

ONEIDA CHARTER TOWNSHIP

PLANNING COMMISSION MINUTES

DECEMBER 11, 2017

MEMBERS PRESENT: CHAIRMAN WALTERS, MEMBERS, KILGORE, SCHROEDER, GREEN, SCHERER, SCHULTZ AND STAHELIN.

OTHERS PRESENT: ZONING ADMINISTRATOR GOSCHKA, TRUSTEES TOM CAMPBELL AND BARBARA CAMPBELL, RESIDENTS OF THE TOWNSHIP, REPRESENTATIVES OF GERONIMO.

1. Meeting was called to order by Chairman Walters at 6:30 p.m.
2. Pledge of Allegiance was given.
3. Chairman asked if there were additions to the Agenda, there were none.
4. Minutes of November 8, 2017 were approved as amended in a motion made by Mr. Green and supported by Mrs. Schroeder.
5. The Commission welcomed Mr. Stahelin and he introduced himself and discussed his work with Public Safety.
6. Public Comment: Chairman Walters recognized the Attorney Mr. Zimmerman for Geronimo. He discussed a recent letter he had sent to the Board and the fact that Geronimo would like to see solar energy arrays allowed on Agricultural land with a Special Use Permit. He also discussed the 75-foot setback, the letter of credit and the clean air act of 2008. A copy of this letter is attached to these minutes.
7. Chairman Walters opened the discussion on the proposed amendment to the Solar Energy Ordinance. Mr. Green discussed his offense with Geronimo trying to meet privately with 2 or 3 Board Members at a time. He noted that we have always operated in open meetings. He also discussed the letter from the attorney for Geronimo noting that MDARD was not the primary reason for placing solar arrays in an industrial zoning area. He felt that some of the comments were rather condescending. He noted that some things like sand and gravel pits can only be placed in the area where it is available. However, sun is available in the whole township and this Ordinance is being written for the whole Township not just for Geronimo. Mr. Green noted that the Township has done rezoning in an orderly progressive fashion and continues to do so. Mr. Green noted this was his personal opinion and he did not speak for the Board.

Mr. Coakley spoke next noting the toxicity of solar panels and that if there is no sun there is no solar energy. He also noted that the array did not have to be built next to the substation. He felt that the requirement for solar energy to be placed in an industrial area met the criteria of the Master Plan and the progressive zoning of the Township. He noted that the Township has an industrial area that will support solar and land there can be rezoned to allow for more area for solar development. He felt

sad at the way this company had come into the Township and made plans to complete this project by 2019 without any prior discussion with the Township.

Chairman Walters closed Public Comment:

8. Chairman Walters opened discussion on the proposed changes to the Solar Energy Ordinance proposed by Clerk Campbell and Trustee Campbell. He explained that he was going to go item by item and read each proposed change from both parties and that the Board would decide whether to allow the changes or not. He will follow the e-mail from the Attorney dated November 28, 2017 and December 4, 2017.

He began with Section 1. a. The Commission allowed the change from six months to 180 days throughout the Ordinance.

b. Commission decided uneconomical and the 10 % would be left out of the entire ordinance.

c. Leave out change. Stay with original wording.

Section 3. wording change is allowed by the Commission.

Section 5. a. was allowed by the Commission.

b. Was addressed above and is allowed.

c. Will be omitted, the Commission wishes to stay with the original language.

Section 16. a. was allowed by the Commission.

b. Leave out change, stay with original wording.

c. Change to property owners and occupants – in all places of the ordinance.

d. Was allowed by the Commission.

e. Was allowed by the Commission.

f. Leave out change, stay with original wording.

g. Was allowed by the Commission.

i. Under g. was allowed with the fine being changed from \$500.00 to up to \$250.00 per day.

h. Leave out change, stay with original wording.

i. Was allowed by the Commission.

j. Commission allowed (report indicating the amount of time any Solar Array was offline or otherwise not producing its ordinary allotment of electrical power.

k. Subsection V. Commission allowed the spelling out of Michigan Department of Transportation and Eaton County Road Commission.

i. Commission allowed.

ii. Leave out change, stay with original wording.

l. Commission allowed change to (W) (3) consistent with Section 19.06.

m. Leave out change, stay with original wording.

n. Proposed change to Subsection (Z) Leave out change, stay with original wording.

p. Commission allowed change to Section 16, subsection (P)

Commission allowed change to Section 16 b. regarding decommissioning.

