

**MARION TOWNSHIP
BOARD OF TRUSTEES
SOLAR ORDINANCE SPECIAL MEETING
PARKER MIDDLE SCHOOL
FEBRUARY 9, 2023, 8 PM**

MEMBERS PRESENT: Scott Lloyd, Bob Harvey, Tammy Beal, Les Andersen, Dan Lowe, Sandy Donovan, and Greg Durbin

MEMBERS ABSENT: None

OTHERS PRESENT: John Gormley, Gormley Law Offices PLC; Michael Homier, Foster, Swift, Collins & Smith

CALL TO ORDER

Bob Harvey called the meeting to order at 8 pm.

PLEDGE OF ALLEGIANCE

BOARD MEMBERS PRESENT

The board members introduced themselves.

APPROVAL OF AGENDA

Les Andersen motioned to approve the agenda as presented. Scott Lloyd seconded. **Motion carried.**

SOLAR ORDINANCE DISCUSSION

Michael Homier, attorney from Foster, Swift, Collins & Smith, said that the township board is at the point where they can consider adopting the proposed ordinance or make amendments to the proposed ordinance; the overlay has been revisited to identify two possible areas near transmission lines that could be suitable. Mr. Homier showed a map of the proposed overlay. The first area is next to transmission lines and a substation (Pingree/Jewell area.) The second area is near Parker Middle School (Wright/Fisk area.) The total acreage of the proposed areas is approximately 420 acres. Mr. Homier explained that this is an overlay district, not a rezoning of the property; it adds an additional use if the property owner wants it. Mr. Homier talked about the demonstrated need for the township and it is a rough calculation; either one of these areas would satisfy that requirement. He said there is a rational decision for designating either of these two areas, particularly near Pingree Road. He emphasized that the township has to make a space for solar, but the property owner does not have to sign up for it. The board is not requiring or mandating anything; it would be a voluntary use by the property owner with a Special Use Permit.

Les Andersen asked Mr. Homier to explain the state mandate. Mr. Homier said it's actually state law that 35% of the energy portfolio of public utilities will be required to be renewable between 2025-2050. What it doesn't say is where that has to be located or what type it has to be. The Zoning Enabling Act says the township cannot adopt an ordinance that completely prohibits a lawful land use where there's a demonstrated need. What the township is trying to do is provide for the township's demonstrated need, not areas outside of the township.

Dan Lowe said he would like the overlay to be smaller—to limit it to one or the other of these two parcels, not both.

Tammy Beal asked Mr. Homier to explain the pros and cons of the Wright/Fisk parcel. Mr. Homier said it's near transmission lines and while it's not completely isolated from residential areas, it's less than other areas. It is approximately 137 acres.

Sandy Donovan asked approximately how many acres does the township need to meet the demonstrated need? Mr. Homier said the rough calculations would be between 130-200 acres.

If a landowner turns down a lease, the township has no additional liability. Mr. Homier explained that wind and solar companies do not have eminent domain; energy companies that are regulated, such as DTE or Consumers Energy, do.

SOLAR ORDINANCE DISCUSSION

Jim Witkowski, 3111 Pinckney Road, asked about demonstrated need versus exclusionary zoning. Mr. Homier said the township needs to balance the risk and having an ordinance and overlay district substantially reduces the risk to the township. Mr. Witkowski said he would put it in light industrial or commercial. The township doesn't have to make it economically advantageous for the solar company. John Gormley said the township only has 60 acres of commercial and zero acres in light industrial that's not already developed.

Nancy Manson, 3346 W. Coon Lake Road, asked if property owners within the overlay don't want to lease, does the township have to find other areas? The answer is no. She said she was told by officers in Shiawassee County that any land used for solar has to be rezoned industrial—is that true? The answer is no. Another concern is that these companies are LLCs that no one's heard of; how is an upfront bond handled? Mr. Homier said that's exactly what should be done in terms of a bond; the township would generally rely on engineers for a cost estimate to decommission and then require up to 125% plus an inflation rate escalator.

