

**MARION TOWNSHIP PLANNING COMMISSION
AGENDA**

REGULAR MEETING

January 23, 2024

7:30 PM

Virtual access instructions to participate in the meeting are posted on www.mariontownship.com

MEETING WILL BE HELD IN MAIN HALL

Call to Order:

Pledge of Allegiance:

Introduction of Members:

Approval of Agenda for: January 23, 2024 Regular Meeting

Approval of Minutes from: December 19, 2023 Regular Meeting

Call for Public Comment:

Public Hearing: none

New Business:

- 1) Review Flowchart Draft for Text Amendment changes
- 2) Review Master Plan goals for ZO changes

Unfinished Business:

- 1) Continue discussion on Sign Section
- 2) Continue discussion of affordable housing project

Special Orders:

- 1) Update from Zach on Renewable Energy

Announcements:

Call for Public Comment:

Adjournment:

DRAFT

*Approved by: _____
Larry Grunn – Chairperson

Date: _____

**MARION TOWNSHIP
PLANNING COMMISSION
REGULAR MEETING
DECEMBER 19, 2023 / 7:30PM**

PC MEMBERS PRESENT: LARRY GRUNN – CHAIRPERSON
JIM ANDERSON - VICE CHAIRPERSON
CHERYL RANGE - SECRETARY
BOB HANVEY
BRUCE POWELSON

PC MEMBERS ABSENT: NONE

OTHERS PRESENT: DAVID HAMANN - MARION TWP. ZONING ADMINISTRATOR
ZACH MICHELS – TOWNSHIP PLANNER

CALL TO ORDER

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

APPROVAL OF AGENDA

Jim Anderson made a motion to approve the December 19, 2023 agenda as presented. Bruce Powelson seconded. **5-0 MOTION CARRIED**

APPROVAL OF MINUTES

Cheryl Range made a motion to approve the November 28, 2023 Planning Commission minutes as presented. Jim Anderson seconded. **5-0 MOTION CARRIED**

CALL TO PUBLIC

None.

UNFINISHED BUSINESS:

WELLHEAD PROTECTION ORDINANCE AND MAP

Dave Hamann explained that this ordinance would be its own article. Bruce Powelson and Jim Anderson listed off some changes that still needed to be made.

PG. 10 / 12A / 11

PG. 11 / 12A / 012

PG. 5 / B4 / pips: pipes

PG. 8 / F / Triclorethane: Tricloroethane

PG. 8 / H3 / may: may be

PG. 9 / B1 / approved: approval

PG. 10 / C / addition: additional & offence: offense

Cheryl Range asked if this was going to be a Zoning Ordinance or a General Ordinance. Bob Hanvey said it would be a Zoning Ordinance.

DRAFT

The Commissioners discussed the exact process for creating ordinance language. One of the options discussed was as follows:

- STEP 1: Send language to the Livingston County Planning Department and other related entities for review and comment.
- STEP 2: The Commissioners would then make any recommended changes.
- STEP 3: Send language to the Township Attorney.
- STEP 4: The Commissioners would then make any recommended changes.
- STEP 5: Send language and the Commissioner's recommendation to the Township Board of Trustees for review and approval.

Dave Hamann asked the Commissioners what they wanted to do about the Data Processing language that was already sent to the Township Board. Dave suggested sending it to the Attorney before the Board of Trustees reviews it.

Les Andersen resides at 4500 Jewel Road. Les suggested that the Commissioners send any new language to the first Board meeting of each month because the Attorney will already be in attendance for the Board meeting. This way the Attorney and the Board can review the language together.

Jim Anderson suggested a different process for creating ordinance language:

- STEP 1: Send language to the Township Attorney.
- STEP 2: Have a Public Hearing.
- STEP 3: Send language to the Livingston County Planning Department and other related entities for review and comment.
- STEP 4: The Commissioners would then make any recommended changes.
- STEP 5: Send language and the Commissioner's recommendation to the Township Board of Trustees and Township Attorney for review and approval.

Jim Anderson said that he would create a flowchart that better explains and outlines this process.

Jim Anderson made a motion to send TXT# 01-23 Data Processing to the Attorney for review instead of the Township Board. Bruce Powelson seconded. **5-1 MOTION CARRIED**

Zach Michels asked the Commissioners what they wanted to do, after the Attorney reviews the Data Processing language.

Jim Anderson made a motion to send TXT# 02-23 Wellhead Protection to the Attorney and The Livingston County Planning Department for review and comment. Bob Hanvey seconded. Bruce Powelson voted against this motion. **4-1 MOTION CARRIED**

NEW BUSINESS:

DISCUSS DEFINITION F CONTRACTOR STORAGE YARD FROM MEMO (11/28/23)

Bob Hanvey explained that Dan Lowe said that we shouldn't rezone the Mitch Harris Property because then contractors will not have anywhere to store their equipment.

The Commissioners decided to change the language in our Zoning Amendment to resolve this issue. The definition in article three of our Zoning Amendments, under Contractor Storage Yard, the words "construction related" will be removed.

The Commissioners are going to review article three in our Zoning Amendments page 3-1 through 3-23 and bring any recommended changes to the next meeting. Zach Michels will bring his feedback and the DEQ changes.

