

CHARTER TOWNSHIP OF FLUSHING

6524 N. SEYMOUR ROAD

FLUSHING, MICHIGAN 48433

810-659-0800

FAX: 810-659-4212

AGENDA FOR ZONING BOARD OF APPEALS MEETING

DATE: May 10, 2022

TIME: 7:30 P.M.

WEB ADDRESS <http://www.flushingtowship.com>

THIS MEETING WILL BE HELD AT NORTH FLUSHING BAPTIST CHURCH LOCATED AT 7500 MT. MORRIS ROAD, FLUSHING, MI 48433.

MEMBERS OF ZONING BOARD OF APPEALS

Richard Vaughn, Vice Chair

Steve Moulton

Craig Davis – Planning Commission Representative

Mandy Hemingway, Recording Secretary

James Sarka

Timothy Lloyd

I. CALL THE MEETING TO ORDER

1. Roll Call
2. Pledge to the American Flag

II. APPROVAL OF AGENDA:

III. PUBLIC COMMENTS:

IV. APPROVAL OF PREVIOUS MINUTES: September 7, 2021

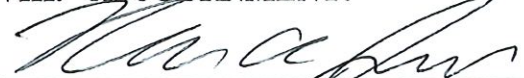
V. UNFINISHED BUSINESS: None

VI. NEW BUSINESS:

1. Election of Officers.
2. Approval of meeting dates and proposed time change.
3. Public Hearing for clarification of Article 18 Special Use Permits Article, Section 20-1804 (OO) Commercial Solar Energy Collector System (b)(2).

VII. NEXT REGULAR SCHEDULED MEETING TO BE HELD TUESDAY, September 6, 2022 AT 7:30 P.M.

VIII. ADJOURNMENT:



DENNIS JUDSON, Zoning Administrator
Charter Township of Flushing

CHARTER TOWNSHIP OF FLUSHING

6524 N. SEYMOUR ROAD

FLUSHING MI 48433

ZONING BOARD OF APPEALS MINUTES

DATE: SEPTEMBER 7, 2021

TIME: 7:30 P.M.

PHONE: 810-659-0800

FAX 810-659-4212

WEB PAGE: <http://www.flushingtowship.com>

MEMBERS OF ZONING BOARD OF APPEALS

Edward Henneke, Chair

James Sarka

Richard Vaughn, Vice Chair

Timothy Lloyd

Mark Newman – Planning Commission Representative

Mandy Hemingway – Recording Secretary

I. CHAIR HENNEKE opened the meeting at 7:30 p.m. with Roll Call and the Pledge to the American Flag.

ROLL CALL: Henneke, Newman, Sarka and Lloyd

MEMBERS ABSENT: Vaughn

OTHERS PRESENT: 2 other individuals present

II. APPROVAL OF AGENDA:

MR. NEWMAN MOVED, supported by Mr. Sarka to approve the agenda as submitted.

THE MOTION CARRIED UNANIMOUSLY.

III. PUBLIC COMMENTS:

No Comments

IV. APPROVAL OF PREVIOUS MINUTES:

MR. NEWMAN MOVED, supported by Mr. Sarka to approve the minutes of the January 7, 2020 ZBA Meeting.

THE MOTION CARRIED UNANIMOUSLY.

V. UNFINISHED BUSINESS: No unfinished business

VI. NEW BUSINESS:

1. Election of Officers.

MR. NEWMAN MOVED to elect Mr. Henneke as Chair and Mr. Vaughn as Vice Chair, supported by Chair Henneke.

THE MOTION CARRIED UNANIMOUSLY.

2. Approval of meeting dates

MR. NEWMAN MOVED, supported by Chair Henneke to approve the meeting dates as listed through January 2022.

THE MOTION CARRIED UNANIMOUSLY.

VII. NEXT REGULAR SCHEDULED MEETING TO BE HELD TUESDAY, DECEMBER 7, 2021 AT 7:30 P.M.

VIII. ADJOURNMENT:

MR. NEWMAN MOVED, supported by Mr. Lloyd to adjourn the meeting at 7:46 P.M.

THE MOTION CARRIED UNANIMOUSLY.

EDWARD HENNEKE, Chair

MANDY HEMINGWAY
Recording Secretary

Date Approved

09/07/2021

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2022 MEETING DATES

***Indicates dates changed due to Election or Holiday**

BOARD OF TRUSTEES

2nd Thursday of the Month - 7:00 p.m.

