

**Fahey Schultz
Burzych Rhodes**

EXPERT COUNSEL



REAL SOLUTIONS

Renewable Energy Projects

Getting Past Go!

ATTORNEYS KYLE O'MEARA AND ANTHONY WARREN

MARCH 24, 2021

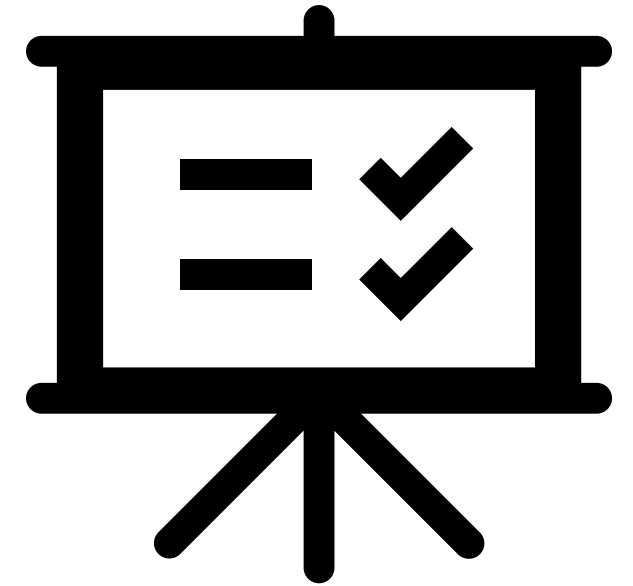
Disclaimer

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

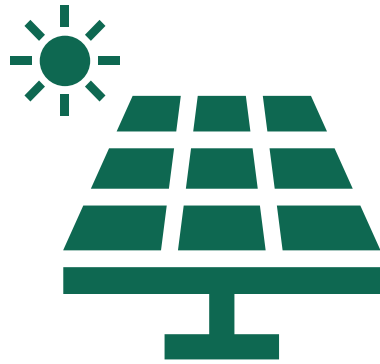


Goals

- ✓ Understand how townships can process complex zoning applications for renewable energy projects.
- ✓ Discuss conflicts of interests in the renewable energy project context.
- ✓ Learn how to implement common ordinance requirements for projects.
- ✓ Touch on some ordinance drafting considerations.
- ✓ Answer Questions



Common New Renewable Energy Developments in Michigan



Solar



Wind



Incentives for Renewable Energy Developments

Utility/Developer Side

- *Michigan Public Service Commission – Renewable Portfolio Standard – 15% in 2021*
- *Federal Tax Credits (COVID Relief Bills and Others)*
- *September 23, 2020 Governor’s Executive Directive (2020-10) – Carbon Neutral by 2050*
- *Pledges by Major Michigan Utility Companies to have 25% of Energy Come from Renewable Sources by 2030*
- *Customer Preferences*

Local Level

- *Financial benefits to landowners (leases)*
 - *MDARD Policy that Solar and Wind Developments are Consistent with PA 116 Farmland Preservation*
- *Property Tax Revenue from Local Property Taxes*





Prior E-Letters: Solar Ordinance Drafting September 2017

- More intensive regulation of large developments
- Allow small-scale solar as an accessory use
- Address issues with utility-scale development glare, noise, and dimensions
- Decommissioning
- <https://fsbriaw.com/2017/09/29/does-your-township-need-a-solar-ordinance/>



A vertical image on the left side of the slide showing the silhouette of a wind turbine against a vibrant sunset sky with orange, yellow, and purple hues. The turbine's three blades are clearly visible, extending from a central hub.

Prior E-Letters: Wind Energy Ordinance Drafting

May 2015

- Location and Setbacks
- Noise
- Shadow Flicker
- Lighting Systems (ADLS)
- <https://fsbriaw.com/2015/05/29/how-to-regulate-wind-energy-projects/>



Preparing to Process a Zoning Request





Ensure You Can Use Experts

These applications are complex, it is necessary to retain experts to ensure lawful zoning decisions.

A township may charge “reasonable fees” as a condition of granting zoning permits. MCL 125.3406.

Michigan Court of Appeals has upheld the ability for townships to recover actual costs in processing an application with an escrow fund (*Forner v Allendale Charter Township Supervisor*, unpublished per curiam, 2019).



