

**AURELIUS TOWNSHIP  
1939 S. AURELIUS ROAD  
MASON, MICHIGAN 48854  
PLANNING COMMISSION SPECIAL MEETING  
MAY 11, 2022  
7:00 P.M.**

The May 11, 2022 special Planning Commission meeting was called to order by Chairperson Deb Groh at 7:00 p.m. The Commission and all those in attendance stood for the Pledge of Allegiance.

**Roll Call:** Members present: Debbie Groh, Joseph Frushour, Lana Kaiser, Gary Malcangi, Sarah Ricketts, Sarah Zimmerman, Jeanie Igl and Chris Tomlinson. Member absent: Lori Pfof. Township Attorney Seth Koches, Township Planner Nathan Mehmed, Scott Leach and Ben Haggard (applicants) and approximately three other interested persons were present.

**Agenda:** The Commissioners were provided a copy of the meeting agenda, which was approved as presented.

**Approval of Minutes.** The meeting minutes of the April 19, 2022 and April 26 Planning Commission meetings were provided to the Commissioners in the agenda packets. The Commission reviewed each set of minutes separately and recommended several revisions.

Upon motion of Kaiser, seconded by Igl, the minutes of the April 19, 2022 regular Planning Commission meeting were approved, as revised. The motion passed 8-0.

Upon motion of Kaiser, seconded by Frushour, the minutes of the April 26, 2022 special Planning Commission meeting were approved, as revised. The motion passed 8-0.

**Communications and Special Items:** None.

**Public Comment:** None.

**Unfinished Business: Closed Session for legal opinion.**

The next item on the agenda was to consider to go into closed session to review a legal opinion prepared by the Township Attorney.

Malcangi made a motion, supported by Kaiser, that the Aurelius Township Planning Commission convene in closed session under section 8(h) of the Open Meetings Act, to consider material exempt from disclosure by state statute, section 13(1)(g) of the Freedom of Information Act, being

a letter from its attorney dated May 11, 2022, for the reason that the letter is exempt from disclosure under State law due to the attorney-client privilege.” The motion passed 8-0.

The Planning Commission went into closed session and came out of closed session at approximately 7:47 p.m.

**Project Summary: Conditions of Approval, Seth Koches/ Aurelius Township Attorney and Nathan Mehmed/Williams & Works Consultant.**

The next item on the agenda was the continued public hearing regarding the request of Blue Elk Solar III, LLC, (“applicant”), 939 Pearl Street, Suite 210, Boulder, Colorado, 80302, for special land use permit approval and site plan approval for a proposed commercial solar energy system at W. Plains Road, Eaton Rapids, Michigan 48827, located within Aurelius Township, Parcel Id. No. 33-09-09-31-400-025 (“subject property”). Ordinance No. 39.14, titled, “Commercial Solar Energy Systems” of the Township Zoning Ordinance, contains General Standards of review and Additional Special Land Use Criteria to be considered by the Planning Commission. The procedure for processing requests authorized by special use permit is contained in Article II, Division 2 of the Township Zoning Ordinance. The subject property is located in the Township’s “A-2” Secondary Agricultural District Zoning Classification and is approximately 178 acres in size. The standards governing site plan review are contained in Article II, Division 3 of the Township Zoning Ordinance. Nathan Mehmed confirmed that no additions were made to the April 19, 2022 report. Seth Koches said that the Commission should continue to discuss or finalize any conditions of approval that were discussed on April 19, 2022 and April 26, 2022.

Koches said that the list of proposed conditions had been updated since the April 26, 2022 special Planning Commission meeting. A copy of the updated conditions was provided to the Commissioners in their agenda packet. Koches summarized the revisions for the Commissioners. Mehmed indicated that his report dated April 19, 2022, was the most recent update and he was available to answer any additional questions from the Commissioners.

**Applicant Response; Scott Leach and Ben Haggard, Torch Clean Energy/Blue Elk Solar III, LLC. And Planning Commission Questions.**

Leach and the Commissioners discussed condition “q.” regarding the noise ordinance. Leach suggested an added condition, “y.”, which requires the applicant to manage and maintain an operational monthly bird mortality observation study. The condition invites MSU Extension to participate in this study. Lastly, the Commission suggested that the applicant provide a monthly written report of construction progress to the Township Board. Leach agreed, and the parties worked to create condition “z.” to the list of conditions.

## **Standards of Approval for Special Land Use.**

Koches confirmed with Mehmed that there were no additions made to the April 19, 2022 report that he created. A copy of the April 19, 2022 report, as prepared by Mehmed, is attached to these meeting minutes as part of the record of this Planning Commission meeting. Koches summarized the standards of approval and additional criteria for special land use review contained in the April 19, 2022 report. The Commissioners had no additional comments or questions. The Commissioners accepted the April 19, 2022 report by Mehmed regarding the applicant's request for special land use review.