John Cheyne, 500 Jewell Road, asked again what the acreage required would be? Mr. Homier said roughly 120-200 acres. Mr. Cheyne said if the 60 acres of commercial could be in the overlay, and the risk analysis is that it's better to put solar on farm land than to litigate, what could the cost of that litigation be? Mr. Homier said previous cases were about \$150K per case; it's expensive and unpredictable. Mr. Cheyne asked what the estimated budget of the township hall addition is? Mr. Hanvey said the bids haven't been received yet, but somewhere in the \$3 million range. Mr. Cheyne said he believes the board would have the support of the residents to litigate. Mr. Homier said to keep in mind that's just the litigation cost if you win; if you lose, there could be a big judgement. This township could be bankrupted. Mr. Cheyne mentioned the home business and nuisance ordinances, including groundwater concerns. Will these ordinances also be applied to solar farms? Mr. Hanvey said it wouldn't be considered a nuisance; it would be the drain code. Mr. Cheyne thanked the board for arranging this meeting.

Chris Fleming, 843 E. Davis Road, said the ordinance is the townships to write. He has concerns about interference with cell/radio/Wi-Fi; environmental concerns; no provision for security; two different definitions of abandonment (1.1 and 6.33.3); In Section 12—Goals; Section 17—Intents and Purposes no provision for monetary and enforcement. There are several places where independent contractors are required and the board should have discretion in who is selected and should approve their findings. Resolutions should be at the discretion of the board; courts should be the last resort. Mr. Fleming asked if there could be a maximum number of acres established?

Steve Willsmore, 5744 Lange Road, asked if the overlay is now smaller or the original? Mr. Hanvey said a much smaller overlay has been proposed. Mr. Willsmore asked about the aquifer and wellhead protection area—Mr. Hanvey said the wellhead protection area is not included in the smaller overlay. He asked if they are talking about large bonds or bags of cash? Mr. Hanvey said the proposal is to change it to cash bond

Patty Hostine 4301 Coon Lake Road, said she sent a five-page letter with her comments/concerns/suggestions. She asked if the demonstrated need is calculable, can that be capped once the need is met? Ms. Hostine suggested these panels go over industrial or commercial instead of farm land. She feels the language in the ordinance needs to be stronger and less attractive to these companies.

Mark Cartier, 2884 Norton Road, said he was taken by surprise when he heard about this, and the township should adopt an ordinance to keep this kind of thing out. Will the companies give the residents some relief on property values? Will the township give the property owners a tax break?

Kim Kurzeja, 5911 Pingree, said she was completely caught off guard about this. What about contamination, sound issues, property values?

Catherine Dyer, 2715 High Meadows, thanked the board for the opportunity to have this meeting. She asked with the 60 acres of the commercial available, could one of the two locations on the new proposed map be made even smaller to reach the required amount? Mr. Homier said yes. She asked whether the industrial and commercial that's already developed, but might be in poor condition, could be used as part of the overlay and the power companies would have to make the improvements? Mr. Homier said when it becomes an impossibility, that's when it becomes exclusionary. She asked if there is any opportunity to discuss the parameters in the ordinance? Mr. Homier said yes.

Cynthia Eades, 3110 New Holland Drive, is an audiologist who has experience conducting industrial noise surveys and medical interventions due to chronic noise exposure, both occupational and environmental. She has two issues--noise needs to be addressed and should be evaluated by a professional industrial audiologist or sound engineer, both pre- and post-construction; she also has concerns about low-frequency noise. Low-frequency noise can affect many things such as blood pressure, vision, anxiety, etc.

Michael Hoeneise, 5945 W. Coon Lake Road, asked if the Rover pipeline location had been considered when creating this proposed overlay? Mr. Homier said the overlay was proposed on a rational basis and what's most suitable. It's not the township's responsibility to make guarantees.

Clint Beach, 11388 Owosso Road, Cohoctah Township, said he sent information to the board regarding property values, sample ordinances, etc. He said the Cohoctah Township Planning Commission voted to extend the moratorium. He's asking the Marion Township Board to do the same to give residents ample time to address numerous concerns.