Finding the Right Experts

Request for Proposals – “RFP”

Contents:

- Description of Township
- Description of Project
- Request for Credentials
 - Experience with Similar Projects
 - Township References
 - Number of Employees

Rank and select candidates based on proposal and/or presentation



Renewable Energy – Conflicts of Interests



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Potential for Many: Common for wind or solar development to sign up large amounts of property owners to “participate” in a project making those property owners have a financial interest in a project.

What is a Conflict of Interest?

- Limited guidance in the Michigan Planning Enabling Act and Michigan Zoning Enabling Act.
- **“Standards of Conduct Act”** MCL 15.341 *et seq.*, gives guidance:
 - Business relationships with zoning applicant (including family)
 - Financial interest with zoning project (including family)
- Fiduciary duties to Township
- Any promulgated policies defining conflict of interest for your Township.

How to Address Conflicts of Interest?



Implement Bylaws

Develop a Process to
Identify Potential
Conflicts

“The Rule of
Necessity”



The Zoning Process



How to Prepare and Address an Application



- Complete the “Preliminary Steps”
 - Zoning Ordinance addresses such developments
 - Have necessary experts and conflict of interest procedures
- Begin to Process
 - *Ensure your township has formally established its planning commission by ordinance under Michigan Planning Enabling Act. MCL 125.3811.*
- Process the Application
 - *We recommend a “two-step” approach.*



Two Step Consideration for Projects

First:

Special Land Use

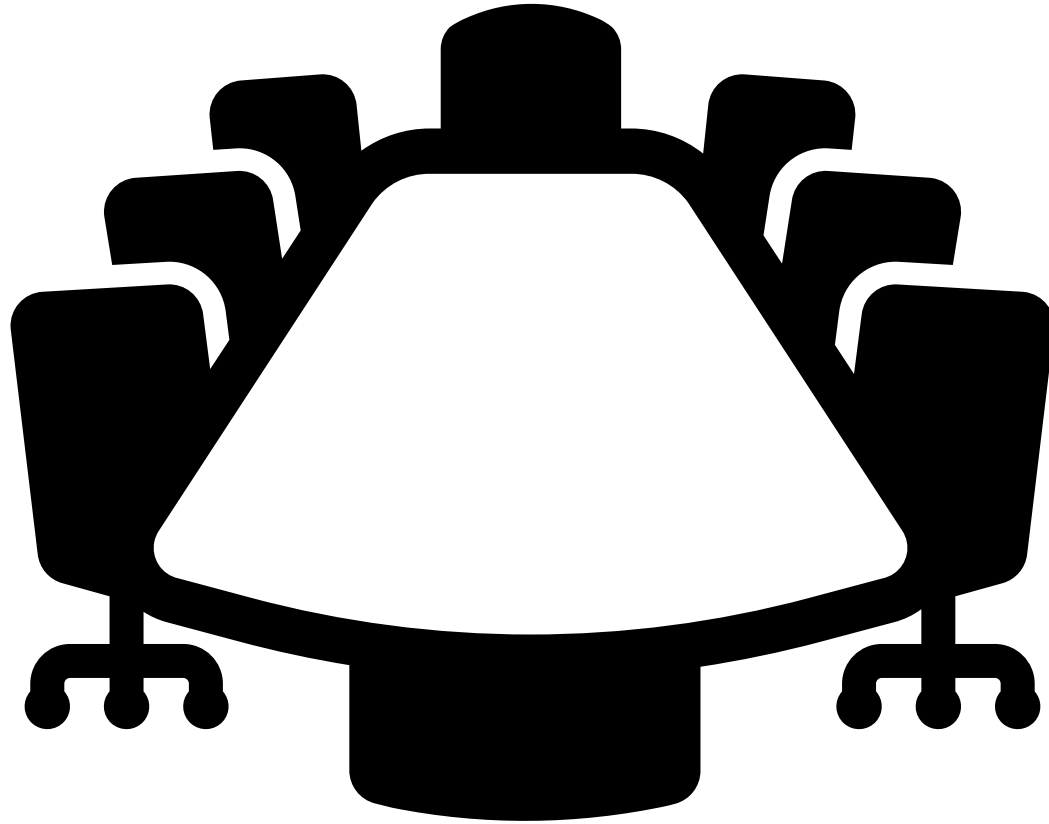
Is the proposed land use appropriate within the Township?

