

ESCANABA TOWNSHIP

ORDINANCE NO. 11-22

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
TO REGULATE SOLAR ENERGY SYSTEMS AND REPEAL SECTION 108**

The Township of Escanaba ordains:

Section 1. Add Definitions to Section 101.

The following definitions are added to Section 101 of the Zoning Ordinance and will be placed in the Zoning Ordinances so that all definitions are in alphabetical order:

- A. Abandonment: A Solar Energy System is abandoned if it has not been in operation and/or has produced less than 15% of the total energy it is designed to generate for a period of one (1) year. This includes a Solar Energy System that was never operational if construction has been halted for a period of one (1) year. To determine abandonment, the Township may consider, among other things, the monthly report(s) required to be submitted under this Ordinance for a Commercial Solar Energy System.
- B. Building Integrated Photovoltaics (BIVPs): A small Solar Energy System that is integrated into the structure of a building, such as solar roof tiles and solar shingles.
- C. Commercial Solar Energy System: A Solar Energy System in which the principal design, purpose, or use is to provide energy to off-site uses or the wholesale or retail sale of generated electricity to any person or entity.
- D. Ground Mounted Solar Energy System: A Private or Commercial Solar Energy System that is not attached to or mounted to any roof or exterior wall of any principal or accessory building.
- E. Private Solar Energy System: A Solar Energy System used exclusively for private purposes and not used for any commercial resale of any energy, except for the sale or credit of surplus electrical energy back to the electrical grid.
- F. Roof or Building Mounted Solar Energy System: A Private Solar Energy System attached to or mounted on any roof or exterior wall of any principal or accessory building, but excluding BIVPs.
- G. Solar Energy System: Any part of a system that collects or stores solar radiation or energy for the purpose of transforming it into any other form of usable energy, including the collection and transfer of heat created by solar energy to any other medium by any means.

Section 2. Add New Section 708, entitled "Solar Energy Systems"

Section 708, entitled "Solar Energy Systems," is added to Article 7 of the Township's Zoning Ordinance. The section reads in its entirety as follows:

Section 708. Solar Energy Systems.

A. General Provisions. All Solar Energy Systems are subject to the following requirements:

1. All Solar Energy Systems must conform to the provisions of this Ordinance and all county, state, and federal regulations and safety requirements, including applicable building codes and applicable industry standards, including those of the American National Standards Institute (ANSI).
2. The Township may revoke any approvals for, and require the removal of, any Solar Energy System that does not comply with this Ordinance.
3. Solar Energy Systems must be located or placed so that concentrated solar glare is not directed toward or onto nearby properties or roadways at any time of the day.
4. Solar Energy Systems are permitted in the Township as follows, subject to this Section 708 and other applicable provisions of the Zoning Ordinance:

Type of System	Sub-Type of System	Zoning District	Conditional Use Permit
Private Solar Energy System	Private BIVPs	All zoning districts	Not required
	Roof or Building Mounted Private Solar Energy System	All zoning districts as accessory use	Required
	Ground Mounted Private Solar Energy Systems	AP (Agricultural Production), RR (Rural Residential)	Required
Commercial Solar Energy System	All Commercial Solar Energy Systems (Ground Mounted only)	Solar Overlay District*	Required

* Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program.

B. Private Solar Energy Systems.

1. Private Solar Energy System BIVPs. Private Solar Energy System BIVPs are permitted in all zoning districts. A building permit is required for the installation of BIVPs.
2. Roof or Building Mounted Private Solar Energy Systems. Roof or Building Mounted Private Solar Energy Systems are permitted in all zoning districts as an accessory use, subject to the following requirements:
 - a. No part of the Solar Energy System erected on a roof is permitted to extend beyond the peak of the roof. If the Solar Energy System is mounted on a building in an area other than the roof, no part of the

Solar Energy System is permitted to extend beyond the wall on which it is mounted.