DRAFT

Zach Michels requested that the updated Zoning Amendment document be sent to him and also uploaded to the Township website. Zach also suggested adding a footer containing the page numbers and the revision date, to the ZA document.

NEW BUSINESS:

DISCUSS ISSUES WITH SIGN SECTION

Zach Michels suggested that the Commissioners consider changing some of the language in our Sign ordinance. The language should not specifically mention "Real Estate signs, garage sale signs, gas pump signs, etc." because it could be considered discriminatory. Jim Anderson asked Zach to compare our language to the Read versus Gilbert case and spell out some of the sections in our language that should be changed.

NEW BUSINESS:

FAMILY ACCESSORY APARTMENT AND AFFORDABLE HOUSING

Bob Hanvey explained that there is a new group currently interested in providing various housing options for the lower/middle-class population. This group has had two meetings in Howell regarding this topic.

SPECIAL ORDERS

None.

ANNOUNCEMENTS

Cheryl Range shared some information that she read in the recent MTA magazine. Zach Michels will send out the webinar information for the upcoming training on renewable energy.

CALL TO PUBLIC

None.

ADJOURNMENT

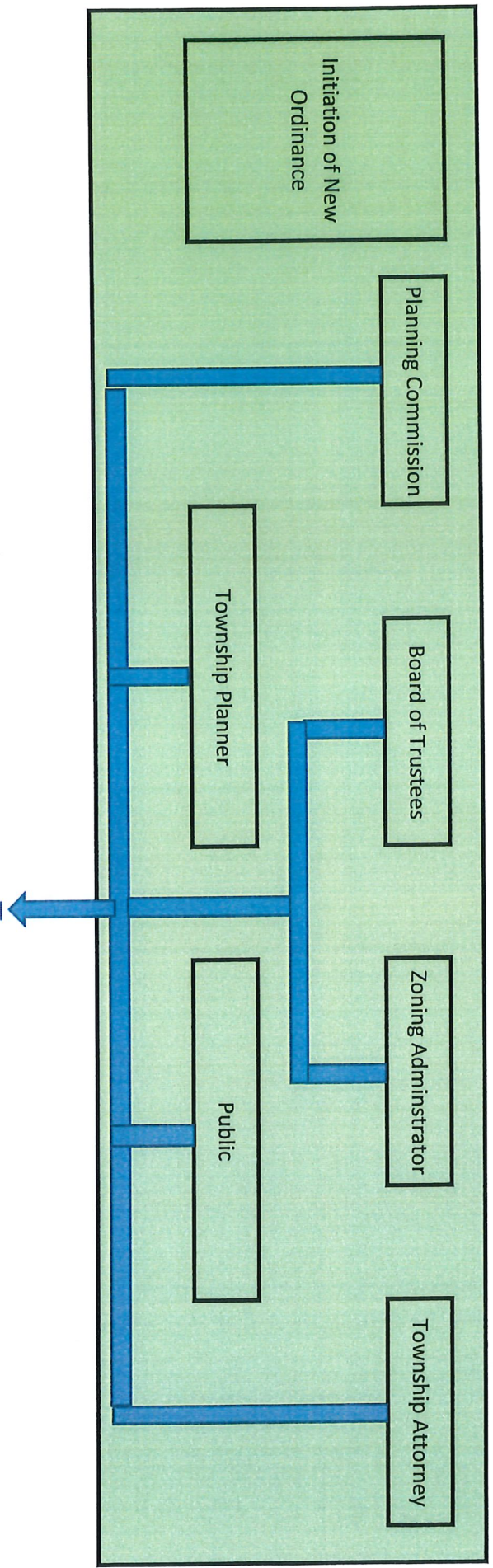
Bruce Powelson made a motion to adjourn the Planning Commission meeting at 9:45pm. Cheryl Range seconded. **5-0**