Second:

Site Plan

Does the specific project conform to the Zoning Ordinance?





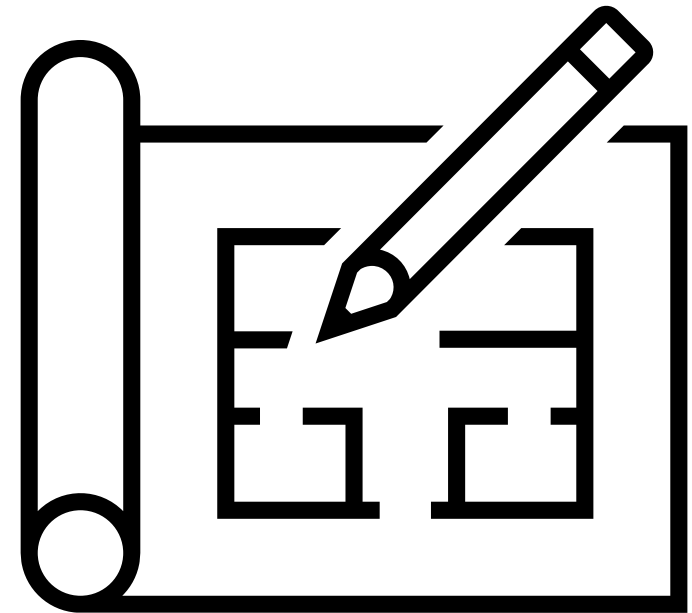
First Step: Special Land Use Review

- Review the proposed land use application (including for completeness)
- Public hearing to receive public input.
- Look at scope of the project in the context of the Zoning Ordinance and the Master Plan.
 - Big-picture review of project.
- **Make a Decision**
 - Approve/Approve with Conditions/Deny
 - Experts can help determine conditions!



Second Step: Site Plan Review

- Ensure proposed sites comply with setback requirements.
- Detail-oriented look at site impacts resulting from project (flicker, glare, sound, buffers, etc.).
- Detail-oriented review of project particulars.
- No public hearing required.



Ensuring Ordinance Standards are Met





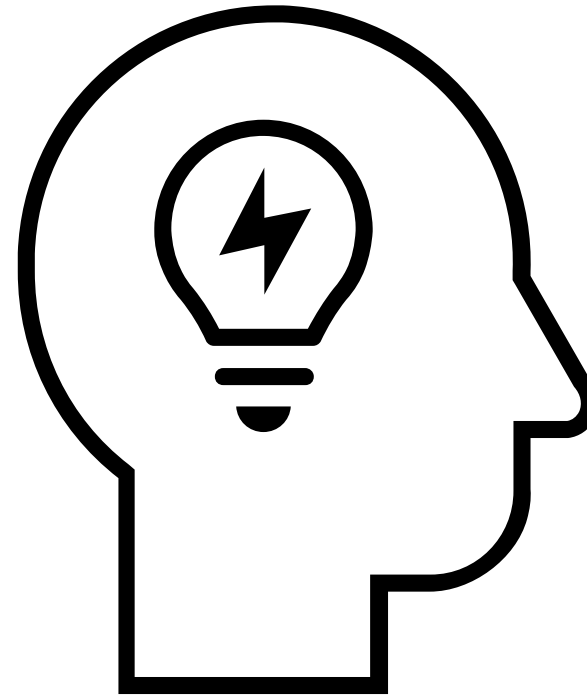
Common Concerns

- Lack of Township resources
- Conditions with technical requirements
- Wide-reaching project
- Long-term nature of the project
- Decommissioning



Ensuring Ordinance Compliance

- **Performance Standards**
 - Complaint Resolution
 - Continuing Escrow
 - Post Construction Studies
 - *If necessary, legal process*
- **Decommissioning**
 - Decommissioning Agreement
 - *Costs of Decommissioning*
 - *Inflationary Index*
 - *Revisiting Numbers*



Questions



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

Tel: 517-381-0100

komeara@fsbirlaw.com

awarren@fsbirlaw.com

www.fsbirlaw.com

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