- b. No part of a Solar Energy System mounted on a roof is to be installed closer than three (3) feet from the edges of the roof, the peak, or eave or valley to maintain pathways of accessibility. This does not apply to roof mounted BIVP's.
- c. No part of a Solar Energy System mounted on a roof is permitted to extend more than two (2) feet above the surface of the roof.
- d. If a Roof or Building Mounted Private Solar Energy System has been abandoned, the property owner must notify the Township of the proposed date of abandonment and shall physically remove it within three (3) months after the date of abandonment. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Township may issue a Notice of Abandonment to the owner of the Solar Energy System. The owner shall have the right to respond to the Notice of Abandonment within ten (10) days from Notice receipt date. If the owner fails to respond to the Notice of Abandonment or if after review by the Township it is determined that the Solar Energy System has been abandoned or discontinued, the owner of the Solar Energy System shall remove the system at the owner's sole expense within thirty (30) days of receipt of the Notice of Abandonment. An extension of up to an additional 120 days may be granted to the applicant for just cause by the Township. If the owner fails to physically remove the Solar Energy System after the Notice of Abandonment procedure, the Township shall have the authority to enter the subject property and physically remove the Solar Energy System at the operator's expense.
- e. A building permit is required for the installation of Roof or Building Mounted Private Solar Energy Systems.
- f. A zoning compliance permit is required for the installation of Roof or Building Mounted Private Solar Energy Systems.
- g. *Remedies.* If an applicant or operator of a Roof or Building Mounted Private Solar Energy System fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the conditional use permit and site plan approval after giving the applicant notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

3. Ground Mounted Private Solar Energy Systems. Ground Mounted Private Solar Energy Systems are allowed only in the AP (Agricultural Production) and RR (Rural Residential) zoning districts and require a conditional use permit and site plan review. In addition to all requirements for a conditional use permit under Section 701 of the Zoning Ordinance and site plan review and approval under Sections 502 through 504 of the Zoning Ordinance, Ground Mounted Private Solar Energy Systems are also subject to the following requirements:

- a. *Site Plan.* Before installation of a Ground Mounted Private Solar Energy System, the property owner must submit a site plan to the Zoning Administrator. The site plan must include setbacks, panel size, and the location of property lines, buildings, fences, greenbelts, and road right of ways. The site plan must be drawn to scale.
- b. *Maximum Height.* A Ground Mounted Private Solar Energy System must not exceed the maximum building height for adjacent accessory buildings and must not exceed fifteen (15) feet above the ground when oriented at maximum tilt.
- c. *Location.* A Ground Mounted Private Solar Energy System must be located behind a line established by the rear of the residential structure and meet the rear yard setback requirements applicable in the AP (Agricultural Production) or RR (Rural Residential) zoning district.
- d. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Ground Mounted Private Solar Energy System to any building or other structure must be located underground. If batteries are used as part of the Ground Mounted Private Solar Energy System, they must be placed in a secured container or enclosure and shall meet any applicable standards or requirements of the Michigan Department of Environment, Great Lakes and Energy (EGLE) and the National Electrical Code (NEC).
- e. *Screening.* Greenbelt screening is required and must be maintained around any Ground Mounted Private Solar Energy System and around any equipment associated with the system to obscure, to the greatest extent possible, the Solar Energy System from any adjacent residences. The greenbelt must consist of shrubbery, trees, or other non-invasive plant species that provide a visual screen. The Planning Commission shall determine at the time of approval, whether the proposed plantings constitute a “visual screen” and may require additional plantings, or other design changes to the landscape plan. All plantings shall be installed in a design that supports their long-term health and vitality. All plantings shall be maintained in a sound health and vigorous growing condition. The Township may require

dead, diseased, damaged, or destroyed species within the required setback area to be replaced with new plantings.

- f. *Lot Area Coverage.* No more than 20% of the total lot may be covered by a Ground Mounted Private Solar Energy System.
- g. *Appearance.* The exterior surfaces of a Ground Mounted Private Solar Energy System must be generally neutral in color and substantially non-reflective of light.

Abandonment. If a Ground Mounted Private Solar Energy System has been abandoned, the property owner must notify the Township and remove the system within three (3) months after the date of abandonment. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Township may issue a Notice of Abandonment to the owner of the Solar Energy System. The owner shall have the right to respond to the Notice of Abandonment within ten (10) days from Notice receipt date. If the owner fails to respond to the Notice of Abandonment or if after review by the Township it is determined that the Solar Energy System has been abandoned or discontinued, the owner of the Solar Energy System shall remove the system at the owner's sole expense within thirty (30) days of receipt of the Notice of Abandonment. An extension of up to an additional 120 days may be granted to the applicant for just cause by the Township. If the owner fails to physically remove the Solar Energy System after the Notice of Abandonment procedure, the Township shall have the authority to enter the subject property and physically remove the Solar Energy System at the operator's expense.