January 13, 2022

July 14, 2022

February 10, 2022

August 11, 2022

March 10, 2022

September 8, 2022

April 14, 2022

October 13, 2022

May 12, 2022

November 17, 2022*

June 9, 2022

December 8, 2022

ZONING BOARD OF APPEALS

1ST Tuesday – Each Quarter - 7:30 P.M.

January 4, 2022 -- May 10, 2022* -- September 6, 2022 -- December 6, 2022 -- January 3, 2023

PLANNING COMMISSION

2nd Monday of the Month - 7:00 P.M.

January 10, 2022

July 11, 2022

February 15, 2022* (Tues)

August 8, 2022

March 14, 2022

September 12, 2022

April 11, 2022

October 11, 2022* (Tues)

May 9, 2022

November 14, 2022

June 13, 2022

December 12, 2022

PARKS AND RECREATION COMMITTEE

3rd Wednesday of the Month – 5:00 p.m.

Flushing Township Nature Park (weather permitting) or at the Flushing Township Hall.

BOARD OF REVIEW

MEETING DATES AND TIME ARE SET BY THE ASSESSOR

WATER AND SEWER COMMITTEE

WILL MEET AS NEEDED, ONE HALF HOUR PRIOR TO THE REGULAR BOARD MEETING

WENDY D. MEINBURG, Clerk

Meeting Dates Approved _____

master/meetingdates 2022

ZONING BOARD OF APPEAL REVIEW REQUEST FORM

ZONING Request Case No. _____
zoning Fee: \$ 650
Date Paid: 4/18/22
Date Notice was Published: 4/21/22
Date of Public Hearing: 5/10/22
Affidavit Attached: _____

FLUSHING TOWNSHIP ZONING BOARD OF APPEALS REVIEW REQUEST

Type of request to ZBA (variance, interpretation of zoning map, interpretation of ordinance, administrative appeal, other - please specify): Request for interpretation of Zoning Ordinance

1. Name of applicant/owner requesting ZBA review and opinion.

A. Applicant

Name: Confluence Solar, LLC
Address: 226 N. Morgan Street # 200
Chicago, IL 60607
Phone: 517-819-4059

B. Owner of property if different than above

Name: _____
Address: _____
Phone: _____

2. Location of Property:

Street number and name: _____
Property tax identification number: _____
Legal description of property involved: _____

List deed restrictions and easements: _____

Present Zoning of property: _____


Requested Zoning change to: N/A

- a. With all requests, a site plan must be submitted (IF APPLICABLE)
b. What is the purpose of the REVIEW request for the zoning? (attach additional information)

Request for Zoning Ordinance interpretation
related to Section 20-1804 (OO) (B) (2).

Please See Attached Memo re: Request for
Zoning Ordinance interpretation.

ACKNOWLEDGEMENT AND CERTIFICATION: It is hereby acknowledged that the applicant(s) has fully read and completed the above application. It is also understood that in case of cancellation or failure of the owner or his representative to appear at the hearing, I understand that all fees will be forfeited.



Signature of Applicant
Title: Vice President

Signature of Owner
(If different than applicant)



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763

Stephen R. Estey
Direct Dial: (248) 203-0538
Direct Fax: (855) 232-1793
Email: SEstey@dykema.com

April 18, 2022

Flushing Township
c/o Zoning Board of Appeals
6524 N Seymour Rd
Flushing, MI 48433

**Re: REQUEST FOR ORDINANCE INTERPRETATION –
 SECTION 20-1804(OO)(B)(2)**

Dear Zoning Board of Appeal Members:

This letter and its accompanying materials are presented to the Flushing Township ("Township") Zoning Board of Appeals ("ZBA") for an interpretation of the Township's Zoning Ordinance ("Ordinance"), Section 20-1804(OO)(B)(2), as it relates to Confluence Solar, LLC's ("Applicant" or "Client") intention to construct a portion of 200 MWac Commercial Solar Energy Collector System (the "Project") in the Township.