Erin Willsmore, 5744 Lange Road, said she has no trust in mystery LLCs or this board.

Jay Drick, County Commissioner, said he's been an attorney for 45 years. He encourages the board to draft an ordinance after everyone has input, and provided the board with ten legal clauses that he hopes are included in the ordinance. He said it's the township board's duty to protect the residents.

Erin Hamilton, Cedar Lake Road, said she would like to see solar done properly, and she feels the demonstrated need of the township is agricultural. She asked for a 12-month moratorium, and asked any board members who are opposed to utility-scale solar farms to stand up and pledge support.

Kerry Borowski said she lives at the corner of Fisk and Wright; she said she's more concerned after hearing from the audiologist. She has concerns about property values and health issues.

Tammy Schoenbeck, Cohoctah Township, said she is a residential appraiser and solar farms can have a 6-30% impact on property values. She hopes the board thoroughly and thoughtfully considers everyone's comments.

Tim Gabriel asked about eminent domain. Mr. Homier said regulated utilities have eminent domain, solar/wind providers do not.

Peter Sinclair from Midland, MI said he is a videographer who will be giving a presentation at the Opera House that shows a different perspective.

Jeff Hopper, 2166 Blackstone, is concerned about the wildlife, and that solar farms would have a direct impact on his spirituality and happiness.

Nancy Manson, 3466 W. Cedar Lake Road, pointed out that about 10 years ago, the people of Michigan voted in favor of adding 25% renewables by 2025. A few years ago, legislation was proposed to increase that to 50% and it was turned down. In ten years, a kilowatt has increased from 10 cents to 20 cents, doubling our electric bills. In September 2022, Consumers was at 10.9% renewables, so they're really behind schedule. If this continues until 2025, kilowatt hours will be about 50 cents—2 to 2.5 the cost today, thanks to renewables.

Tim Ryan, 459 E. Davis Road, thanked Mr. Homier for a well-reasoned presentation. He said the township needs to enforce the ordinances, every time.

Sarah Porter, Conway Township, said there is a lack of communication. She said they begged the board to hire this attorney, and people should give them a chance.

Brad Savino, 3140 Pingree, said things to consider adding to the ordinance is 1. No vetting process; 2. Gag orders built into contracts. 3. Property owner and solar company should share responsibility. 4. Plans for disposal. 5. Inspections at any time paid for by the solar company. 6. Zoning infractions. 7. Taxing. 8. Maintenance and construction (times and duration.)

Bob Hanvey said the board needs to resolve some of the tradeoffs. Much of what was heard tonight are concerns the board is already aware of, other than the sound issues. He asked the attorney to explain the tradeoffs between adopting an ordinance or imposing an ordinance. Mr. Homier gave of example of recent similar cases, and the result was the judge striking down the moratorium; however, by that time, an ordinance was in place.

John Borowski has concerns about diminished values, setbacks, groundwater

Les Andersen said the township can choose to not extend the moratorium and sit on any applications until the ordinance is perfected. He asked whether this should be sent back to the planners and the Planning Commission? Dan Lowe said he would prefer the board handle this by fixing as best as they can, but he would rather have a moratorium in place.

Greg Durbin is encouraged by what's been accomplished and believes the residents now understand that the board's intentions were to protect the township, not to encourage solar farms.

Bob Hanvey said the Planning Commission meets the fourth Tuesday of each month at 7:30 pm; the packets are available on the township's website one week before the meeting. The township board meets the second and fourth Thursday of each month at 7:30 pm.

Tammy Beal said the next special meeting on solar is scheduled for Wednesday, February 22 at Parker Middle School at 8 pm. The next regular board meeting is scheduled for Thursday, February 23 at the township hall at 7:30 pm.

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Greg Durbin motioned to adjourn at 11:02 pm. Les Andersen seconded. **Motion carried.**

Submitted by: S. Longstreet

Tammy L. Beal, Township Clerk Date

Robert W. Hanvey, Township Supervisor Date