- h. *Building Permit.* A building permit is required for installation of a Ground Mounted Private Solar Energy System.
- i. *Transferability.* A conditional use permit for a Ground Mounted Private Solar Energy System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township.
- j. *Remedies.* If an applicant or operator of a Ground Mounted Solar Energy System fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the conditional use permit and site plan approval after giving the applicant

notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

- k. *Principal Use.* The principal use and principal structure must exist on the subject property prior to installation of a Ground Mounted Private Solar Energy System.

C. Commercial Solar Energy Systems. Commercial Solar Energy Systems are allowed only in the Solar Overlay zoning district, which is set forth on Exhibit A (except Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program) and require a conditional use permit and site plan review. In addition to all requirements for a conditional use permit under Section 701 of the Zoning Ordinance and site plan review and approval under Sections 502 through 504 of the Zoning Ordinance, Commercial Solar Energy Systems are also subject to the following requirements:

1. *Application Requirements.* The applicant for a Commercial Solar Energy System must provide the Township with all of the following:

- a. Application fee in an amount set by resolution of the Township Board.
- b. A list of all parcel numbers that will be used by the Commercial Solar Energy System; documentation establishing ownership of each parcel; and any lease agreements, easements, or purchase agreements for the subject parcels.
- c. An operations agreement setting forth the operations parameters, the name and contact information of the certified operator, the applicant's inspection protocol, emergency procedures, and general safety documentation.
- d. Current photographs of the subject property.
- e. A site plan that includes all proposed structures and the location of all equipment, transformers, and substations, as well as all setbacks, panel sizes, and the location of property lines, signage, fences, greenbelts and screening, drain tiles, easements, floodplains, bodies of water, proposed access routes, and road right of ways. The site plan must be drawn to scale and must indicate how the Commercial Solar Energy System will be connected to the power grid.
- f. A copy of the applicant's power purchase agreement or other written agreement with an electric utility and/or transmission company showing approval of an interconnection with the proposed Commercial Solar Energy System.

- g. A written plan for maintaining the subject property, including a plan for maintaining and inspecting drain tiles and addressing stormwater management, which is subject to the Township's review and approval.
- h. A decommissioning and land reclamation plan describing the actions to be taken following the abandonment or discontinuation of the Commercial Solar Energy System, including evidence of proposed commitments with property owners to ensure proper final reclamation of the property back to its original condition prior to the installation of the Commercial Solar Energy System, repairs to roads, and other steps necessary to fully remove the Commercial Solar Energy System and restore the subject parcels, which is subject to the Township's review and approval.
- i. Financial security that meets the requirements of this Section, which is subject to the Township's review and approval.
- j. A plan for resolving complaints from the public or other property owners concerning the construction and operation of the Commercial Solar Energy System, which is subject to the Township's review and approval.
- k. A plan for managing any hazardous waste, which is subject to the Township's review and approval. The plan shall include a list identifying all hazardous materials that will be stored or generated on site.
- l. A transportation plan for construction and operation phases, including any applicable agreements with the County Road Commission and Michigan Department of Transportation, which is subject to the Township's review and approval.
- m. An attestation that the applicant will indemnify and hold the Township harmless from any costs or liability arising from the approval, installation, construction, maintenance, use, repair, or removal of the Solar Energy System, which is subject to the Township's review and approval.
- n. Proof of environmental compliance, including compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act; (MCL 324.3101 et. Seq.; Part 91, Soil Erosion and Sedimentation Control (MCL 324.9101 et. Seq.) and any corresponding County ordinances; Part 301, Inland Lakes and Streams, (MCL 324.30101 et. Seq.); Part 303, Wetlands (MCL 324.30301 et. Seq.); Part 365, Endangered Species Protection (MCL324.36501 et. Seq.); and any other applicable laws and rules in force at the time the application is considered by the Township

- o. Any additional information or documentation requested by the Planning Commission, Township Board, or other Township representative.

