

Principle of local control is at heart of energy zoning debate

BY MADELINE FATA/GOVERNMENTAL AFFAIRS ASSOCIATE



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The state and federal government have been strongly promoting clean energy programs in recent years. In 2020, Gov. Gretchen Whitmer signed an Executive Directive committing to pursue 100 percent carbon neutrality in Michigan by 2050. When Democrats won majority in the Legislature shortly after, both chambers pursued more environmentally friendly policies, including legislation to codify the governor’s clean energy goals in statute.

Similarly, President Joe Biden launched the Federal Sustainability Plan in 2021 to eliminate carbon emissions across federal operations by 2050. The president’s Inflation Reduction Act included \$27 billion in competitive funding as part of

the Environmental Protection Agency’s Greenhouse Gas Reduction Fund.

These large-scale initiatives prompted industry leaders to follow suit. Consumers Energy (CE) announced a plan to achieve 40 percent renewable energy by 2030, while DTE Energy said it would reach 65 percent renewable by 2028.

All of this is to say state and federal government officials, as well as utilities, have ambitious plans to reduce carbon emissions — and quickly. To accomplish their goals, energy providers are turning to solar panels and wind turbines. CE has referred to this moment in time as the “Solar Revolution” as developers line up to buy or lease land across the state.

At present, when a developer wants to build a solar facility, they must adhere to local zoning ordinances and engage with local elected officials and the public. The relationship between a developer and local is often fraught with conflict. There are at least three active legal cases in Michigan where a developer is suing a township over delaying project considerations or rejecting ordinance changes.

In search of consistency and stability, developers have teamed up with the governor's office and Democratic leadership. They've turned to Wisconsin for inspiration, where all siting and permitting authority for any solar project over 100 megawatts is reviewed by the Public Service Commission (PSC). However, developers have decided to pursue more restrictive conditions in Michigan, granting the PSC authority over any project larger than 50 megawatts.

The Michigan PSC consists of three governor-appointed officials whose primary function is "to serve the public by ensuring safe, reliable, and accessible energy and telecommunications services at reasonable rates." The PSC is not designed for zoning or land use matters of any kind, and all other types of energy facilities are currently subject to local zoning ordinances. Zoning is a vested interest of the local government.

By preempting local control, a county, township, city or village could not determine the location, size, setback distance, decibel level or any other criteria for a solar or wind facility. Additionally, locals would have no input on the construction, operation, use or maintenance of a solar or wind facility. If a county already has a solar or wind policy, practice, regulation, rule or ordinance, it would be null and void.

Twenty counties in Michigan have countywide renewable energy zoning ordinances. Each was carefully crafted by considering land availability, farmland capacity, the needs of property owners, and countless other factors. Under the proposed legislation, the only mechanism for locals to put a stop to a project is through intervention. This process is likely too expensive for most communities to pursue with no assurance of success. All the effort would be for naught and local voices would be lost.

It is worth noting that the view of developers is not unreasonable. With each legal dispute comes a substantial loss of time and money and having to consider

the variances across more than 1,800 separate local units of government is no small feat. However, this does not justify the elimination of local control.

MAC is working hard to preserve local control and those ordinances already in place. All 83 counties should be able to develop and adopt an ordinance of their own. If a county were to decide not to adopt an ordinance, only then should the regulating authority belong to the PSC. Eighty-three ordinances would undoubtedly be easier for developers to navigate, township and municipal leaders could have influence over the ordinance and, most importantly, counties have a unique ability to consider siting with a more regional perspective than other local units of government. ♦



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