Chairman Walters asked if there were questions from the Board. Mr. Stahelin asked about two different systems adjacent to each other and room in the industrial district. It was explained that property could be rezoned to allow for additional arrays.

After all discussion, Motion was made by Mr. Green to forward the changes to the Township Board with a recommendation that the Ordinance be adopted. Support was given by Chairman Walters. Motion Carried with one no vote.

9. Accessory Building Ordinance discussion was tabled until the January Meeting.
10. Public Comment: Geronimo Attorney Zimmerman noted that solar was not the same everywhere. They will bring information to the next meeting addressing this issue.

Mr. Coakley addressed the cost of solar energy. Mr. Zimmerman said the consumer will pay less for solar energy.

Resident discussed what the outcome would be if Geronimo sold to a foreign country and then the system failed. How do we get funds for decommissioning? Resident also discussed danger of explosion and danger to surrounding families. Mr. Green said these were questions to be discussed at the time of a request for a Special Use Permit by a Company. Resident asked how many Township people would benefit from Geronimo Solar Array. Geronimo says it will have project done by 2019.

The Residents of the area thanked the Board for up holding the proper use of farmland and continuing to protect their heritage. Mrs. Deer Hall asked when this matter would go to the Township Board. Zoning Administrator Goschka said it will go back to the Attorney and then to the Township Board in January of 2018.

11. Other Business: Mr. Green asked about the court date for the Barn Venue. Zoning Administrator Goschka said the Barn Venue's attorney could not make the original date and asked for it to be postponed. The new date is December 21, 2017.

Mr. Green asked about progress with the properties on Hartel Road. Zoning Administrator Goschka said she was working with the owner on the southern property.

12. Adjourn Meeting: Motion to adjourn was made by Chairman Walters at 8:20 p.m. and supported by Mrs. Schroeder. Motion Carried. Meeting adjourned.

Minutes respectfully submitted by Jan Schultz

APPROVED:

MICHEAL WALTERS, CHAIRMAN



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December 4, 2017

Oneida Township Planning Commission
c/o Melissa Goschka, Zoning Administrator
11041 Oneida Road
Grand Ledge, MI 48837

Re: Draft Oneida Township Zoning Ordinance Amendments

Members of the Oneida Township Planning Commission:

With the Oneida Charter Township Board's return of the draft zoning ordinance amendment for solar energy systems to the Planning Commission, you have another opportunity to review the key provision from a slightly different perspective than has been discussed in the past. The key provision, for both prospective operators of large solar energy systems as well as citizens within the Township and Township government, is where large solar energy systems are allowed to be constructed. The current draft of the zoning ordinance amendments limits such uses to industrially-zoned districts, primarily because of a memorandum from MDARD's Environmental Stewardship Division. For a variety of reasons, Geronimo Energy believes that large solar energy systems should be allowed in agriculturally-zoned districts as a special land use.