2. *System and Location Requirements.*

- a. Commercial Solar Energy Systems must be ground mounted.
- b. Commercial Solar Energy Systems must be located on parcels of land twenty (20) acres in size or larger.
- c. Commercial Solar Energy Systems are permitted only in the Solar Overlay District.
- d. Commercial Solar Energy Systems are not permitted on any properties enrolled in the PA 116 Farmland and Open Space Preservation Program.
- e. Commercial Solar Energy Systems (including all solar panels, structures, and equipment) must be set back 500 feet from all lot lines and public road rights-of-way. If a single Commercial Solar Energy System is located on more than one lot, then the lot-line setbacks of this subsection do not apply to the lot lines shared by those lots.
- f. The height of the Commercial Solar Energy System and any mounts, buildings, accessory structures, and related equipment must not exceed fifteen (15) feet when oriented at maximum tilt. Lightning rods may exceed 15 feet in height, but they must be limited to the height necessary to protect the Commercial Solar Energy System from lightning.

3. *Lot Area Coverage.* No more than 20% of the total lot area may be covered by a Commercial Solar Energy System.

4. *Permits.* All required county, state, and federal permits must be obtained before the applicant or operator begins construction of any phase of the Commercial Solar Energy System.

5. *Screening.* Greenbelt screening is required around any Commercial Solar Energy System and around any equipment associated with the system to obscure the Solar Energy System from any adjacent residences. The greenbelt must consist of shrubbery, trees, or other non-invasive plant species that provide a visual screen. At least 50% of the plants must be evergreen trees that are at least six feet tall at the time of planting. In lieu of a planting greenbelt, a decorative fence that is at least 50% opaque and that meets the requirements of this Ordinance applicable to fences may be used if approved by the Planning Commission. The Planning Commission shall determine at the time of approval, whether the proposed plantings constitute a "visual screen" and may require additional plantings, or other design changes to the landscape plan, as a condition of Special Land Use Approval. All plantings shall be installed in a design that supports their long-term health and vitality. All plantings shall be maintained in a sound health and vigorous growing

condition. The Township may require dead, diseased, damaged, or destroyed species within the required setback area to be replaced with new plantings.

6. *Lighting.* Lighting of the Commercial Solar Energy System is limited to the minimum light necessary for safe operation. Illumination from any lighting must not extend beyond the perimeter of the lot(s) used for the Commercial Solar Energy System. The Commercial Solar Energy System must not produce any glare that is visible to neighboring lots or to persons traveling on public or private roads.

7. *Security Fencing.* Security fencing must be installed around all electrical equipment related to the Commercial Solar Energy System, including any transformers and transfer stations. Appropriate warning signs must be posted at safe intervals at the entrance and around the perimeter of the Commercial Solar Energy System.

8. *Noise.* The noise generated by a Commercial Solar Energy System must not exceed the following limit:

- a. 40 dB(A) Leq 1 second or 50 dB(C) Leq 1 second, as measured at the property line of any adjacent non-participating parcel.
- b. In addition to the above limitations, a sound barrier of a solid decorative masonry wall or evergreen tree berm, with trees spaced not less than 10 feet apart, must be constructed to reduce noise levels surrounding all inverters. The berm must be no more than ten (10) feet from all inverters, must be at least as tall as all inverters but not more than three (3) feet taller than the height of all inverters.

9. *Underground Transmission.* All power transmission or other lines, wires, or conduits from a Commercial Solar Energy System to any building or other structure must be located underground at a depth that complies with current National Electrical Code standards, except for power switchyards or the area within a substation. If batteries are used as part of the Ground Mounted Solar Energy System, they must be placed in a secured container or enclosure approved by NEC and Michigan EGLE.

10. *Drain Tile Inspections.* The Commercial Solar Energy System must be maintained in working condition at all times while in operation. The applicant or operator must utilize a third-party qualified company to inspect all drain tile at least once every three years by means of robotic camera, with the first inspection occurring before the Commercial Solar Energy System is in operation. The applicant or operator must submit proof of the inspection to the Township. The owner or operator must repair any damage or failure of the drain tile within 60 days after discovery using a third-party qualified company and submit proof of the repair to the Township. The Township is entitled, but not required, to have a representative present at each inspection or to conduct an independent inspection.

11. *Insurance.* The applicant or operator will maintain property/casualty insurance and general commercial liability insurance in an amount of at least \$10 million per occurrence.

