your reference. I truly hope you can receive my remarks today as the constructive criticism they are intended to be.

Sincerely,

Sarah K. Porter

July 19, 2023

Livingston County Planning Commission,

Upon review of the staff comments of the Conway Township solar ordinance, I can appreciate and thank you for most of the recommendations and guidance suggested. One area noted that concerns me are the staff comments to the specific professional qualifications or experience for the studies listed for the applicant to attain compliance. I think item 9. of that section should read: Any additional studies requested, and experts chosen by the Planning Commission. If the developers are allowed to hire the experts to perform these very important studies, how could the township officials confidently depend on the presented results? This is like asking the fox to guard the hen house.

Other staff comments leave me perplexed and questioning the intent of the comments. Specifically, the section stating "As proposed, the township has identified only a three parcel, 136-acre overlay district for future large/utility scale solar energy systems/facility development within the township. As such, does this mean that no other proposed solar energy system facility will be considered unless it is located solely within this district? If so and to clarify, does that also mean that, for example, a township resident with a large-acre parcel, also in close proximity to the existing overhead electrical line, would not legally be allowed to pursue a large/utility scale solar energy facility development on their property as well? Are there plans for any additional areas that could be identified in the future as potential large/utility scale solar energy overlay districts?" This comment to me begs the question, does the planner understand the concept of an overlay? With 24 years of experience, I believe he most certainly does. So, this nags at my gut. I re-read it, am I misunderstanding the comments? My gut tells me to read between the lines. What is he asking, what is being suggested, and why? So, I read. I compared other staff comments made on Handy, Cohoctah, and Marion ordinances. To my knowledge none of the townships thus far have made a request for advice from the Livingston County Planning Commission as to the appropriate size or acreage for a solar energy system. Additionally, I could find no mention of a staff comment to suggest such an appropriate size. It seems extremely unlikely that our township would get this far into this process, all the way to requesting you to review our ordinance, only to be considering more, or other locations to allow this land use. The details, intent, and tone set in our ordinance makes it clear that no other location is of interest nor being considered.

Our community has spent the last ten months researching, analyzing, writing letters, attending every meeting possible, demanding that our boards listen to our concerns, and ultimately assisting in the drafting of the ordinance before you today. Conway Township and other surrounding townships are properly identifying and zoning land for solar energy systems to meet the demonstrated need of our residents, including future growth. Our residential/agricultural community is not interested in an industrial land use overtaking our township, no matter how the State of Michigan wants to define them. With the help of an excellent attorney, many safeguards were added to ensure the health, safety, and general welfare of the community, the entire community, not just the large landowners, but the majority of the residents. These staff comments seem to come from a different position. Respectfully, these comments suggest the planner does not have his finger on the pulse of the very community he is ultimately intended to protect.

Sincerely,

Sarah K. Porter

7. ZONING REVIEWS:

A. Z-24-23: CONWAY TOWNSHIP, AMENDMENTS TO ZONING ORDINANCE ARTICLES- VARIOUS ARTICLES: SOLAR ENERGY SYSTEM OVERLAY DISTRICT.

The Conway Township Planning Commission proposes to amend various articles in the Township Zoning Ordinance to regulate Solar Energy Systems. Principal Planner Stanford reviewed his report with key findings throughout the text including but not limited to:

- Overlay District of 136 acres: Location, proximity to transmission lines, owner notification
- Written description of the fire suppression system that will be installed as well as any specialized equipment necessary for emergency response.
- Submit Safety measures and user manual information to Emergency Management Director as well as the County Environmental Health Department Director for compliance, permanent filing, and reference.
- Be specific describing the qualifications for 'qualified individuals' completing all Impact Assessments.
- Develop a Special Land Use Documentation for Permit Transfer to run with the land.

Township Recommendation: Approval. The Conway Township Planning Commission recommended Approval of this set of zoning amendments at its June 12, 2023 meeting. There were public comments both for and against different aspects of the proposed ordinance language noted in the minutes.

Staff Recommendation: Approval with Conditions. The proposed amendments appear to be reasonable and appropriate. There are a few key elements as highlighted in the review that have remaining questions and clarifications which should be addressed before any final approval is given by the township. In addition, Staff would highly recommend that the township carefully consider all Staff comments noted throughout the review before proceeding with any final approval of the proposed amendments by the township as well.

Commission Discussion: Commissioner Call inquired about building permits by county or zoning administrator and how will the Township confirm abandonment. Commissioner Call also inquired about who will pay for the training for the emergency responders and if Township permits are required for solar developments. Commissioner Bowdoin stated that the Township Planning Commission and citizens have been supportive to create a cohesive ordinance for the community. Commissioner Bowdoin believes that the builder should be responsible for the emergency training of personnel. Commissioner Bowdoin asked if the proposed ordinance is too exclusionary with regards to the size of the proposed overlay district. Commissioner Ikle stated that the Township should be asking for an additional endorsement for the development and who asked for \$25 million for insurance. Commissioner Ikle also asked about the security bond and how it would not come with a new entity. The Township should also have the ability to deny an owner based on track record and other background information per attorney review. There are also no definitions on financial security and should be included in the ordinance. Commissioner Funk believes there is still lots of items that need to be reviewed. Commissioner Funk also stated concerns over roads and impacts upon infrastructure due to solar developments. There also needs to be some detail regarding conceptual plans and what is the minimum requirements. Commissioner Ikle suggested townships use a planner for development of ordinances.

Public Comment: Steve Smith, Conway Township, asked about inverters and the setback requirements. Brian Williams, Conway Township, suggested that solar developers are not truthful regarding their reasons for developments in certain areas. Sara Porter, Conway Township, wants additional studies for proposed developments and wants it included in the ordinance. Mike Brown, Conway Township, explained that the \$25 million requested by Township includes abandonment and decommissioning costs; would like comments included in county review to the township. Steve Weiss, Conway Township, stated that the township planner and attorney led them down the wrong path regarding their development of the solar ordinances.

Livingston Country Planning Commission – Comments not included in Conway Township's Solar Ordinance Review:

Call –

1. Pg 7 #2 - Building permits for Private Solar Energy Systems?
2. Pg 8 F - Is the greenbelt approved by the Planning Commission or the Zoning Administrator? Include in the site plan?
3. Pg 15 #5 – Township permits is not listed.

Bowdoin –

1. Pg 16 F – Stated this paragraph gives him “heartburn” because gaps in the fence could lead to problems with animals and kids playing within the facility.

Funk –

1. Pg 11 – Emergency response plan – Is there a county standard and does one need to be developed?
2. Pg 7 – Require a report to prove how much energy the system is producing.