Applicant believes that under Section 20-1804(OO)(B)(2) the phrase "the total area of ground-mounted solar energy collections" as used to calculate the maximum lot coverage, to be the total area covered by the solar array collectors (Ground-mounted solar energy collectors). Our Client has been informed by the Township Supervisor that the Township's Planning Consultant believes the lot coverage is to be calculated instead based on the entirety of the Project to the fence line, including the inverters, access roads, area between panels, and transformers. Applicant understands this to be incorrect as (1) it is inconsistent with the plain and unambiguous language of the Ordinance; and (2) to include the entire Project area to the fence line would render any Commercial Solar Energy Collector System in the Township unworkable, resulting in exclusionary zoning. There would not be sufficient square footage on the lots (due to the 25% maximum) to make a commercial solar collection system viable.

Under Michigan law, the ZBA is the authorized body to interpret the Ordinance. As such, the Applicant is seeking a ZBA interpretation of Section 20-1804(OO)(B)(2) confirming the phrase "the total area of ground-mounted solar energy collections" as used to calculate the maximum lot coverage, to be the total area covered by the solar array collectors (Ground-mounted solar energy collectors) only.

I. Background

It is anticipated the Project will be approximately 1,500 acres and utilize solar panels to be installed in both Montrose and Flushing Townships. Roughly 75% of the Project is anticipated to be located in the Township. The Project consists of photovoltaic (PV) arrays mounted to single-axis trackers. See attached **Exhibit 1**. The Project will include a handful of inverter stations located throughout the project site which are required to convert the electricity generated from DC-to-AC power. Individual panel rows will be spaced approximately 16-25' apart, which will minimize shading impacts, and also allows for vehicular access throughout the Project. The Project will be completely enclosed by a woven-wire fence with wooden posts, which is consistent with the rural and agricultural nature of the community. The Project will utilize existing and new internal access roads and the entire area underneath the panels will be planted with a permanent vegetative cover, which consists of a mixture of native grasses and pollinators.

II. Jurisdiction of the Zoning Board of Appeals

The Michigan Zoning Enabling Act of 2006 provides:

125.3603. Zoning board of appeals; powers; concurring vote of majority of members. Sec. 603.

(1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.

(emphasis added)

Likewise, Section 20-2206 of the Ordinance further provides that the ZBA is granted the authority to interpret the provisions of the Ordinance as set forth in MCL 125.3603.

Section 20-2206. Duties.

(a) The Township Zoning Board of Appeals shall act upon all questions as they may arise in the administration of this chapter, including the interpretation of the zoning maps. It shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of an ordinance

adopted pursuant to the township rural zoning act (MCL 125-271 et seq., MSA 5.2963(1) et seq.). It shall hear and decide all matters referred to it or upon which it is required to pass under this chapter.

(emphasis added)

As such, the ZBA is vested with the authority to interpret and make a finding that the phrase “the total area of ground-mounted solar energy collections” as used to calculate the maximum lot coverage under Section 20-1804(OO)(B)(2) is to be interpreted as the total area covered by the solar array collectors (Ground-mounted solar energy collectors) only.

III. Section 20-1804(OO)(B)(2) – The Total Area of Ground-Mounted Solar Energy Collections only Includes Solar Array Panels (Ground-mounted solar energy collectors) Under the Ordinance and Not All Land to the Fence Line.

Section 20-1804 Requirements for Permitted Special Land Uses

(OO) Commercial Solar Energy Collector System

- (b) All commercial solar energy collector systems that are ground-mounted shall follow the following requirements:
- (1) Ground-mounted solar energy collectors shall not exceed 12 feet in height measured from the ground at the base of such equipment. The height of the ground-mounted solar energy collector shall be measured from ground level to the highest point of the solar panel.
 - (2) **The total area of ground-mounted solar energy collections shall be included in calculations to determine lot coverage and shall not exceed a maximum lot coverage of 25 percent regardless of the residing zoning district.**

Section 20-200 Definitions

Lot coverage means the part or percentage of the lot occupied by a building, including accessory buildings.

In interpreting ordinances, it is instructive to look to the law in Michigan as it relates to statutory construction. Courts give effect to the intent of the legislative body by reviewing the plain language of the statute itself. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). When reviewing a statute, one must consider the statutory language to determine if an ambiguity exists. *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 538; 565 NW2d 828 (1997). Where statutory language is ambiguous, judicial construction is permitted. *Deschaine v St Germain*, 256 Mich App 665, 669; 671 NW2d 79 (2003). Judicial construction is neither necessary nor permitted, however, where the statutory language is clear and unambiguous. *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 667; 760 NW2d 565 (2008). “In statutory interpretation, the primary goal must be to ascertain and give

effect to the Legislature's intent, and the judiciary should presume that the Legislature intended a statute to have the meaning that it clearly expresses." *McClellan v Collar* (On Remand), 240 Mich App 403, 409; 613 NW2d 729 (2000) (citation omitted).

