

**EATON COUNTY
ZONING ORDINANCE COMMITTEE MEETING
January 17, 2018**

Call to Order: Brian Ross called the meeting to order at 3:07 p.m. in the Board of Commissioners Room, Eaton County Courthouse, 1045 Independence Blvd., Charlotte, MI 48813.

Planning Commission Committee Members present: Brian Ross and Christine Barnes
Absent: Ben Tirrell
Additional Planning Commission Members present: Tammy Halsey

Staff present: Claudine Williams and Brandy Hatt

Agenda Approval: A motion was made by **Commissioner Barnes** to approve the agenda for the January 17, 2018 meeting as printed. **Commissioner Ross** supported. Motion carried.

Minutes Approval: A motion was made by **Commissioner Barnes** to approve the August 31, 2017 and October 3, 2017 minutes as printed. **Commissioner Ross** supported. Motion carried.

Public Comments: Mr. Brian Droscha, 140 Stewart Road, Charlotte, stated he is opposed to solar facilities being constructed on good farm land. He stated he is from a farming family; his brother was contacted by Cypress Creek, a solar company who is willing to pay him one-thousand dollars an acre to lease his farm land for the purpose of installing a solar facility. Mr. Droscha stated the information provided to his brother indicates the systems would take approximately two weeks to install and the land graded. He stated it is not a reasonable timeframe because the soils are gravel and clay. Mr. Droscha stated these companies are going to strip away the topsoil from the properties, thus ruining the farm land for future crops. Geronimo Energy says they plant crops between their panels, but Mr. Droscha noted crops cannot be planted in gravel. He read a portion of a brochure received from Cypress Energy regarding the completion of a property. He asked if there are mechanisms in place to ensure complete removal of the panels and equipment; topsoil cannot be put back on a property and that property simply farmed. Mr. Droscha stated he is concerned we are going to have a lot of brownfield sites due to solar panels; crops cannot be planted on brownfield sites. He asked that further discussion regarding solar energy be tabled until Michigan State University completes their study to see if maybe the best location for solar panels is in a parking lot. He asked that the good farm land be left alone. Mr. Droscha stated solar power was recently discussed in an issue of Michigan Farm News; he read a portion of the article regarding tax incentives. He stated he believes the tax incentives offered to the solar companies is why we are currently being bombarded by so many solar companies; it is not about green energy, it is about tax breaks and money.

Mr. Jack Caughey, 7749 Benton Road, stated he is the Chair of the Benton Township Planning Commission. He asked the Zoning Ordinance Committee to consider not allowing solar facilities in agricultural zoning. He stated Benton Township has a master plan, they have set aside property in their township for commercial and industrial zoning; a lot of money was spent on their master plan. Mr. Caughey stated a highway was moved to protect farm land; money was given by the federal government to protect the farm land from the highway location. He stated an average farm yields ninety-thousand bushels of corn which could run an ethanol plant; ethanol is blended with gasoline to fuel cars. He stated the average farm produces enough feed corn to aid in the production of two point three million eggs. Mr. Caughey stated agriculture is the number two industry in the State of Michigan; a farm is something that produces food and fiber. He said we do not have an infinite amount of farm land available. He stated we should stick to our master plan and put solar facilities in current brown field sites or light industrial. He stated the township and county have always worked together and he would like to continue to do so.

Ms. Nancy Gensel, 5388 Carls Ridge Drive, stated petitions were signed in Benton Township with over one-hundred fifty people opposed to solar facilities on agricultural property. Ms. Gensel read the language from the petition into record and gave the petition to staff for the record. She stated she is concerned about the chemicals found in solar panels, specifically, cadmium sulfate. She passed out chemical data sheets from the

Centers for Disease Control and Prevention on Cadmium Sulfate to the Zoning Ordinance Committee. Ms. Gensel stated the installation of a solar facility does require grubbing and leveling of the land; the contours of the land are not kept. She stated she is concerned how the grubbing and leveling of the land will affect the drainage of the property and the drainage of neighboring properties; she asked how repairs would be made to existing drainage. Ms. Gensel asked how the property once destroyed could be returned to the original condition.

Mr. Ben Kudwa, 7808 Oneida Road, stated his property is right on the line between Oneida and Benton Townships. He stated he has lived in his home since 1986; he is also concerned about the drainage issues. He stated the property has a slope to the west of Oneida Road; it drains to from the west to the east. Mr. Kudwa stated there isn't adequate drainage in place for the area currently; some of the drains are working, but some are not. He stated we are talking about allowing for something we don't know much about that could potentially further affect the drainage and where the water ends up. He stated before moving forward with this issue, the drainage in the area should be addressed and fixed. Mr. Kudwa stated he did read a drainage plan is required in the proposed language, but he does not believe that is enough. He stated he has seen the drainage in his area get worse over time.