12. *Decommissioning.* If a Commercial Solar Energy System is abandoned or otherwise nonoperational for a period of one year, the property owner or the operator must notify the Township and must remove the system within six months after the date of abandonment. Removal requires receipt of a demolition permit from the Building Official and full restoration of the site to the satisfaction of the Zoning Administrator and a third-party engineering company chosen by the Township at the expense of the operator/applicant. The site must be filled and covered with top soil and restored to a state compatible with the surrounding vegetation. The requirements of this subsection also apply to a Commercial Solar Energy System that is never fully completed or operational if construction has been halted for a period of one year.

13. *Financial Security.* To ensure proper decommissioning of a Commercial Solar Energy System upon abandonment, the applicant must post financial security in the form of a security bond, escrow payment, or irrevocable letter of credit in an amount equal to 125% of the total estimated cost of decommissioning, code enforcement, and reclamation, which cost estimate must be approved by the Township. The operator and the Township will review the amount of the financial security every two years to ensure that the amount remains adequate. This financial security must be posted within 15 business days after approval of the conditional use application.

14. *Extraordinary Events.* If the Commercial Solar Energy System experiences a failure, fire, leakage of hazardous materials, personal injury, or other extraordinary or catastrophic event, the applicant or operator must notify the Township within 24 hours.

15. *Annual Report.* The applicant or operator must submit a report on or before January 1 of each year that includes all of the following:

- a. Current proof of insurance;
- b. Verification of financial security; and
- c. A summary of all complaints, complaint resolutions, and extraordinary events.

16. *Inspections.* The Township may inspect a Commercial Solar Energy System at any time by providing 24 hours advance notice to the applicant or operator.

17. *Monthly Report.* The applicant or operator must submit a report on or before the first of each month that includes the electrical production of the facility for the previous month.

18. *Transferability.* A conditional use permit for a Commercial Solar Energy System is transferable to a new owner. The new owner must register its name and business address with the Township and must comply with this Ordinance and all approvals and conditions issued by the Township.

19. *Remedies.* If an applicant or operator fails to comply with this Ordinance, the Township, in addition to any other remedy under this Ordinance, may revoke the conditional use permit and site plan approval after giving the applicant or operator notice and an opportunity to be heard. Additionally, the Township may pursue any legal or equitable action to abate a violation and recover any and all costs, including the Township's actual attorney fees and costs.

Section 3. Amend Section 212(c).

Section 212(c) of the Zoning Ordinance, entitled AP (Agricultural Production) Zoning District is amended to add the following uses permitted by conditional use permit:

- Ground Mounted Private Solar Energy System

Section 4. Amend Section 214(c).

Section 214(c) of the Zoning Ordinance, entitled RR (Rural Residential) Zoning District is amended to add the following uses permitted by conditional use permit:

- Ground Mounted Private Solar Energy System

Section 5. Repeal Section 108.

Section 108 of the Zoning Ordinance, entitled Exemptions is hereby repealed from the Zoning Ordinance in its entirety.

Section 6. Adding Section 217.

The Zoning Ordinance is hereby amended to add a section 217, entitled Solar Overlay Zoning District to add the following use permitted by conditional use permit:

Sec. 217 SOLAR OVERLAY ZONING DISTRICT

(A) Conditional Uses. Commercial Solar Energy Systems

Section 7. Amendment to Zoning Map

The Township's Zoning Map is hereby amended to add a solar overlay district encompassing the following real property and as depicted in the map below:

Part of T40N R23W Section 02, that part described as the West 3000 ft of section 2 laying above the electric transmission line, AND T40NR23W, part of Section 11, starting from the NW Corner of NW 1/4 of NW 1/4 of section 11 as POB, then N89 °23'50"E 2200 ft MOL to the Electric Transmission line, then S62°23'46"W to a point 1050' south of POB.