Moreover, it is well established that in construing a law, a public body must endeavor to give meaning and effect to all statutory provisions. A construction which renders a provision meaningless or trivial is disfavored. *Nelson v Transamerica Ins Services*, 441 Mich. 508, 513-514; 495 N.W.2d 370 (1992); *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013), quoting *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW 2d 503 (2012). When a Township Board has passed an ordinance that unambiguously conveys its intent in the text, the text speaks for itself and there is no need for judicial construction; the proper role is simply to apply the terms of the ordinance to the circumstances in a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich. 22, 27; 528 N.W.2d 681 (1995).

Here, under Section 20-1804(OO)(B)(2), "total area of ground-mounted solar energy collections," as used to determine lot coverage, "shall not exceed a maximum lot coverage of 25 percent." The plain language of the Ordinance clearly states that the lot coverage calculation should only include the total area covered by the solar arrays (ground-mounted solar energy collectors). The Township staff, however, has determined that the "total area of ground-mounted solar energy" includes the entire Project area up to the fence line. This cannot be the case because (1) it is inconsistent with the plain language of the Ordinance; and (2) to interpret the Ordinance in this manner would restrict commercial utility grade solar projects to such a small area of land that the system would not generate enough electricity to be viable – thus resulting in exclusionary zoning.

For purposes of this discussion, the Applicant has created a sample solar project diagram, in order to demonstrate how various environmental features and zoning requirements may impact the overall design and engineering of the solar array panels layout. In this example, the sample Project utilizes approximately 532 solar arrays per acre. Applying the plain Ordinance language and the Applicant's interpretation of Section 20-1804(OO)(B)(2), the sample Project is able to utilize approximately 21,280 solar arrays (generating 8.4 Mwach) per 40 acres of land. Under the Township staff's interpretation of Section 20-1804(OO)(B)(2), however, the sample Project would only be able to utilize 5,320 solar arrays (generating 2.1 Mwach) per 40 acres of land, thus making the sample Project unworkable. See the attached diagram depicting this sample and showing the restrictive impact to the sample Project if it is determined that the "total area of ground-mounted solar energy" includes the entire Project area up to the fence line as **Exhibit 2**.

Under Michigan law, exclusionary zoning is prohibited. Thus, a Township cannot simply rely upon the fact that a particular use is not expressly delineated in its ordinance or interpret an ordinance in such a way that renders the use unviable. The prohibition against exclusionary zoning in Michigan was initially established through judicial declaration in *Kropf v. Sterling Heights*, 391 Mich. 139; 215 N.W.2d 179 (1974), and has now been codified by statute in Michigan's Zoning Enabling Act:

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.

MCL 125.3207

There is a clear benefit and need within the State of Michigan for renewable energy. The Michigan Department of Agriculture & Rural Development ("MDARD") has expressly recognized the need to install solar arrays on agricultural land, including land enrolled in PA116. Agricultural land is the most compatible land for solar energy system projects as the land generally consists of large acreage and solar uses are low intensity. Solar energy systems also serve to supplement farming incomes and allow for nutrient and land recharge while supporting native vegetation and pollinator habitat species. Giving soil rest helps maintain soil quality and contributes to biodiversity of agricultural land to increase nutrient levels, enabling the land to successfully revert back to agricultural uses at the end of the operational life for solar installations.

Likewise, the development of Commercial Solar Energy Systems creates significant economic benefits for the Township, private landowners, and the community. According to preliminary projections prepared by Confluence Solar, the proposed 200 MWac Project will generate millions of dollars in new tax revenue over the Project's lifetime, including over \$2,000,000 in new tax revenue in the first year alone, based on current applicable tax code. This new tax revenue will provide critical funding for local schools, libraries, fire and police services, all of which will benefit the Township's residents. Given the passive nature of this type of development, the Project will not rely on municipal services, such as water, sewer, or new roads during Project operations, meaning that the Project will provide a net economic benefit to the Township and community.