Mr. John Coakley, 2100 E. Strange Highway, stated he has looked at what has been put together so far; proposed section 14.39.2 Intent and Purpose, is missing the consideration for and impact a large solar system could have on the residents and aesthetics of the area. He stated the size of the project currently proposed by Geronimo Energy is five-hundred acres from east to west and north to south; it covers enough of an area to land a seven forty seven air plane, it is equivalent to one-hundred twenty Wal-Mart stores. Mr. Coakley stated we are not dealing with a small development; there will be steel in the ground, structures at least fifteen feet in height and a setback of seventy-five feet. He stated someone has to live next to that. He asked the Zoning Ordinance Committee to consider how they would feel if a solar facility were adjacent to their property. He stated he believes the solution is easy, the Ordinance should be written so when companies are looking to develop solar facilities they can find property that fits. He stated there should be a five-hundred foot setback between a development like this and a residential property. Mr. Coakley stated he knows some may say his proposed setbacks are not fair, but if in place, the developer will know what property to look for and purchase ones that meet the requirements. He stated the solar facility owned by DTE in Lapeer was done undercover; the residents didn't know what was going on or how it was going to affect them. He stated the residents in Lapeer are not happy with the solar facility; its installation took their natural setting away. Mr. Coakley stated DTE has setback regulations for wind energy systems; the information is available to them so they know where to look for appropriate properties. He stated the idea of having a large setback is not unreasonable; He suggested possible adding language to the affect of the setback shall be five-hundred feet from a residential property, but could be less if the owner of the property allowed for a lesser setback. He stated the large facility being proposed is not a typical development.

Mr. Steve Davidson, 671 McConnell Highway, stated he agrees with everyone, he is concerned about losing good farm land. He stated he would like the farm land to remain the same.

Mr. Matt Zimmerman stated he is an attorney representing a couple of solar companies interested in Eaton County. Mr. Zimmerman stated he would like to counter some of the information given. He stated the amount of cadmium sulfate located in a solar panel was overstated; he said the amount in each panel is equivalent to a human hair and the panels have passed all of the required testing to be used. Mr. Zimmerman stated he does not represent Cypress Energy, however the companies he does represent do not grossly grade the land to install panels; the property is returned to farmable property, it will be returned to as it was before a solar facility was installed. He stated the current proposed language required complete removal of all components of the solar facility and re-vegetation of the property as well as a financial guarantee to ensure all of the required work is done. Mr. Zimmerman briefly discussed other potential means of financial guarantees; he stated a possible dollar amount appropriate for the financial guarantee would be twenty-thousand dollars an acre. Mr. Zimmerman stated he has heard a lot of comments regarding the drainage of the properties, but that is also addressed in the proposed language. He stated the proposed drainage plan is required to be presented to the drain commissioner to be approved. In regards to the setbacks, he stated the Zoning Ordinance Committee had considered a setback of fifty feet, but increased it to seventy-five feet; to increase it further would make development impossible and could be considered exclusionary. Mr. Zimmerman stated if the Zoning

Ordinance Committee does not want to allow solar facilities in Eaton County, they should follow the advice given by the public today or follow Oneida Township's Ordinance. He stated if the Zoning Ordinance Committee believes solar is a valid land use, the drafted language before them is workable and reasonable.

Mr. John Coakley, 2100 E. Strange Highway, stated he just heard Mr. Zimmerman say we should either do it their way or no way at all. He stated this is the township resident's ordinance, not the developer's ordinance. He stated he has been to the site the Lansing Board of Water and Light is currently working on, they are removing the topsoil. He stated he does not believe increasing the setbacks will make the land use exclusionary. Mr. Coakley stated if he were a developer looking for property and knew the requirements needed to develop, he would find property that met the requirements and company needs. He would not find property located adjacent to a residential development.

Mr. Ben Kudwa, 7808 Oneida Road, addressed the proposed drainage requirements; he asked why Eaton County would give up the right to create their own drainage plan. He stated he would like Eaton County to develop the drainage plan. **Commissioner Ross** stated as currently proposed, the drainage plan would be developed by a licensed engineer and submitted to the Eaton County Drain Commissioner Office for review and approval, changes or denial. Mr. Eric Deibel, Eaton County Deputy Drain Commissioner, stated the three sites in Delta Township all have different drainage plans. He stated there is a flood easement over the Sundance property; it is not treated as a farm, but rather a commercial land use for the drainage plan.