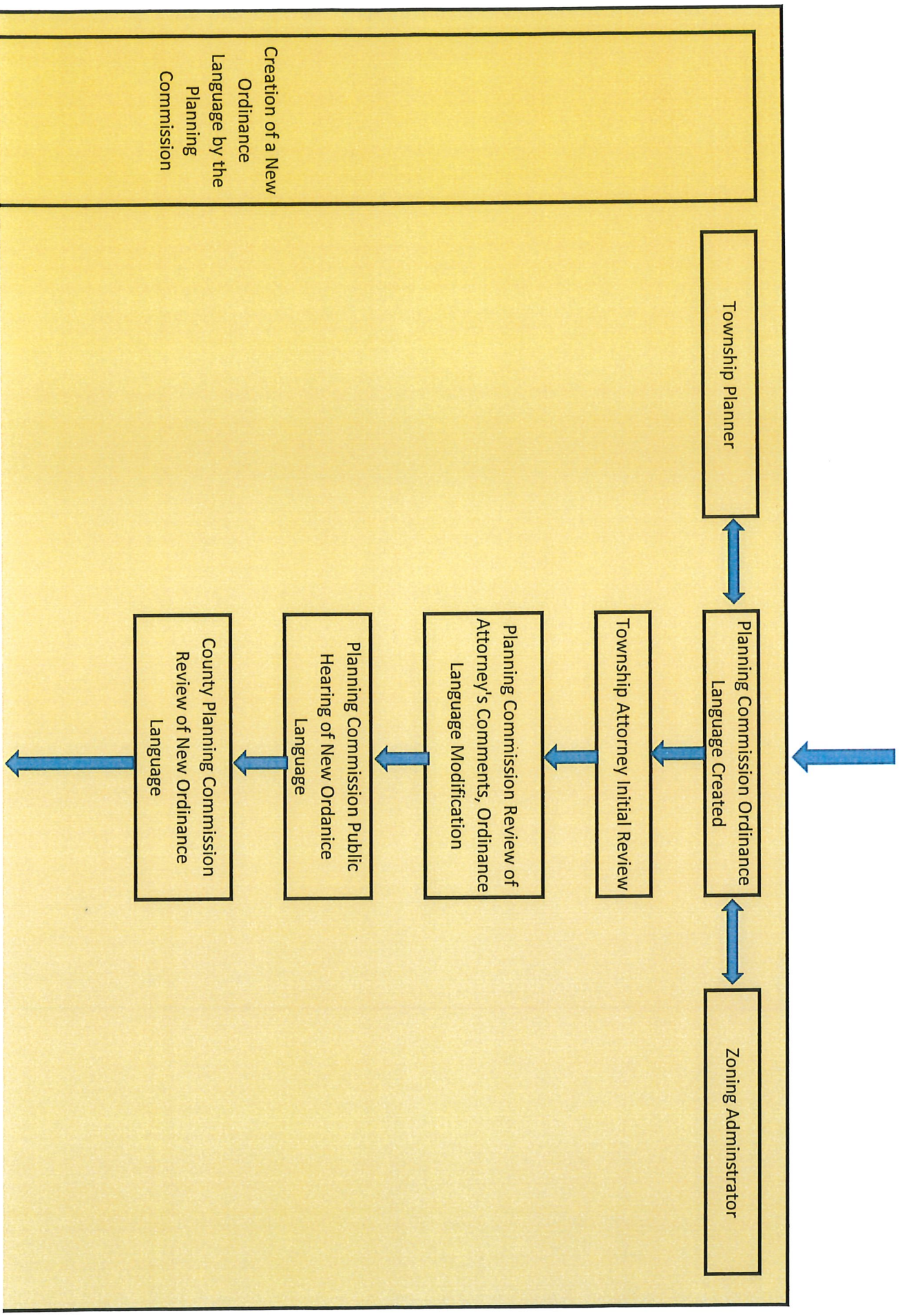
MOTION CARRIED

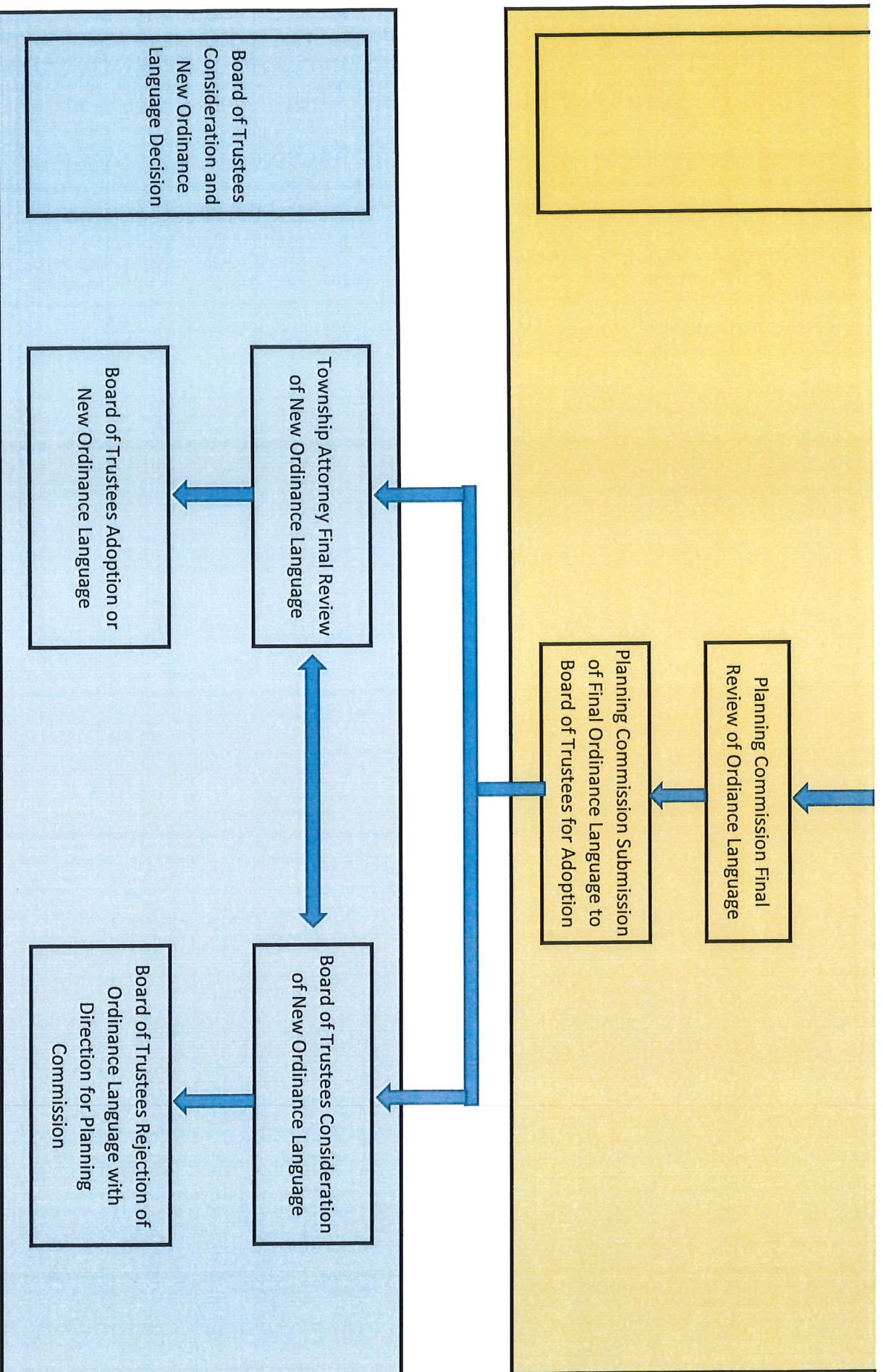
MINUTES TAKEN BY: Jessica S. Timberlake

Marion Township New/Modified Ordinance Flowchart - Draft

January 3, 2024









COMMUNITY CHARACTER

GOAL 1

Foster/encourage a balance between growth and development, and protection and enhancement of the quiet, scenic, rural character of Marion Township.

OBJECTIVES

- Document and establish the existing character of Marion Township to serve as the basis for programs to protect that character.
- Develop and enforce ordinances and regulations that, to the greatest extent possible, better preserve the established character of the Township and promote the official goals and objectives of the Marion Township Master Plan.
- Identify and preserve significant scenic, geologic, open space, and historic features to retain their benefits to the Township.
- Identify and preserve significant wetlands, woodlands, inland lakes and streams, wildlife habitat, and scenic and environmental areas to retain their benefits to the Township.
- Promote farmland, open space, and natural feature preservation while continuing to actively protect the Township's natural beauty, rural character and resources.

PLANNING AND LAND USE

GOAL 2

Coordinate planning efforts with neighboring communities regarding shared resources such as corridors, commercial, conservation and development areas.

OBJECTIVE

- Minimize zoning and future land use conflicts along boundaries with neighboring communities.

GOAL 3

Maintain easy to understand, action-oriented Master Plan language that guides future land use decisions and includes a procedure for periodically updating the Plan while providing meaningful public participation in the process.

OBJECTIVES

- Use the Marion Township Master Plan as a basis for establishing land use regulations that are easily understood by citizens and developers.
- Use the Marion Township Master Plan as a basis for ensuring that preservation of environmental resources is incorporated into the design of agriculture, residential, commercial, and industrial developments in a manner that promotes and enhances the character of the Township.
- Designate target locations within the Township for focused development based on Township Community input and as outlined in the current Future Land Use Plan.
- Designate farmlands and open space locations within the Township for limited development and protection in an effort to maintain the rural character of the Township



NATURAL ENVIRONMENT

GOAL 4