From a policy prospective, we all know that our country, our economy and lifestyle are dependent upon having an available and affordable supply of energy. Most of us would also agree (including the scientific community) that supplying as much of that need as possible through sources that do not emit carbon into the atmosphere is beneficial if not outright mandatory to preserve our economy and lifestyle. In order to accomplish both objectives, the natural resources available to us that are free of carbon (such as wind, solar and hydro resources) need to be used to generate electricity. Like carbon-based resources, wind, solar and hydro resources are not found everywhere in quantity or in conditions which enable efficient utilization for electric generation purposes. You may be familiar with how wind power developers use met towers and other data to determine whether wind resources in a particular area are sufficient to enable the operation of an efficient wind farm. So, too, operators of large solar energy systems need to analyze a variety of factors to determine if an area has sufficient solar resources to support such a project. These factors include the following:

- a minimum amount of solar radiation (lack of cloud cover);

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- proximity to high-voltage transmission lines with available capacity and to a substation to provide access to the transmission lines;
- property of a sufficient size;
- property free of structures or with structures that can be easily removed;
- topography that is relatively flat and ideally sloping to the south;
- soil capable of supporting the solar panels and foundations;
- wind low enough to prevent structural damage;
- minimal snowfall in amount and duration;
- appropriate drainage;
- lack of vegetation on and surrounding the property that would create shadows; and
- market needs.

From a legal perspective, both courts and the legislature in Michigan have made it more difficult for municipalities to restrict sand and gravel mining through local zoning ordinances. See, for example, *Silva v. Township of Ada*, 416 Mich 153, 159-160 (1982) ("Natural resources could only be extracted from the place where they are located and found. Preventing the mining of natural resources located at a particular site prevents all use of those natural resources."); MCL 125.3205(3)-(7), which codified the *Silva* test in the zoning enabling act in direct response to the Supreme Court's decision in *Kyser v. Kasson Township*, 486 Mich 514 (2010).

Like minerals extracted from the ground, solar energy cannot be efficiently captured from just any location. Both are economically feasible only in particular, limited locations. Also, like minerals, solar energy is a valuable natural resource in which there is an important public interest. In the context of extracted minerals, a municipality is required to show that there are very serious consequences before it is able to regulate them through its zoning ordinance. We do not believe that there are very serious consequences to the operation of a large solar energy system on the property selected by Geronimo.

In addition, solar usage on agricultural property is less impactful to agricultural land than other uses permitted in the Township's A-1 Agricultural District. Uses such as camp grounds, single family dwellings, family day care houses, cemeteries and public utility service buildings create a greater impact on agricultural use of the underlying property in the long term than would a large solar energy system as the latter generally preserves the soils.

We believe that the Township should build flexibility into its zoning ordinance concerning large solar energy systems. MDARD's Director may in the future overrule the Economic Stewardship Division's interpretation of PA 116, or that Division, with or without a new chief, may reinterpret PA 116 to find that solar energy systems are consistent with agricultural uses. PA 116 might also be amended to overturn the Economic Stewardship Division's interpretation. Having large solar energy systems be permitted as special land uses in agricultural-zoned districts provides that flexibility. If any of these events occurs, the Township would not have to amend its ordinance again.

Oneida Township is able to reflect these policy and legal principals into its zoning ordinance by allowing large solar energy systems in agriculturally-zoned districts as special land uses. The conditions that a property owner would need to meet under the special land use

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sections of the zoning ordinance that the Township could add would include the factors listed above. This would assure that large solar energy systems would only be located in those limited areas where the solar resources can be effectively captured. This would also change the proposed amendment from inviting litigation to one that encourages cooperation.

Members of the Township Board also made revisions to the draft zoning ordinance amendment that the Township Board wants the Planning Commission to consider. Geronimo's thoughts on these issues have been expressed to the Township in the past, and representatives from Geronimo will address them again at your meeting tomorrow night. Those issues, however, are not particularly relevant if the zoning ordinance does not permit large solar energy systems to be located where the solar resources can be efficiently captured.

In summary, we urge the Planning Commission to revisit the key issue in the draft zoning ordinance amendments for large solar energy systems. Allowing large solar energy systems in agriculturally-zoned districts as a special land use only where all of the factors listed within the special land use section of the ordinance would not only be beneficial to all involved but would also be consistent with Michigan land use law on utilization of natural resources.

Thank you in advance for your consideration of this issue.

Sincerely yours,

VARNUM

Matthew D. Zimmerman

MDZ/plw