Mr. Scott Wilson, Eaton Rapids Township Supervisor, stated he is a fourth generation farmer. Mr. Wilson stated Cypress Creek has been in contact with his family to discuss the potential of solar development on their farm. He stated he was informed they are looking for a total of five-hundred acres. He said he knows they have approached other farmers in the area and land negotiations are still early in discussions. Mr. Wilson stated the preservation of farm land is important; it is not logical to expect prevention of solar facilities in Eaton County, but we could possibly limit the size of the sites. He stated there could be a small impact if the size of the site used for any development is limited.

Commissioner Ross asked Ms. Williams to read Commissioner Tirrell's suggested changes into record as he was unable to attend the meeting. Ms. Williams read Commissioner Tirrell's suggested changes into record.

Ms. Williams asked if any of the commissioners have questions for Mr. Eric Deibel, Eaton County Deputy Drain Commissioner. **Commissioner Barnes** asked Mr. Deibel to comment on the decommissioning plan, specifically, the fact that the proposed language is requiring everything to be removed from the ground. She stated the county has spent a lot of money on drains; drainage is a big issue, tax payers contribute to. She asked if a solar project could affect the drain assessment and where the water will go. Mr. Deibel stated a solar facility development could change how the water drains and where the water will go, but that can be addressed during the review process. **Commissioner Barnes** asked if the residents will pay more or less for the drain assessments if a project moves forward. Mr. Deibel stated the residents will not pay anything for the required drainage if a project is developed; he stated the properties will still be located in their existing drainage districts. **Commissioner Barnes** asked how the decommissioning of a project will affect private drain tiles. Mr. Deibel stated the Eaton County Drain Commissioner's Office does not have jurisdiction or control over private drain tiles. Mr. Deibel stated no development will be allowed to be constructed in the Eaton County Drain Right-of-Way. Ms. Williams suggested adding a requirement that the decommissioning plan be reviewed and approved by the Eaton County Drain Commissioner's Office prior to being submitted to the Planning Commission for review.

Ms. Williams stated the Zoning Ordinance Committee requested more information on environmental impact studies; she stated Ms. Sue Spagnuolo of the Eaton Conservation District is present to discuss environmental issues. Ms. Spagnuolo stated she doesn't have her research complete yet. She stated there are environmental impact studies that could be done based on the discussions regarding water and soils contamination and neighboring properties. She stated it is important to know where the water will go and what the surface of a project will look like; will it be covered in gravel, grass or wild flowers. Ms. Spagnuolo stated she would like the water run-off, soils and surface materials addressed in the design aspect of a solar facility. **Commissioner Barnes** stated she has heard the Michigan Department of Natural Resources is considering purchasing property in the same area as the Benton Township site Geronimo Energy is interested in, to

preserve wild life and hunting grounds. She asked Ms. Spagnuolo if she has any concerns about using the property located in Oneida and Benton Townships as a solar facility. **Commissioner Ross** stated the Zoning Ordinance Committee is here to discuss possible language addressing solar facilities for the entire county, not one property or project. **Commissioner Barnes** asked Ms. Spagnuolo if she would have any concerns regarding the construction of a solar facility on approximately five-hundred acres. Ms. Spagnuolo stated the question would best be answered by a wild life biologist. She stated she is aware a wind facility cannot be constructed within two miles of an area where an eagle's nest may be located. She stated she does not believe the State of Michigan has anything regarding the regulation of solar facility in relation to the protection of wildlife.