Protect environmentally sensitive areas such as wetlands, groundwater recharge areas, wellhead protection areas, and inland lakes from the harmful effects of incompatible development.

OBJECTIVES

- Maintain an inventory of environmentally sensitive areas, provide the information to interested parties, and incorporate the information in land use regulation documents.
- Devise regulations for land development in environmentally sensitive areas that permit development consistent with identified protection objectives and that complement state and federal regulations for those areas.
- Continue the protection of areas around community drinking water wells as wellhead protection areas to protect groundwater drinking supplies.
- Implement wellhead protection techniques that seek to reduce pollution and soil erosion/sedimentation, and carefully consider development in sensitive areas.
- Cooperate with appropriate watershed districts to address water quality issues.



RECREATION

GOAL 5

Provide a variety of recreational opportunities to area residents through a system of public and private facilities.

OBJECTIVES

- Investigate sources of state and federal funding for parks and recreation facilities.
- Design open space and recreation areas to enhance the character of residential areas. Encourage the incorporation of such areas into new residential developments.
- Where possible, open space easements should be preserved to provide an interconnecting network of non-motorized trails that follow natural greenway corridors.

GOAL 7

Assist the Livingston County Road Commission in maintaining a safe and efficient road network and improve roads to promote use in a manner consistent with the goals and objectives of the Marion Township Master Plan.

OBJECTIVES

- Prioritize township road needs in cooperation with the Livingston County Road Commission.
- Where a loss in roadway efficiency is likely to occur with an excessive number of driveways, prevent individual lot access to arterial or collector streets from intensive development.

GOAL 8

Where public utilities exist, ensure a safe and adequate water supply and environmentally-sound sewage treatment that is efficiently provided and cost effective.

OBJECTIVE

- Continue to coordinate and maintain the provision of public sewer and water infrastructure, and designated wellhead protection areas. Prepare and implement a plan for the carefully timed provision of public sewer and water service in limited areas of the Township, consistent with the development goals and objectives of the Marion Township Master Plan.

GOAL 9

Develop township services and facilities as necessary and financially practical.