Finally, Confluence Solar also estimates that the proposed 200 MWac Commercial Solar Energy Project will create over 250 in-demand construction jobs, many of which are able to be filled locally. As such, there is a demonstrated need for the Project and the Ordinance should be interpreted in a way so as not to result in exclusionary zoning.

IV. Conclusion

As discussed above, Applicant asks the ZBA to find that the phrase "the total area of ground-mounted solar energy collections" as used to calculate the maximum lot coverage under Section 20-1804(OO)(B)(2), means what it says; that is, to be the total area covered by the solar array collectors (Ground-mounted solar energy collectors). Any other interpretation is inconsistent with the plan language of the Ordinance and would result in exclusionary zoning.

Thank you for your consideration of this request. Should you have any questions, please do not hesitate to contact me.

Flushing Township
April 18, 2022
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Regards,

Dykema Gossett PLLC

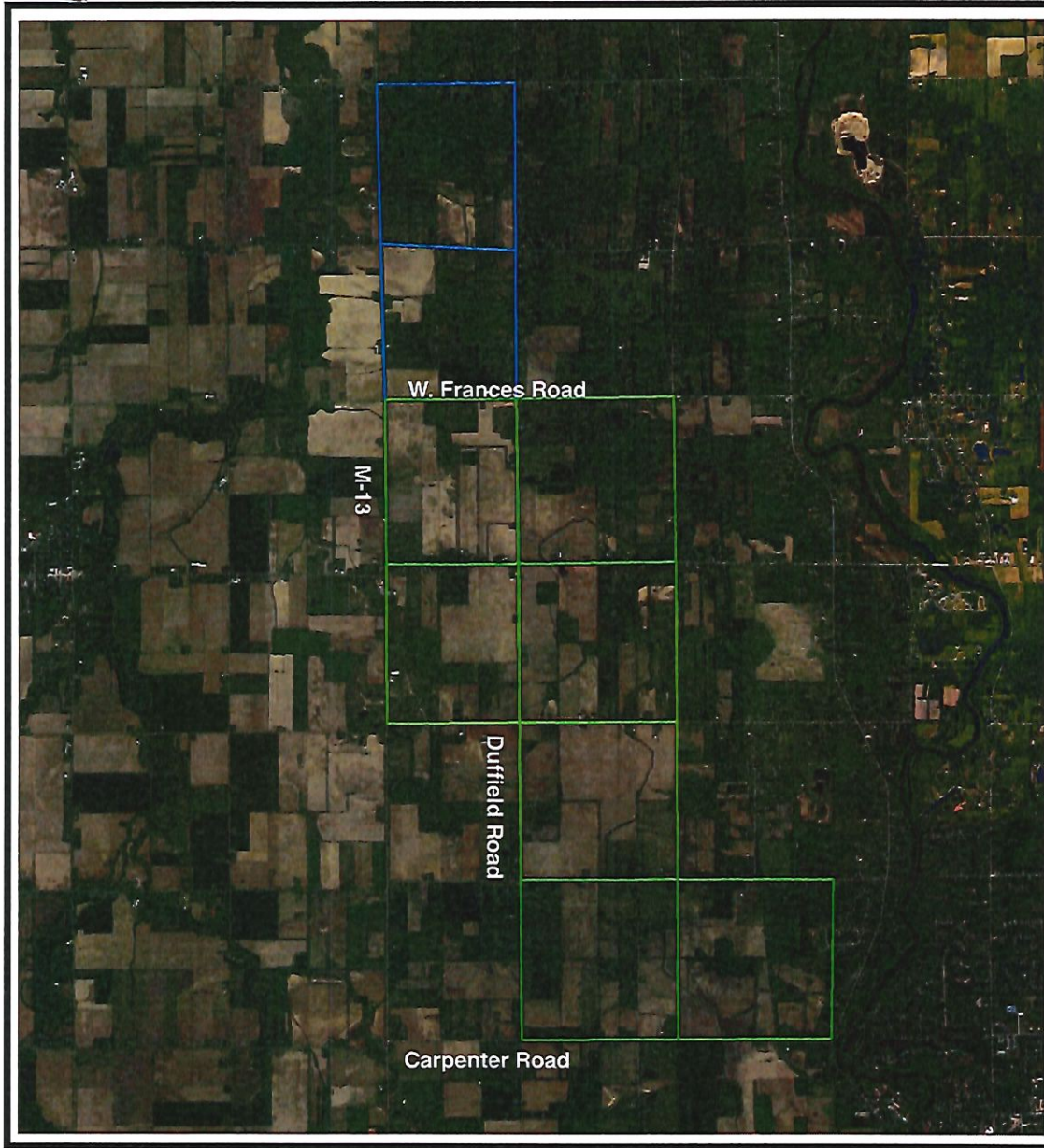
A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.