Ms. Williams gave the Zoning Ordinance Committee information requested on how to bond a potential solar project. She stated the City of Lapeer has a two-hundred acre, forty-five megawatt solar facility ; she has been in communication with them and read an e-mail she received from the City of Lapeer regarding the bonding of their facility out loud. She stated the City of Lapeer is relying on the property owner and the lease agreement to ensure the property is properly decommissioned and restored. Ms. Williams stated it has been suggested the bonding of the property start at twenty-five thousand dollars per acres, she asked if an additional ten-thousand dollars should be added. A discussion was held about bonding for surface mines. Ms. Williams stated as requested by the Zoning Ordinance Committee, language was added to item 14.39.3 J. Abandonment and Decommissioning addressing the removal of all equipment, including what may be below ground and the re-vegetation of the property including possibly adding soils. **Commissioner Ross** stated he does not have a problem adding ten-thousand dollars to the twenty-five thousand dollar per acres bond requirement. He stated they may be able to lower the amount based on the megawatts the facility produces. He suggested possibly having a sliding scale for the required bonding which may allow for a lower bonding amount for smaller facilities. Ms. Williams stated the bonding could also be based on the decommissioning plan which is provided by a third party engineer; however, the Planning Commission would need to account for inflation when setting a bonding amount based on the decommissioning plan. She stated the intent is to make sure the bonding for all facilities is the same rate. Ms. Williams stated she found one county that required a thirty-thousand dollar bond; the rest of the counties she looked at relied on the decommissioning plan to determine the bonding amount. **Commissioner Ross** stated he is fine with using the decommissioning plan to determine the bonding required for a facility. **Commissioner Barnes** asked Commissioner Ross to explain what is being proposed further. **Commissioner Ross** stated rather than placing a direct dollar amount for the bonding of the property in the proposed language, the Planning Commission would rely on the decommissioning plan to determine the amount of bonding needed. He asked Ms. Barnes if she is comfortable with the proposal. **Commissioner Barnes** said yes. **Commissioner Ross** stated it is his understanding from previous Zoning Ordinance Committee Discussions all items above and below ground are to be removed from the property. **Commissioner Barnes** said yes.

Commissioner Barnes asked Ms. Williams if she could explain what changes were recently made to the Oneida Township Solar Ordinance. Ms. Williams stated language was added to the decommissioning section allowing Oneida Township to remove the equipment themselves if the company does not. She stated they also added language for abandonment of a facility; if a facility generates less than ten percent of the proposed energy output, the facility could be considered abandoned. Ms. Williams stated Oneida Township is also requiring a log maintained by the solar company showing the energy output per panel and maintenance of the systems for each day. **Commissioner Ross** asked the Zoning Ordinance Committee Members if there are any concerns regarding the proposed language for abandonment and decommissioning. **Commissioner Barnes** said no.

Commissioner Barnes asked if the property or solar facility were sold to another solar company, would they be required to come back before the Planning Commission prior to the sale. Ms. Williams stated Article 9 of the Zoning Ordinance prevents the transfer of a Conditional Use Permit to another operator without prior consent of the Planning Commission; however there are some uses that allow for the transfer of ownership without Planning Commission approval. **Commissioner Barnes** stated she would like a new potential owner of a solar facility to come back before the Planning Commission to ensure they are held accountable to the previously approved conditions and to allow for changes to the facility if there are any needed. **Commissioner Halsey** agreed. **Commissioner Ross** stated he is okay without allowing for the Conditional Use Permit to transfer without coming back before the Planning Commission. **Commissioner Barnes** stated the Planning

Commission has recently heard applications where the applicant has requested to not have to come back before the Planning Commission for approval to sell the property or business. She stated the Planning Commission still required them to come back for approval prior to selling their business. **Commissioner Ross** stated we could add language requiring the potential new owner or operator of a solar facility to sign the Conditional Use Permit, thus requiring them to abide by the Ordinance and any regulations or conditions set by the Planning Commission. Ms. Williams stated if the new operator is not proposing any changes to the approved plans, they may be able to use the already approved plans to make application. She stated a new owner of a solar facility may need a new decommissioning plan and possibly a drainage plan, depending on how old the facility is at the time of transfer.

Commissioner Barnes stated she is still concerned about the potential environmental impact a solar facility could have. **Commissioner Ross** stated they could discuss the environmental impact with the entire Planning Commission. He stated he would like the proposed language to move forward to be heard as a District Change Amendment before the Planning Commission. Ms. Williams asked the Zoning Ordinance Committee for guidance on what they would expect to have added for environment impact prior to sending the District Change Amendment out for review. She stated the deadline for application is this coming Friday. She asked if they would like her to add something to the proposed language to be sent to the Planning Commission as a District Change Amendment or would they like her to do more research and schedule another Zoning Ordinance Committee Meeting. **Commissioner Ross** stated he would like the proposed language to move forward as a District Change Amendment to be heard by the entire Planning Commission. He stated there will be discussion at the Planning Commission Meeting and changes can be made at that time pending the discussion. He stated the Zoning Ordinance Committee is only making a recommendation to the Planning Commission.