OBJECTIVE

- Increase public services and facilities only when consistent with demand from township population growth.

GOAL 10

Only allow expansion of the water and/or sewer utilities currently not serviced within the Township in the case of septic system failures, water contamination or other emergencies.

OBJECTIVE

- Maintain public services and facilities when consistent with demand from township population growth.

GOAL 11

Ensure a water supply of sufficient quantity, quality and an environmentally sound sewage and septic treatment system.

OBJECTIVE

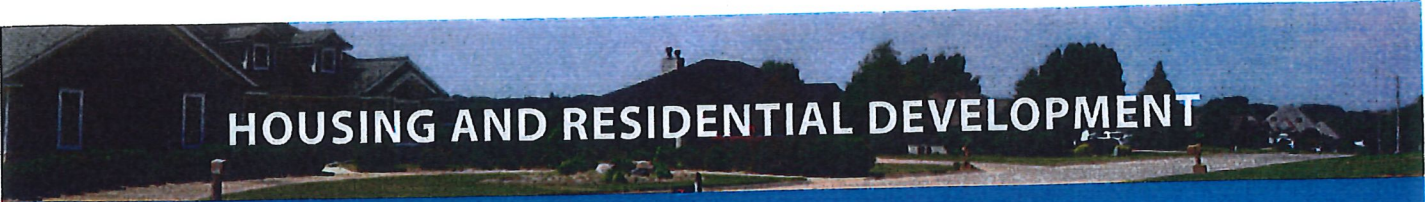
- Inform Township residents on a regular basis the do's and don'ts of sanitary sewer and septic systems.

GOAL 12

Ensure all lakes, streams, creeks and drainage systems are protected from industrial, residential, road run off contamination.

OBJECTIVE

- Inform Township residents how their actions impact the environment in which they live.
- Maintain the quality of the Township's groundwater system and continue to monitor well and septic system locations to prevent any adverse effects on the Township's groundwater supply.



HOUSING AND RESIDENTIAL DEVELOPMENT

GOAL 13

Encourage a variety of residential dwelling types that meet the needs of a changing population, are sensitive to existing natural features, and are compatible with the character of existing residences.

OBJECTIVES

- Ensure and support new residential development that fits into the rural character of Marion Township.
- Ensure that the designs of new development provide for preservation of existing trees, scenic features, and sensitive environmental areas.
- Maintain manufactured housing development within the City of Howell as established through a legal agreement, with site and architectural design that will create neighborhoods of lasting value and stability.
- Encourage the clustering of new residential development to preserve open space and agricultural land.
- Structure zoning and land division regulations to ensure open space developments and preservation of farmland.
- Encourage an array of zoning districts and innovative zoning ordinance language that permits many different types of housing opportunities such as live-work units, elder cottage housing, granny flats, and housing for special needs.
- Discourage home occupations that require outdoor storage of heavy equipment or materials.
- Future housing development be required to have designated usable open space for residents. Size of open space should be determined by the number of units within a development.



COMMERCIAL AND INDUSTRIAL DEVELOPMENT

GOAL 14

Encourage the development of commercial and light industrial activity in locations where adequate public facilities are available, and that are consistent with the Marion Township Master Plan.

OBJECTIVES

- Ensure new commercial and industrial development in areas with safe access to major roads and adequate public sewer and water utilities.
- Ensure new commercial and industrial development where activities will not cause undue interference with traffic patterns and will not pose a nuisance to adjacent land uses.
- Implement site plan requirements for new or altered commercial and industrial uses so that impacts on the natural environment and surrounding land uses are minimized.

GOAL 15

Any commercial development on agricultural land shall be complementary and accessory to the primary agricultural use.

OBJECTIVES

- Commercial activity on farmland shall be inherently connected with the agricultural activities of the farm, agricultural products, take place on the premises of the farm, primarily outdoors, primarily produce noise traditionally associated with agricultural activities, disperse traffic throughout the day's operation (as opposed to concentrated traffic at the start and end of events), or have traffic that primarily consists of passenger vehicles (as opposed to commercial traffic for vendors or service providers).



SOLID WASTE AND RECYCLING

GOAL 16

Ensure the safe, efficient, and cost-effective disposal of solid waste and toxic substances.

OBJECTIVES

- Encourage the reduction of solid waste through recycling, composting, and other resource recovery projects, and encourage the use of biodegradable containers.
- Establish regulations for landfills and other solid waste collection sites.
- Regulate the importing of solid waste from other counties into Marion Township within the parameters of statutory and common law.
- Endorse a recycling program with a central drop-off site or possibly a curbside program.
- Develop and distribute community education materials on recycling procedures and facilities.
- Endorse a collection site for household hazardous waste and/or distribute community education materials on proper waste disposal methods.
- Encourage new residential developments in the Township to coordinate the use of one waste hauler for all residences within the development.
- Explore options for one community-wide hauler.
- Adopt regulations for on-site storage and containment of hazardous substances.



INTERJURISDICTIONAL COOPERATION

GOAL 17

Encourage uniform or compatible land use planning and zoning across municipal boundaries by coordinating efforts with the surrounding Townships and the City of Howell.

OBJECTIVE



Provide adjoining municipalities with up-to-date copies of the Marion Township Master Plan.