NW Corner

N 45 degree 53' 54.65"

W 87 degree 7' 14.23"

NE Corner

N 45 degree 53' 54.22"

W 87 degree 6' 31.79"

SE Corner

N 45 degree 53' 7.75"

W 87 degree 6' 32.21"

SW Corner

N 45 degree 52' 52.42"

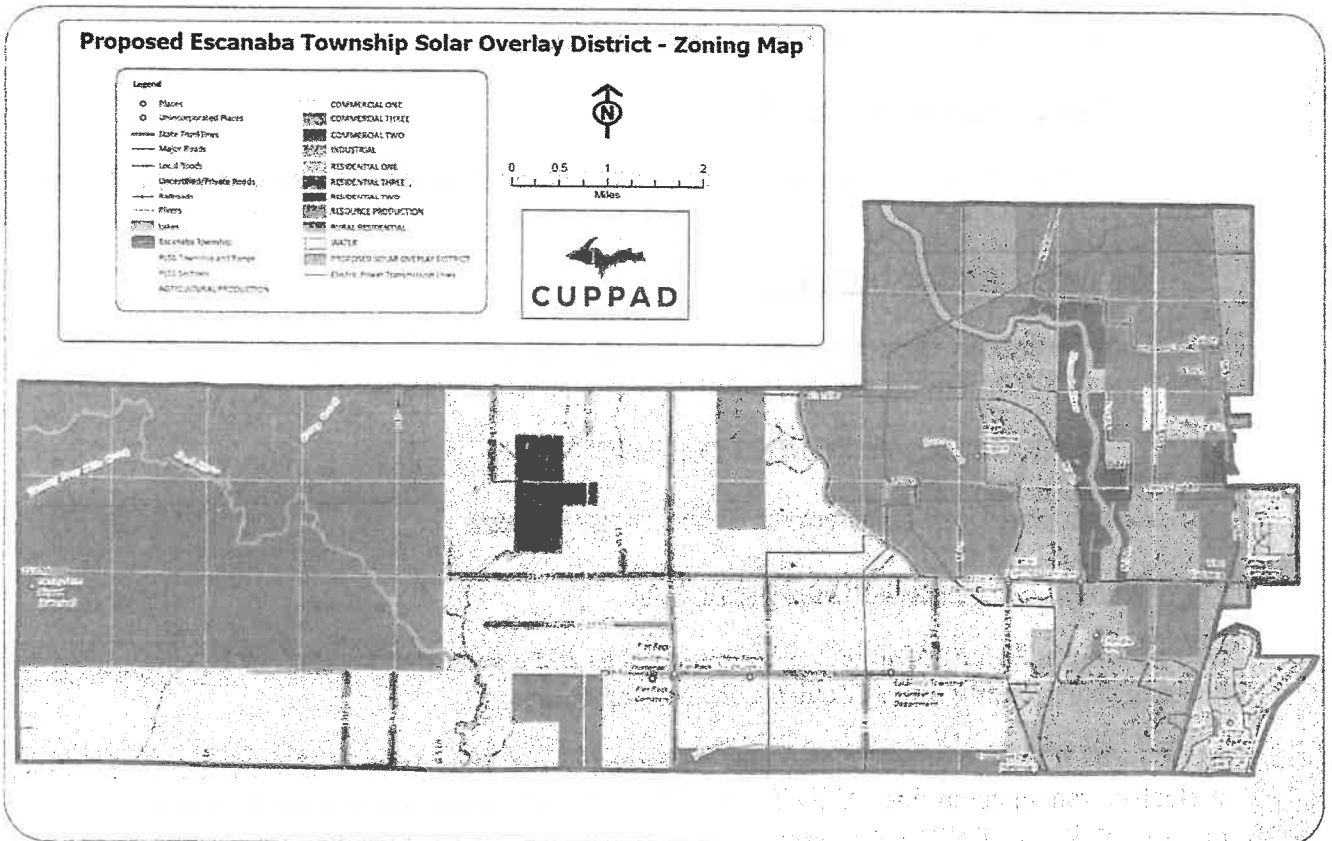
W 87 degree 7' 14.44"

Bordered on west by ATC transmission line

South Border is bordered by the existing ATC transmission line

North Border is determined by Escanaba Township border line

East Border is determined by a line parallel of the west border and 3000 ft. to the east



Section 8. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 9. Repealer.


All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 10. Effective Date.

This Ordinance takes effect seven (7) days after publication as provided by law.

This Ordinance was adopted by the Township of Escanaba, County of Delta, State of Michigan, at a meeting held on the 14 day of November, 2022, and ordered to be published in the manner prescribed by law.

I, Theresa Chenier, Clerk of the Township of Escanaba, County of Delta, State of Michigan, do hereby certify that the foregoing is a true copy of an ordinance adopted by the Township Board of the Township at a meeting held on the 14 day of November, 2022.



Theresa Chenier, Township Clerk

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