

**Fahey Schultz
Burzych Rhodes**

EXPERT COUNSEL



REAL SOLUTIONS

Wind And Solar Ordinances – 7 Common Questions

ATTORNEYS MATTHEW KUSCHEL AND KYLE O'MEARA

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Disclaimer

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





Presentation Goals

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



Solar and Wind Energy Projects



Utility-Scale Wind Projects

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

“Personal” Wind Turbines

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

Utility-Scale Solar Projects

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

“Personal” Solar Panels

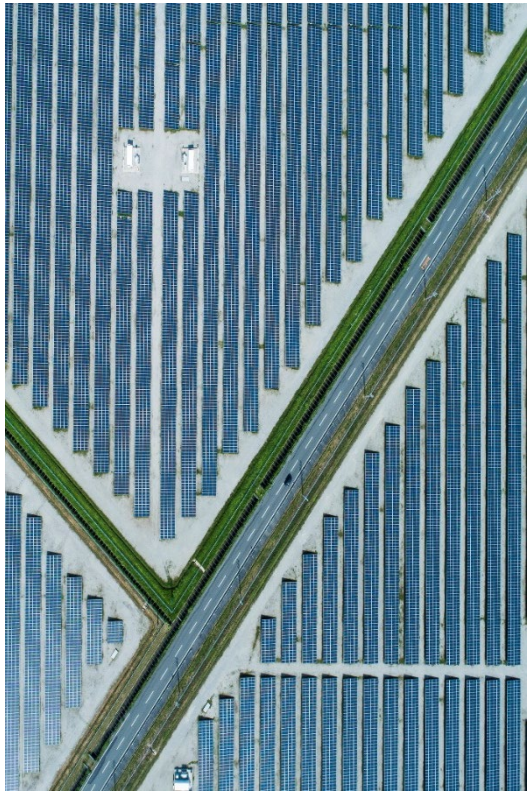
- Typically, accessory uses of stand-alone solar panels and related equipment to provide power to an individual property.






WIND AND SOLAR ORDINANCES – 7 COMMON QUESTIONS

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



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



A hand-drawn architectural plan on a table. A hand is holding a pen, drawing on the plan. A yellow level is visible in the bottom left corner. The plan shows various lines, rectangles, and text, including "CHURCH" and "SCHOOL".

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


Not necessarily

Police Power vs. Zoning

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

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

- A township police power ordinance more strictly regulating standards (e.g., noise) that are addressed by a county zoning ordinance are likely to be held by a court as unenforceable. *Forest Hill Energy-Fowler Farms, LLC v Twp of Bengal*, unpublished opinion of the Court of Appeals, issued December, 4, 2014 (Docket No. 319134), 2014 WL 6861254, p *5



3. What types of issues do these ordinances regulate?

“Performance Standards” vs “Review Materials”

- “Performance Standards” – Regulations that will last the life of the project (e.g., glare standards)
- “Review Materials” – Regulations that will apply to a project upon application

Examples of Performance Standards

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

Examples of Review Materials

- Setbacks (Both)
- Districts or Overlay Where Improvements are Allowed (Both)
- Site Plan Materials (Both)
- Adequate Permits from Other Agencies (Both)
- Proof of Land Rights (Both)
- Initial Studies (Noise, Shadow Flicker, Environmental) (Both)



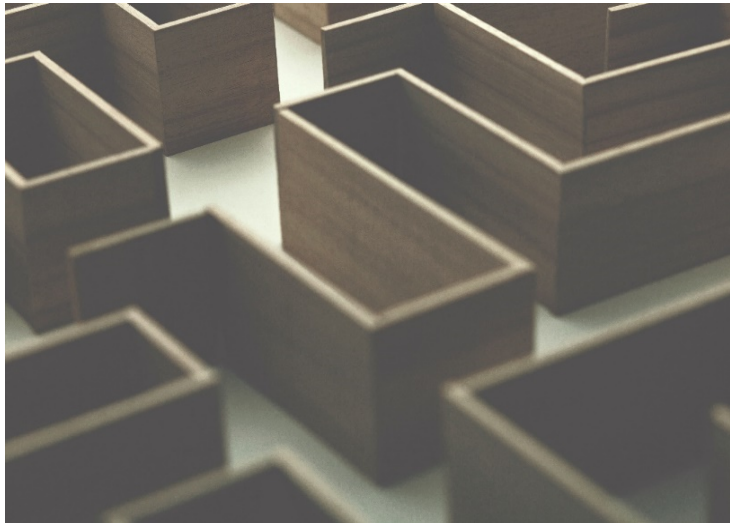
4. Can our township prohibit these projects by ordinance?