GOAL 18

Enhance the feasibility and effectiveness of providing public facilities and services through cooperation and sharing of costs with other municipalities.

OBJECTIVE



Where mutual benefits are apparent, cooperate with the City of Howell to provide public services for the development of prime commercial and industrial land near the Pinckney Road and I-96 interchange. Continue with the Marion Township and City of Howell Joint Planning Committee, Watershed Advisory Committee, Howell Area Parks and Recreation Authority, Parks Committee, MHOG, and the Livingston County Road Commission.



AGRICULTURE AND OPEN SPACE PRESERVATION

GOAL 19

Keep farming a viable and visible part of Marion Township's future land use plan. Open Space green way and farmland preservation should be of the highest priority.

OBJECTIVES

- Systematically preserve open spaces, greenways, and farmland to maintain the quality of life in Marion Township, to preserve environmentally sensitive areas, and to maintain rural character.
- Educate the public on zoning and site planning techniques that preserve agricultural land, open space, and unobstructed views of fields, pastures, and agricultural buildings.
- Explore purchase of development rights (PDR), land conservancy, P.A. 116, or other methods to preserve working agricultural lands.
- Support the landowner's Right to Farm when proper agricultural practices are followed.
- Protect drainage ways for agricultural land.
- Give farmers the tools or range of options necessary to conduct farm-related activities on their property while keeping farming viable on the rest.
- Encourage property tax policies that assess farmland for present use rather than potential use.
- Encourage, promote and support Michigan Department of Agriculture and Rural Development's Agricultural Preservation Trust Fund the purchase of development rights program.
- Strongly encourage the integration of dedicated open space natural features in site development proposals and zoning text amendments.
- Preserve an interconnected system of riparian corridors, woodlands, tree rows, and open spaces.



RENEWABLE ENERGY

GOAL 19

Establish cleaner, alternative energy systems that will not only protect natural resources, but also provide a means to protect economic stability.

OBJECTIVES



- Update and strengthen the Township's Zoning Ordinance standards on renewable energy facilities.
- Develop working relationships with solar energy companies and other related organizations to ensure solar energy facilities are meeting expectations.
- Continue to monitor the Township's renewable energy facility standards to maintain relevancy with changing technologies in energy production.
- Allow renewable energy facilities while preserving the Township's natural beauty, rural character, and important agricultural systems.




GOAL 20

Cooperate with County, Regional, State and Federal hazard mitigation initiatives.

OBJECTIVE

-  Keep the Township's Hazardous Materials Ordinance updated and timely.
-  Support Livingston County Emergency Management Plans.



TRANSPORTATION

GOAL 21

Promote a transportation system that is safe for all modes of transit.

OBJECTIVES

- Promote interconnections between residential developments to minimize traffic on main roads.
- Promote an interconnected greenway system that enhances opportunities for safe pedestrian and bicycle transportation.

GOAL 22

Provide a transportation system that maximizes the mobility of people and supports the efficient transfer of goods and services.

OBJECTIVES

- Endorse and support the efforts of Livingston Essential Transportation Service (LETS) and the Livingston County Transportation Coalition Master Plan.

GOAL 23

Develop a transportation system that is sensitive to and which complements the natural environment.

OBJECTIVES

- Reduce the adverse effects of the transportation system on prime agricultural lands, essential open spaces and recreational resources, and historically significant sites and districts within the Township.
- Preserve the rural feel of the current road network, including a mix of paved and unpaved roads, and screening non-agricultural buildings from the view of passers-by on roads.

GOAL 24

Work with the County Road Commission on the development of a comprehensive traffic and flow plan for the Township based on current and future traffic conditions.

OBJECTIVES

- Actively work with law enforcement and county road engineers to develop reasonable traffic control devices such as speed limits, intersection lighting, traffic signals, turn lanes, signage, and enforcement.

GOAL 25

Seek Township resident support for major road improvements.

OBJECTIVES

- Formation of Community Task groups to address major road/traffic issues within the Township.
- Seek funding of major road improvements via additional road millages.

Accessory Dwelling Unit: RURAL (Generally Zoning that includes parcels with at least 1 acre)
Township modifications noted in RED.

Ordinance Number: -----

Intent: By permitting Accessory Dwelling Units the Township seeks to achieve several goals:

