

Portside Solar Update, 11/14/2023. Our office has received calls regarding the status of Portside Solar project, so we would like to provide a little background. Currently, Fort Gratiot is not aware of Ranger Power’s intent to appeal to circuit court, apply to the MPSC, or otherwise; nor is Ranger Power under any obligation to notify Fort Gratiot. Pursuant to the authority given to Fort Gratiot by state law, and the Fort Gratiot Zoning Code, following are possible next steps available to the applicant.

For special land uses, the decision of the Fort Gratiot Planning Commission is final, and can be appealed only to circuit court; the Fort Gratiot Board of Trustees cannot overturn the decision of the PC, or take any other action.

Background: Of the 1,240 townships in Michigan, there are two types—general law and charter townships. Fort Gratiot, along with 138 other townships, is a **Charter Township**, which is a special township classification, created by the Michigan Legislature in 1947, to provide additional powers and streamlined administration for governing a growing community. The Zoning Enabling Act (PA 110 of 2006) and the Planning Enabling Act (PA 33 of 2008) are the main governing state laws authorizing duties and responsibilities to planning commissions and zoning boards of appeals, including, but not limited to, specifics to master plan creation, zoning ordinance creation, interpretation, and enforcement.

Not all zoning ordinances township-to-township are the same, so it is important to note that there may be differences in process or authorities granted, as permitted by law and set by ordinance, between municipalities. Following are the state law references and related ordinances illustrating process and authority specific to Fort Gratiot.

Michigan Zoning Enabling Act:

125.3207 Zoning ordinance or decision; effect as prohibiting establishment of land use.

Sec. 207. 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.

125.3502 Special land uses; review and approval; application; notice of request; public hearing; incorporation of decision in statement of findings and conclusions.

Sec. 502. (1) The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance. The zoning ordinance shall specify all of the following:

- (a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval. *(Cross reference FG Article IV for uses, 38-482 for FG PC authority)*
- (b) The requirements and standards for approving a request for a special land use. *(Cross reference FG 38-486)*
- (c) The procedures and supporting materials required for the application, review, and approval of a special land use. *(Cross reference FG 38-483 through 38-485)*

125.3504 Special land uses; regulations and standards; compliance; conditions; record of conditions.

Sec. 504.

(1) If the zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments under section 502 or 503 or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance. *(Cross reference FG 38-482, authorizes FG Planning Commission, and 38-486, standards for determination)*

(2) The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and shall insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government. *(Cross reference FG 38-486)*

(3) A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.

(4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements: *(Cross reference FG 38-487)*

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

(5) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of conditions which are changed. *(Cross reference FG 38-487 and 38-488)*

Fort Gratiot Zoning Code, Article IV, § PC Authority to Grant; § PC Final Decision, Appeal

Sec. 38-482. - Authority to grant permits.

The planning commission, as provided in this article, shall have the authority to grant special approval use permits, subject to such conditions of design, operation, and safeguards as may be determined for the special approval uses specified in the various provisions of this chapter.

Sec. 38-489. - Appeal to circuit court.

(a) Decisions of the planning commission shall be final. However, a person having an interest affected by a special land use decision may appeal to the circuit court. Upon appeal, the circuit court shall review the record and decision of the planning commission to ensure that the decision:

(1) Complies with the constitution and laws of the state.

(2) Is based upon proper procedure.

(3) Is supported by competent material and substantial evidence on the record.

(4) Represents the reasonable exercise of discretion granted by law to the planning commission.

(b) If the court finds the record of the planning commission inadequate to make the review required by this section, or that there is additional evidence which is material and with good reason was not presented to the planning commission, the court shall order further proceedings before the planning commission on conditions which the court considers proper. The planning commission may modify its findings and decision as a result of the new proceedings, or may affirm its original decision. The supplementary record and decision shall be filed with the court.

(c) As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the planning commission.

For the entire Fort Gratiot Zoning Code, Article IV, Special Land Uses, click here:

[https://library.municode.com/mi/fort_gratiot_charter_township_\(st._clair_co.\)/codes/code_of_ordinances?nodeId=COOR_CH38ZO_ARTIVSPLAUS](https://library.municode.com/mi/fort_gratiot_charter_township_(st._clair_co.)/codes/code_of_ordinances?nodeId=COOR_CH38ZO_ARTIVSPLAUS)

Clyde Township:

As this project encompassed land in both Fort Gratiot and Clyde, the applicant still appears to be moving through the Clyde Township process. Ranger Power on their 11/14/2023 Planning Commission agenda under Old Business. We will continue to monitor the Clyde process.

House Bill 5120 Updates:

House Bill 5120 by Rep. Aiyash (D-Wayne) passed the Senate on Wednesday, 11/08/2023 along party lines and received a concurrence vote in the House later that day. The bill will take effect 1 year after the governor signs it. The following provisions are included in the final version, applicable to all solar facilities greater than 50 megawatts, and wind facilities greater than 100 megawatts:

- If a local unit wants the responsibility of approving or denying applications, it must adopt a “compatible renewable energy ordinance” (CREO). Locals will have 1 year from effective date to create and adopt a CREO. A CREO cannot be any more restrictive than what is prescribed in the bill.
- If a local unit does adopt a CREO, a developer must apply to them first and the local unit has 120 days to approve or deny the application. The deadline can be extended up to an additional 120 days if the local unit and applicant agree.
- If the local fails to act in 120 days or if the application is denied but meets the requirements of the bill, the Public Service Commission (PSC) then reviews the application.
- If the PSC approves an application, the local CREO can be voided if the PSC feels the local’s initial denial was unreasonable.
- If the PSC approves the application, the applicant will give the local unit \$75,000 to be used as an intervention fund.
- The applicant will give the local \$2,000 per megawatt for public safety or infrastructure improvements, but the applicant must agree to the terms of use.
- **It is anticipated that developers will be able to apply to the MPSC beginning in February, 2025.**

The governor is expected to sign the bill in the coming weeks, especially since the clean energy package was also approved this week. Senate Bill 271 by Sen. Geiss (D-Wayne) passed along party lines in both chambers to set a renewable energy standard of 50% by 2030, and 100% clean energy by 2040. The siting reform legislation was introduced to supplement the clean energy package, with the goal of making it easier for solar and wind facilities to be built across the state. We will continue to monitor challenges, changes to and clarification issued by the MPSC as this law begins implementation.