Commissioner Ross stated the Zoning Ordinance Committee should discuss the potential zoning districts solar facilities will be allowed to be constructed in. He stated he agrees with Commissioner Tirrell, we need to allow for them to be in the Limited Agricultural and Industrial Zoning Districts. **Commissioner Barnes** stated she does not agree. She stated a solar facility is a commercial operation and should only be allowed in an Industrial Zoning District. **Commissioner Barnes** stated she is still concerned about the decommissioning and the potential environmental impact. She stated she thinks often about how she would feel if a solar facility were adjacent to her property; she is still unsure about the proposed setbacks. She agrees five-hundred feet or four-hundred feet is too much, but fifty feet is too little. **Commissioner Barnes** stated she had to negotiate with an oil well company on her property; the jack pump is there, but it isn't obstructing her view. She stated a setback of fifty feet does not allow for a good neighbor policy. **Commissioner Ross** stated he would like to have the proposed language submitted to the Planning Commission with a proposed setback of seventy-five feet; if the Planning Commission would like to require it to be different it can be changed at the meeting. He stated he would also like the proposed language to go to the Planning Commission allowing for solar facility to be located in the Limited Agricultural and Industrial Zoning District with a Conditional Use Permit; he reiterated, it can be discussed and changed by the entire Planning Commission at the meeting. **Commissioner Barnes** agreed, sending the proposed language with the worst case scenarios as far as setbacks and zoning districts to the Planning Commission is a good idea. She stated the Planning Commission can choose to make the language, regulations and conditions stricter. **Commissioner Barnes** stated she does not want to be in a position where the Planning Commission is forced to make changes that lessens the requirements. **Commissioner Ross** agreed, he stated he does not want to mislead and suggested moving forward as is and the Planning Commission can always make more restrictive.

Commissioner Ross asked staff to send the proposed solar energy language to the Planning Commission as a District Change Amendment to be heard at the March 6, 2018 Planning Commission Meeting.

Commissioner Ross invited anyone present to make public comment.

Mr. Jack Caughey, 7749 Benton Road, asked how private drains will be protected; he asked what will happen if a solar company pierces or damages a private drain. He asked that provisions be made to address this issue.

Mr. John Coakley, 2100 E. Strange Highway, stated he believes the setback should be more restrictive than seventy-five feet. He stated this solar company has come into their area without regard for the residents and have moved forward with purchasing property for their project already. Mr. Coakley stated if the Ordinance requires a large setback in the language, the solar company will know what property to look for. He stated allowing for a lesser setback is not being considerate to the neighboring property owners. Mr. Coakley asked that the setback be set to five-hundred feet; with this setback the developer gets what they want and so do the neighbors.

Mr. Matt Zimmerman, attorney for solar companies, stated he understands the request for further environmental impact studies and information, but informed the Zoning Ordinance Committee, solar companies are required to meet State of Michigan requirements as well as Section 301 and 303 of NREPA. He stated a Soil Erosion and Sedimentation Permit will be required by the Drain Commissioner's Office for any project; solar facilities are also required to meet the Storm Water Act, which is enforced by the Michigan Department of Environmental Quality. He stated the Michigan Department of Environmental Quality reviews all plans. Mr. Zimmerman stated a setback of five-hundred feet may make it so developers don't have enough space left on the property to actually develop. He stated the proposed setback of seventy-five feet is a good compromise.

Mr. John Coakley, 2100 E. Strange Highway, stated the solar companies are offering more than three times the value of the property to purchase properties to develop solar facilities.

Mr. David Kosbar, 630 E. St. Joe Highway, stated he struggles with Mr. Zimmerman's comment that a five-hundred foot setback would make development of a property difficult; he stated it is the Planning Commission's job to protect the citizens of Eaton County, not solar facilities. He stated solar facilities are an industrial use, not an agricultural use. Mr. Kosbar stated the site development standards for Industrial property have more requirements. He stated if a developer would like to develop in an area that isn't currently zoned Industrial, they can make application to re-zone it and make sure the property meets the regulations for Industrial property. Mr. Kosbar stated he is concerned about the environmental impact; solar facilities are not green, they pose an environmental risk. He stated the solar facilities do not last as long as they should and take five years to construct. Mr. Kosbar stated an acre of corn captures thirty-two thousand pounds of carbon dioxide and puts it in the ground.

Mr. Brian Droscha, 140 N. Stewart Road, stated Mr. Zimmerman stated the property will be brought back to farmable conditions; if that is the case then the Planning Commission should require one-hundred percent restoration of the property. He stated the Barry-Eaton District Health Department has Time of Sale Transfer, which requires an inspection of the drain system prior to the sale of a property. He stated if the drain system fails, the property owner is required to put up the money to replace and repair the system. Mr. Droscha stated he does not think it is unreasonable to require corporations to do the same for solar facilities.

Commissioner Ross asked if there was any further public comment. Seeing none, he closed the public portion of the meeting at 4:36 p.m.

Meeting adjourned at 4:37 p.m.