## **Motion to Recommend Blue Elk Solar III, LLC Solar Energy SUP to the Township Board.**

Upon motion of Kaiser, seconded Aurelius Township Planning Commission recommended approval of the request of Blue Elk Solar III, LLC, , 939 Pearl Street, Suite 210, Boulder, Colorado, 80302, for special land use permit approval for a proposed commercial solar energy system at W. Plains Road, Eaton Rapids, Michigan 48827, located within Aurelius Township, Parcel Id. No. 33-09-09-31-400-025 because the standards contained in Section 16-576.C. of the Zoning Ordinance as outlined in Mehmed's report dated April 19, 2022 for the Township Zoning Ordinance are satisfied, subject to the following conditions:

## **Conditions of Approval**

1. For the purposes of these Conditions of Approval, the term "Applicant" shall be defined to mean, "Blue Elk Solar III, LLC" or any future "owner(s)" of the commercial Solar Energy System (SES)/Solar Farm.
2. The Aurelius Township Planning Commission approves the Applicant's special land use application and issues its recommendation to the Aurelius Township Board of Trustees for a special land use permit for a 20 MW utility grid solar energy system on the properties described further on Exhibit A and as depicted on the Applicant's site plan, subject to the terms and conditions set forth below:
  - a. All applicable requirements of the Zoning Ordinance must be met in their entirety as well as all other applicable laws, ordinances, and rules of the federal, state, county, and township governments.  
Any deviation from SUP terms requires PC approval.
  - b. Blue Elk Solar III, LLC will enter into a decommissioning agreement with Aurelius Township and provide a decommissioning security bond or other financial instrument prior to the start of construction and shall be 125% of the actual decommissioning cost. The Township approved a decommissioning cost estimate in an amount of \$601,107 and a decommissioning security shall be \$751,384 for the first three years. The financial surety/performance guaranty for the decommissioning security is subject to review and approval of the Township attorney. The Applicant shall provide written proof annually to the Township Clerk that the financial surety/performance guaranty is valid.

- c. The decommissioning plan cost shall be updated every 3 years by the Applicant and confirmed by a Township approved third-party engineering firm, at the cost to the Applicant. The bond will be adjusted as required, after approval by the Planning Commission.
- d. The Township will not accept salvage value as a part of any decommissioning security.
- e. Upon termination of the project, or if the project is not operational for a period of 12 months, the project shall be decommissioned. In such case, all project materials, improvements, construction, structures, including footings to their entire depth, shall be removed by the project owner/operator.
- f. Construction, delivery, loading/unloading hours, shall be between 7:00 AM to 6:00 PM, Monday through Friday. Work shall not be conducted on recognized Federal holidays. Work conducted outside of the established dates and hours requires prior written approval from the Zoning Administrator (ZA).
- g. The building department may establish an escrow account to cover the costs to review the permit application if these fees are not included in the building permit fee.
- h. Any past due property taxes shall be paid within five (5) days of the purchase of the land.
- i. The Applicant shall provide the Township an as-built ALTA (American Land Title Association) survey that includes the locations of any posts that have concrete foundations.
- j. As part of ongoing Operations and Maintenance of the SES/Solar Farm, the Applicant shall annually inspect the fence and vegetative buffers, during the growing season, at its expense, as required by Section 16-576, C, 17 of the Zoning Ordinance [Attachment 1].
- k. Applicant shall notify via first-class mail adjacent neighbors no later than 30 days prior to the start of construction.
- l. The *Issued for Permit* drawing set must include details on the locking of equipment and keyed access for emergency personnel.
- m. Applicant will hire a MSU Extension biologist, or approved MSU biologist to perform a complete field study to evaluate for the species listed on the MNFI (Michigan Natural Features Inventory) letter dated, August 26, 2020. If the field study finds presence of species, then the applicant will work with MSU to prevent or mitigate any impacts to said species.
- n. The Applicant shall provide proof that the owner and/or operator of the Commercial SES/Solar Farm maintains a current insurance policy with a bond rating acceptable to the Township to cover installation and operation prior to issuance of the building permit.
- o. For non-emergency access, the Township and its representatives shall have the authority to inspect the utility grade solar energy project (any of the panels, racks, roads and/or

accessory structures) upon reasonable notice, of at least 24 hours to the owner and/or operator. The operator may require that a representative of the owner and/or operator accompany the Township and/or its representatives on any inspection and that all visitors adhere all site safety protocols.