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



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



- 1. Application Escrow Accounts:** Monies that would be deposited in escrow with a township to retain third-party experts (planners, engineers, attorneys) to assist with reviewing a special land use permit and site plan application. See MCL 125.3406 and *Forner v Allendale Charter Twp Supervisor*, unpublished opinion of the Court of Appeals, issued March, 21, 2019 (Docket No. 339072), 2019 WL 1302094, p *5.
- 2. Approved Complaint Resolution Process:** An approved process by a township for a developer to receive complaints from the public related to ordinance standards and to resolve such complaints (if applicable).
- 3. Post-Construction Studies:** An applicant would pay a township to retain a third-party expert to ensure that a development is meeting certain standards when constructed such as noise, glare, and shadow flicker.
- 4. Ordinance Enforcement Escrow:** Monies that would be deposited in escrow with a township that would remain through the life of a project so a township can investigate any complaints related to ordinance violations with a third-party expert (e.g., a sound consultant).



6. What are some tips to engage stakeholders?

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



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

- Because both solar and wind ordinances can sometimes become politicized with advocates on both sides (both pro and anti), a township may have a difficult time finding objective information for ordinance drafting. Here are some ideas to find objective information:

- FSBR Ordinance Drafting E-Letters

- Solar (2017) - <https://fsbrlaw.com/2017/09/29/does-your-township-need-a-solar-ordinance/>
- Wind (2015) - <https://fsbrlaw.com/2015/05/29/how-to-regulate-wind-energy-projects/>

- Academic Planning and Zoning

- Michigan State University Extension – Planning
- University of Michigan – Graham Sustainability Institute

- Technical Information (e.g., how to regulate/measure noise?)

- May want to consult with a subject-matter expert such as a planner or engineering firm with experience with such projects.

- Ask other elected officials with (and without) projects in their jurisdiction

- It's not easy to find what is appropriate for your community

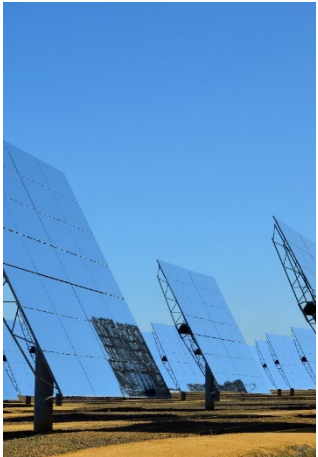


8. (Bonus) How can our township regulate “personal” wind turbines and solar panels?

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



Our Ordinance Drafting Resources



Does Your Township Need a Solar Ordinance? (2017 E-Letter)

- Discusses how to draft a solar ordinance.
- <https://fsbriaw.com/2017/09/29/does-your-township-need-a-solar-ordinance/>

How to Regulate Wind Energy Projects (2015 E-Letter)

- Discusses how to draft a wind energy ordinance.
- <https://fsbriaw.com/2015/05/29/how-to-regulate-wind-energy-projects/>

Renewable Energy Projects – Getting Past Go (2021 E-Letter)

- This E-letter discusses important issues for how to consider a project, assuming a township has an ordinance in place.
- <https://fsbriaw.com/2021/02/26/renewable-energy-projects-getting-past-go/>
- These include:
 - Retaining experts
 - Evaluating township conflicts of interest
 - Special land use permit and site plan review
 - Ensuring compliance with ordinance provisions



Questions



Kyle O'Meara and Matthew Kuschel
Fahey Schultz Burzych Rhodes PLC
4151 Okemos Rd., Okemos, MI 48864

Tel: 517-381-0100

komeara@fsbirlaw.com

mkuschel@fsbirlaw.com

www.fsbirlaw.com

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