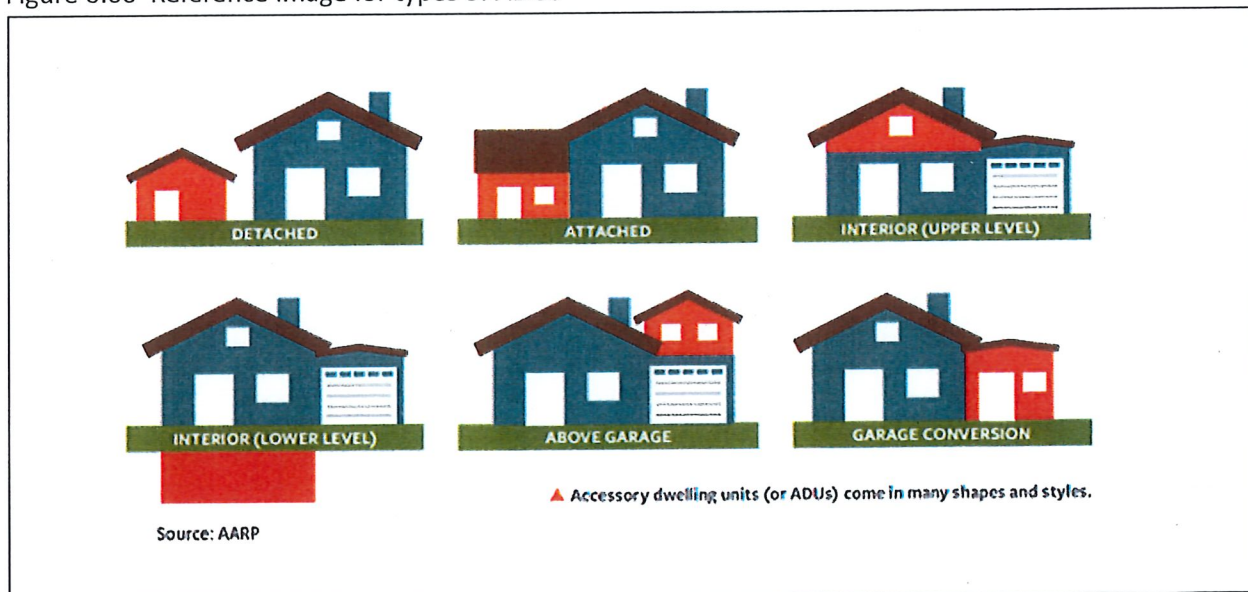
1. Increase flexibility for homeowners to meet the needs of their family including multigenerational members.
2. Create more housing options for smaller households including single professionals or empty nesters.
3. Maintain compatibility with existing housing types.
4. Increase affordable housing options.
5. Provide homeowner with potential extra income to meet rising homeownership costs.

Definitions:

Accessory Dwelling Unit (ADU): is a second, smaller dwelling unit either developed within an existing single-family house (such as a basement, attic or addition) or as a smaller detached accessory building. An attached ADU also shares at least a 15 feet wall with the Principal Dwelling Unit.

Principal Dwelling Unit: The single-family dwelling located on the parcel with an Accessory Dwelling Unit.

Figure 0.00 Reference Image for types of ADUs



Accessory Dwelling Units are a permitted use within the Agricultural (AG) & Single Family Residential (SFR) District/s. Attached ADUs shall be between 400-800 sq ft. Detached ADUs shall be between 500-900 sq ft.

Dimensions & Setbacks: ADUs must meet the lot dimensions and setbacks requirements in Table 0.00.

Table 0.00 Dimensional Requirements for ADUs

Zone	Minimum Lot Size	Minimum Lot Width	Minimum Front Setback	Minimum Side Setback	Minimum Rear Setback	Maximum Height (Attached)
AG	1 acre	150	50	30	50	30 ft
SFR	1 acre	100	50	30	40	30 ft

OR

Dimensions & Setbacks: ADU's must meet lot dimension and setbacks of the corresponding zoning district.

Lot Coverage: ADUs shall adhere to the lot coverage requirements of the corresponding zoning district.

Principal Dwelling Unit

1. Must be owner occupied.
2. The minimum floor area of the principal dwelling unit may not decrease the minimum floor area requirements of a single family, 960 square feet, with at least 600 sq. ft. on the ground floor.
3. The principal dwelling unit and the ADU must share common water, septic, and electric facilities.

Detached ADU

1. May be permitted in front of the principal dwelling unit provided that:
 - a. The Detached ADU is at least 150 feet from the right of way.
 - b. The Detached ADU is within 50 feet of the principal dwelling unit.
 - c. Screening: If detached ADU is visible from the right of way, additional evergreen screening may be required.
2. Is permitted in the side yard provided:
 - a. The ADU is a minimum 10 feet away from principal dwelling unit.
 - b. Meets all the required setbacks.

OR

Detached ADU

1. Shall only be permitted in the rear yard with a minimum 10 feet behind the Principal Dwelling Unit.
2. Is permitted in the side yard provided:
 - a. The ADU is a minimum 10 feet away from principal structure.
 - b. Meets all the required setbacks.

Other Requirements

1. **Amount of ADUs per Parcel:** No more than 1 ADU per parcel shall be constructed. ADUs are only permitted on lots with a single-family dwelling. ADUs are not permitted on parcels with existing duplexes/apartments.
2. **Utilities:** An ADU shall be connected to potable water and sanitary facilities approved by the County Health Department. Utility service to an ADU shall rely on the same metering and service panel as those that serve the principal dwelling except as may be otherwise required by the building inspector according to the State Construction Code. Separate utility billings for an ADU by the utility provider are prohibited.
3. **Design Character:** The ADU shall be designed so the appearance of the building will remain that of a single-family dwelling. Further, it shall not detract from the appearance of the lot as a place of one (1) residence, and shall be aesthetically compatible in appearance with other single-family dwellings in the immediate area based on architectural design and exterior materials.
4. **Access:** Attached ADUs shall be limited to a common entrance foyer or exterior entrance to be located on the side or rear of the building.
5. **Occupancy/Bedroom Requirements:** An ADU shall have no more than 4 individuals including those less than 18 years of age. More than 2 bedrooms is prohibited.
6. **Renting an ADU:** Leasing or renting a ADU for shorter than 30 days is prohibited. The ADU shall not otherwise be made available to any one (1) or more persons for periods less than thirty (30) days.
7. **Driveway and Parking:** Shall provide a combined off-street parking for a minimum of four automobiles for principal dwelling unit and ADU.
 - a. In no case shall a ADU be permitted to have a separate driveway.