Stephen R. Estey

EXHIBIT 1



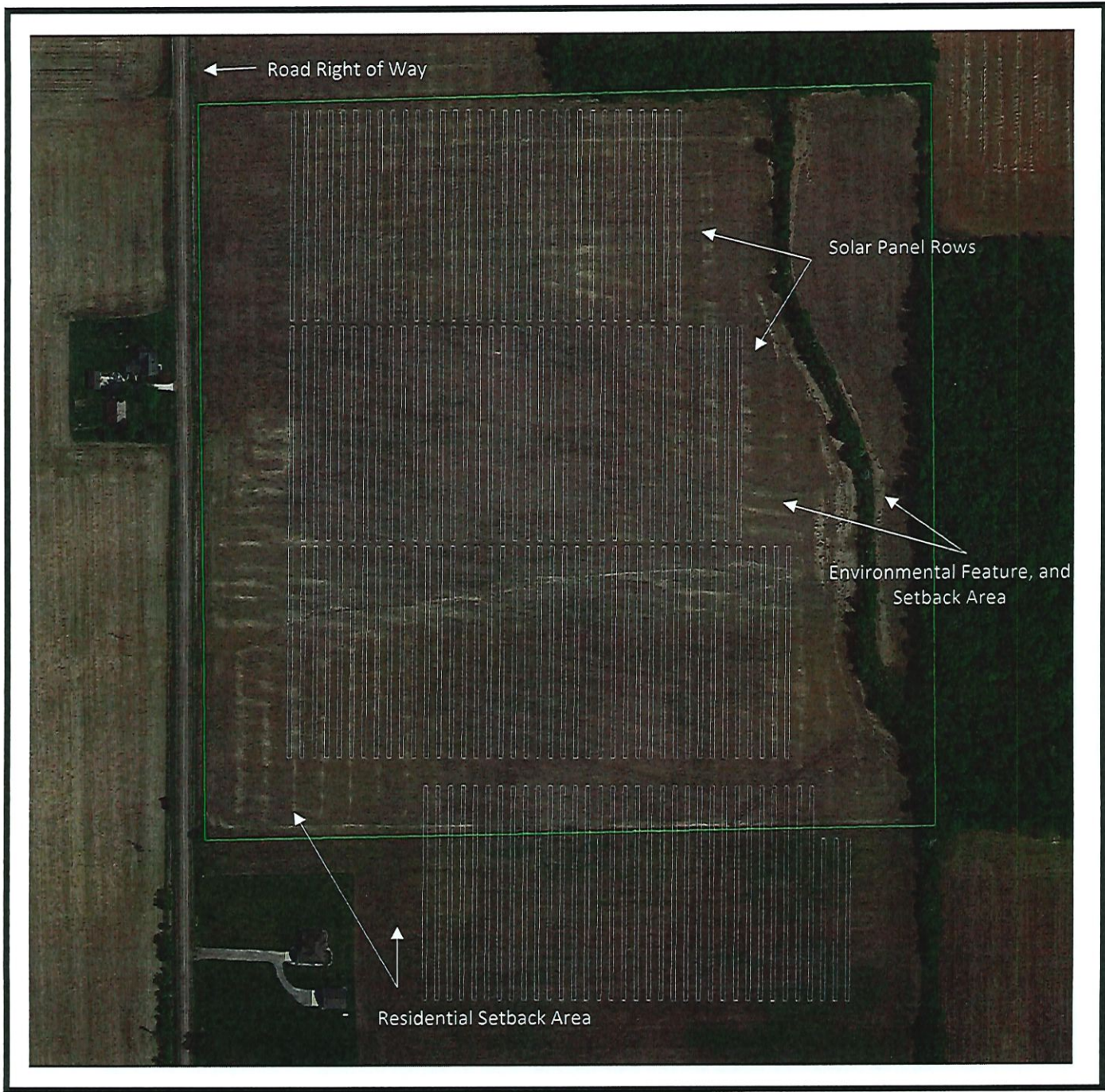
EXHIBIT 2

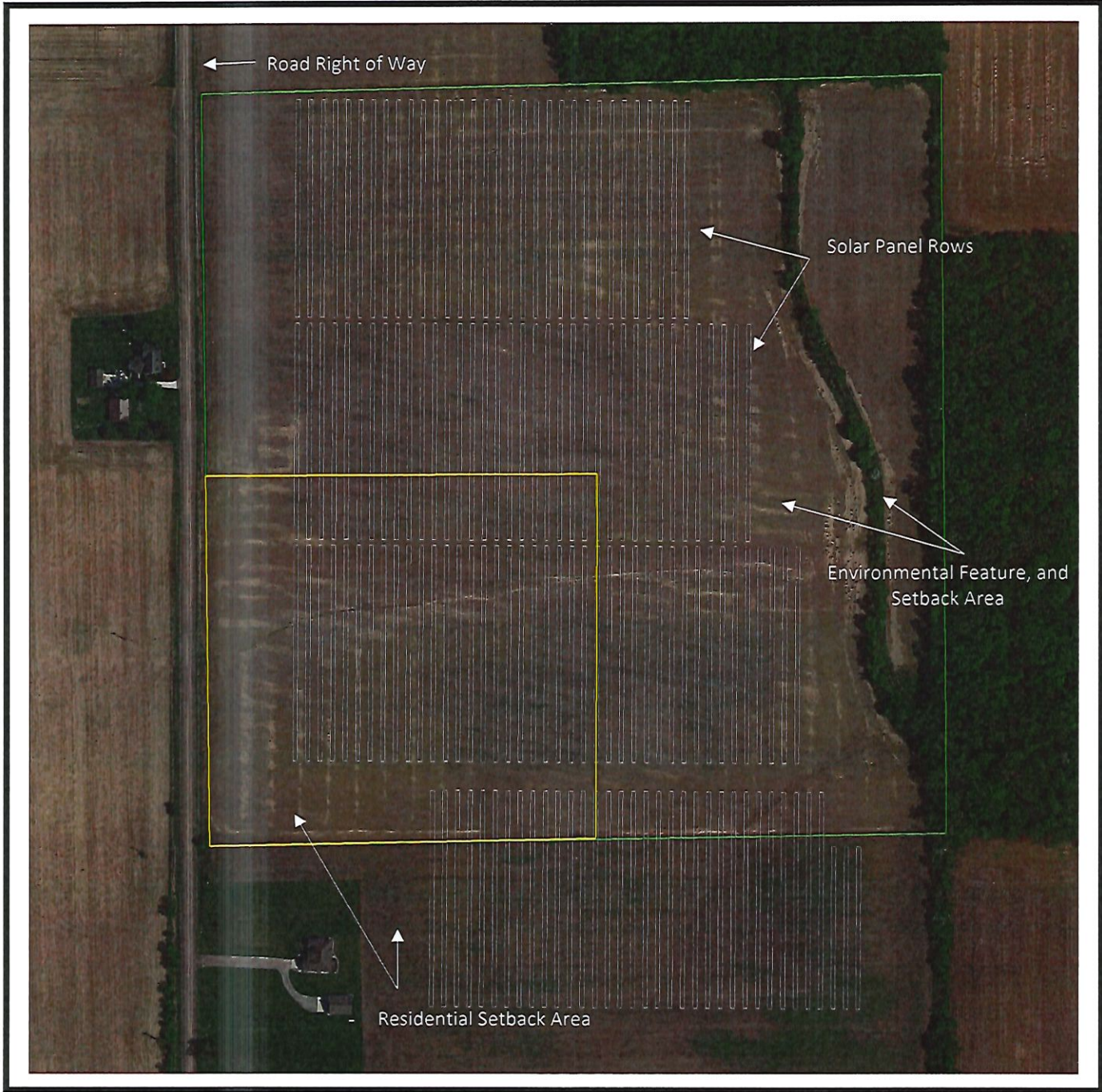




 Flushing Township Section Lines

 Montrose Township Section Lines

**Project area is subject to change. This map provided for discussion purposes only.*







	25% utilization Area
	40-acre Parcel Boundary





← Road Right of Way

	25% utilization Area
	40-acre Parcel Boundary