- p. At the end of the construction phase, the Applicant shall conduct an initial pre-operation noise study that measures, at a minimum five (5) different points on the project site. This will occur one month or less before start-up of the solar farm. The second noise study, which will study the same data points will be performed at the operational start-up of the solar farm. Both studies will take into consideration the time of day, ambient air temperature, wind speed and direction, and surrounding local acoustics. In the event Applicant is out of compliance with noise decibel levels established by the Zoning Ordinance the Applicant shall immediately develop a remediation plan to be presented to the Township within ten business days. The Applicant shall complete such remediation plan, as soon as possible, but in no event later than six weeks from notice of non-compliance, unless the completion of such work is delayed due to weather, the need to procure additional equipment, or services from third-party vendors unavailable within such time frame. Applicant shall provide Township the result of the pre-operation and secondary noise studies.
- q. The special land use permit, including all conditions of approval, and the site plan(s), including any conditions of site plan approval, shall apply to and bind Blue Elk Solar III LLC, any successors, assigns, purchasers, transferees or subsequent owners. Any successor, assign, purchaser, transferee or subsequent owner and/or operator shall comply with all of the conditions of the special use permit and site plan(s) approval. Aurelius Township may enforce any violation of the provisions of this special use permit and/or site plan(s) against the Applicant or any successors, assigns, purchasers, transferees or subsequent owners as provided in the Township Zoning Ordinance or as otherwise provided by law. Any violation of these conditions is considered to be a violation of the *Township Zoning Ordinance*, a nuisance per se and the Township may seek to enjoin such violation and/or otherwise enforce these conditions as provided by law.

Applicant shall notify the Township in writing within 30 days of any transfer of ownership, operator, or maintenance provider via certified mail to 1939 S. Aurelius Road, Mason, MI 48854

The letter shall be to the attention of: Office of the Township Supervisor, Township Clerk and Township Planning Commission Chairperson.

- r. Applicant will maintain a minimum 25-foot buffer of existing forest on the northern boundary of the property. In addition, the applicant will only clear trees that are necessary to construct solar panels or prevent shading of the solar panels.
- s. Applicant will not place solar panels or associated equipment excluding the project fence, driveway and vegetative barrier within 150 feet of a residence.
- t. Applicant will provide training for the responding local emergency and fire department services, and all fire departments that provide mutual aid, prior to the start of commercial

SES/Solar Farm operations. On-site emergency access and contacts, and equipment protocols shall be provided to local emergency services and fire departments in the event of a fire or other emergency. Local emergency service and fire department training will be held thereafter at the expense of the owner and/or operator, as requested by the emergency services and/or fire department(s) not more than once per calendar year.

- u. Annually, Applicant shall establish, manage and keep operational a complaint resolution procedure. This shall provide a method for residents and/or township entities to file a complaint about ongoing operations of the utility grid solar energy system.
- v. Applicant shall honor any viewshed (visibility analysis) mitigation efforts in the Development Agreement with the Township.
- w. The Applicant shall establish, manage and keep operational a bird mortality observation study using on-site SES/Solar Farm maintenance staff on a regular basis, for a two-year period. As part of the study, the Applicant shall coordinate/consult with MSU Extension regarding participation in the study. In the event an MSU Extension biologist wants to perform a bird mortality study, Applicant shall work with MSU to provide access to the project site. A report of findings will be provided to the Township monthly for the first six months of operation of the SES/Solar Farm, after which, the Applicant shall provide quarterly reports for the remainder of the two-year period.
- x. Applicant confirms that as of the date of submittal for this *Special Land Use Permit*, the proposed facility location is not within one-mile of an operating utility-scale solar project or one for which a *Special Land Use Permit* has been granted within the Township.
- y. Applicant shall keep in good repair all structures on the project site.
- z. Upon the start of construction, the Applicant shall provide a monthly written report to the Aurelius Township Board of Trustees and Planning Commission summarizing the construction progress at the project site. Monthly reports shall conclude at the end of construction.

The motion passed 8-0.

#### Site Plan Review.

The Planning Commission next considered the question of site plan approval. Mehmed's report analyzed Section 16-87 of the Township Zoning Ordinance, which regulates Site Plan review. Mehmed confirmed that the applicant's site plan satisfied the standards set forth in Section 16-87 of the Township Zoning Ordinance. The April 19, 2022 report, which was accepted by the Planning Commission concluded that the applicant's site plan is in conformance with Section 16-87. The Planning Commission had no further questions or comments regarding site plan compliance.

Upon motion of Kaiser, seconded by Groh, the Aurelius Township Planning Commission approved the site plan as submitted by Blue Elk Solar III, LLC, 939 Pearl Street, Suite 210, Boulder, Colorado, 80302, for a proposed commercial solar energy system at W. Plains Road, Eaton Rapids, Michigan 48827, located within Aurelius Township, Parcel Id. No. 33-09-09-31-400-025 because the standards contained in Section 16-87 of the Township Zoning Ordinance as outlined in Mehmed's April 19, 2022 report are satisfied, with the following conditions:

1. That the Township Board approves the applicant's request for a special land use permit to operate a commercial solar energy system.

**New Business:**

None.

**Other reports:**

None.

**Public Comment:**

None.

**Adjournment:**

The Planning Commission meeting was adjourned at 9:10 p.m.

s/ T. Seth Koches

Seth Koches, recording Secretary