Other Requirements for ADUs Continued.....

8. **Garage:** A garage may be erected to serve an ADU subject to the following requirements:

- a. An ADU garage shall be part of the same structure as the ADU.
- b. An ADU garage shall be no greater than 450 sq. ft. in gross floor area.
- c. An ADU garage shall be no higher than 15 ft. as measured to the highest point of the roof.
- d. An ADU garage shall comply with the same setback standards as required for a principal dwelling in the district.
- e. No more than one (1) ADU garage shall be erected on a lot.
- f. At no time shall the Garage be used as a dwelling.

9. **Authorization:**

- a. No ADU shall be established prior to the issuance of a land use permit for the ADU. The Zoning Administrator shall be the approving body for all ADUs.
- b. The applicant shall submit the following information for review:
 - i. A plat plan showing the location of the proposed accessory dwelling unit, lot identification (address and property number), size of lot, dimension of lot lines, existing improvements on the lot, location of structures on adjacent lots, abutting streets, driveways, and parking areas.
 - ii. Sufficient architectural drawings or clear photographs to show the exterior building alterations proposed.
 - iii. Interior floor plans showing the floor area of the proposed accessory dwelling unit and the primary dwelling.
- c. No construction of an ADU, including excavation and clearing, shall be initiated prior to the Zoning Administrator receiving adequate evidence that the County Health Department has approved potable water and sewage disposal plans.
- d. A land use permit for an ADU shall terminate at such time that the ADU does not conform to one or more of the standards and requirements of this Section 000 and the ADU has not been brought into compliance within the time period specified by the Zoning Administrator, but no greater than **ninety** 90 **days**. In the case of an ADU in a separate building from the principal dwelling, and which has not been brought into compliance with the period specified by the Zoning Administrator, the ADU shall be removed from the lot within **sixty (60) days** thereafter and the ground shall be returned to its pre-construction condition. No ADU shall be occupied upon termination of the land use permit for the ADU.



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

Sarah Mills and Madeleine Krol

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

(Last revision: 1/12/2024)

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

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

1) What is Public Act 233 of 2023 about?

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

¹ Section 221 (f)

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

³ 2008 PA 295, (MCL 460.1013)

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

- The new permitting process laid out in PA 233 solely applies to wind, solar, and energy storage projects above the capacity/size thresholds listed in the Act⁴. This refers to any solar energy facility with a nameplate capacity of 50 megawatts or more, any wind energy facility with a nameplate capacity of 100 megawatts or more, and any energy storage facility with a nameplate capacity of 50 megawatts or more *and* an energy discharge capability of 200 megawatt hours or more. Any solar energy, wind energy, or energy storage facilities below these thresholds are subject to conventional local zoning. It is unclear whether the mentioned capacity thresholds refer to AC or DC power, which differ for solar energy.

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

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

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

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

⁴ Section 222 (1)

⁵ Section 222 (2)

⁶ Section 231 (4)

⁷ Section 223 (3)

⁸ Section 223 (1)

⁹ Section 223 (1)

¹⁰ Section 223 (2)

¹¹ Section 223 (1)

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

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

Questions on setting up CREOs:

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

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

¹² Section 225 (1) s

¹³ Section 223 (1)

¹⁴ Section 221 (f)

¹⁵ Section 223 (3) a

¹⁶ Section 223 (3) c(ii)

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

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

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

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

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

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

¹⁷ Section 223 (3)

¹⁸ Section 223 (3)

¹⁹ Section 221 (n)

²⁰ Section 221 (a)

²¹ 2006 PA 110, MCL 125.3101 et seq.

²² Section 221 (f)

²³ Section 223 (3)

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

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

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

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

²⁴ Section 223 (3)

²⁵ Section 221 (f)

²⁶ Section 223 (3) c(i)

²⁷ Section 223 (3) c(ii)

²⁸ Section 223 (3) c(iii)

²⁹ Section 223 (3) c

³⁰ Section 223 (3) d

³¹ Section 223 (1)

³² Section 226 (1)

³³ Section 223 (5)

Community Host Agreements

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

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

³⁴ Section 227 (1)

³⁵ Section 227 (1)

³⁶ Section 221 (n)

³⁷ Section 227 (1)

³⁸ Section 227 (1)

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

⁴⁰ Section 227 (2)

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

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

Thinking through pros and cons of the different paths

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

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

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

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

⁴¹ Section 227 (1)

⁴² Section 226 (5)

⁴³ Section 223 (3) b

⁴⁴ Section 226 (1)

⁴⁵ Section 227 (1)

⁴⁶ Section 226 (7) e

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

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

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

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

⁴⁷ Section 223 (3)

⁴⁸ Section 223 (1)

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

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

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

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

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

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

⁵⁰ 2008 PA 33, MCL 125.3801 et seq.

⁵¹ 2006 PA 110, MCL 125.3101 et seq.

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

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

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