



March 15, 2021

Rives Township Planning Commission
Roger DeCamp, Chairperson
Jim Lindstrom, Secretary
Judi McCord, Clerk
348 E. Main Street
Rives Junction, MI 49277

*Via Email to: pcchair@rivestwp.org,
pcsec@rivestwp.org, and
clerk@rivestwp.org*

Dear Members of the Rives Township Planning Commission:

I represent the group Citizens to Keep Rives Rural (“CKRR”), a grassroots organization dedicated to conserving the rural character and agricultural landscape of Rives Township. CKRR appreciates this opportunity to provide comments on the proposed amendments to the Rives Township Zoning Ordinance. Overall, the amendments are an improvement over the existing ordinance and provide greater protections for Rives’ rural character, particularly with regards to the Industrial zoning provisions. However, CKRR has several recommendations for the Planning Commission to consider prior to adopting the revised ordinance that CKRR believes will help clarify the ordinance further and avoid conflicting interpretations in the future.

- **SECTION 17.01 – PURPOSE:**

The Planning Commission is proposing to delete the last sentence of Section 17.01, which reads “If the specific use of land, natural resources and structures are not listed as a permitted use in this ordinance, conditional use permits are required and can only be granted by the Rives Township Board.” CKRR recommends that amended Section 17.01 include some clarification that uses other than uses by right require a permit. For example, this last sentence could be changed to read “Conditional use permits are required for uses of land, natural resources, and structures that are not listed as a permitted use in the ordinance and are not otherwise prohibited.” This proposed modification would be consistent with the use regulations in Section 17.23A, which provides “No structure shall be constructed, erected, placed, or maintained, and no use shall be commenced or continued within Rives Township except as specifically, or by necessary implication, authorized by this Ordinance.”

- **SECTION 17.23 – USE REGULATIONS:**

CKRR supports the proposed amendment to Section 17.23B Use Regulations. The amendment better reflects the review and permitting process for conditional uses described in Article 7, emphasizes the role of the Planning Commission in the process, and clarifies that conditional use permits are discretionary. In particular, CKRR appreciates the removal of the term

Rives Township Planning Commission
March 15, 2021
Page 2

“by necessary implication” from 17.23B, as this clarifies that uses can be permitted as conditional only if they are specifically enumerated as such within the Zoning Ordinance.

• **SECTION 17.55 – LIGHT INDUSTRIAL DISTRICT – I; SECTION 17.56 – PERMITTED USES; SECTION 17.57 – CONDITIONAL USES:**

CKRR supports the proposed amendments to the Industrial zoning provisions. Replacing the Industrial zoning provisions with Light Industrial is consistent with the goals and objectives of Rives’ 2019 Master Plan. CKRR agrees wholeheartedly with the provision in amended Section 17.55 that “The Township has no public water and sewer, or Class A roads suited for more intensive industrial uses. To these ends, certain intensive industrial uses are excluded which would conflict with and harm the rural character of the Township.” However, CKRR believes that this provision would better protect the rural character of Rives Township by including the language “Facilities used to generate electric power derived from coal, natural gas, oil, nuclear, or solid waste are examples of intensive industrial uses that would conflict with and harm the rural character of the Township” at the end of Section 17.55. CKRR also recommends adding a similar provision to the definition of Essential Services in Section 17.27: “The definition of Essential Services does not include facilities used to generate electric power derived from coal, natural gas, oil, nuclear, or solid waste.”

CKRR would like to clarify that these proposed revisions would not constitute exclusionary zoning because there is no demonstrated need for power from a fossil fuel electric generation facility in Rives Township or the surrounding area of the state. Under Michigan law, zoning is only considered “exclusionary” if (1) the ordinance has the effect of totally prohibiting the establishment of the land use within a local unit of government, (2) there is a demonstrated need for that land use within that local unit of government or the surrounding area of the state, (3) a location exists within the local unit of government where the use would be appropriate, and (4) the use would be lawful.¹

CKRR recommends that the ordinance include a finding that there is no demonstrated need for electric power generation from fossil fuels in Rives Township. This finding is appropriate for several reasons:

- First, Consumers Energy, the major electric utility that provides power for Rives Township, has explained how it will be meeting its customers’ electricity needs over the next 15-20 years in a public filing with the Michigan Public Service Commission called an “Integrated Resource Plan,” and this plan does not include any gas- or coal-fired electric power generation located in Rives Township. Consumers Energy already has its own coal- and gas-fired power plants, and contractual rights to purchase power from other gas-fired electric generation facilities located on the west side of the state. According to its Plan, the only power that Consumers Energy will be purchasing from new electric generating

¹ MCL 125.3207.

Rives Township Planning Commission
March 15, 2021
Page 3

facilities will be renewable energy.² Consumers did issue a request for proposal to acquire capacity and energy from natural gas fueled combined cycle or combustion turbines in January 2021; however, that request was specifically for existing facilities.³

- Second, the other large electric utility in Michigan, DTE Electric Company, received approval in 2018 to construct its own new 1,100 MW natural gas-fired power plant in Michigan.⁴ DTE did not receive the Michigan Public Service Commission's approval to construct another fossil fueled plant as part of DTE's Integrated Resource Plan.⁵
- Third, the Michigan Public Service Commission Staff found that MISO Zone 7 (the zone of the Regional Transmission Organization covering the lower peninsula of Michigan that provides power generators with access to the energy transmission network) will have a surplus of 180 MW for the 2023/2024 planning year.⁶ So, there is no demonstrated need for using land for non-renewable power generation in Rives or the surrounding area, nor is there a demonstrated need for this type of power generation in the entire lower peninsula.

CKRR also recommends that the Planning Commission clarify what "other similar uses" would entail for the uses listed in Section 17.56A, 17.56K, and 17.57, or include an explanation of how those "other similar uses" would be determined. For example, the language defining "similar uses" should provide that the uses must be similar in terms of Standard Industrial Classification and level of impact on the environment, existing neighboring land uses, and the overall character of land use in Rives Township.

² See Michigan Public Service Commission June 7, 2019 Press Release, *MPSC approves Consumers Energy's integrated resource plan*, available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000005HS09AAG>.

³ See <https://www.consumers-rfp.com/default.aspx>.

⁴ See Michigan Public Service Commission Case No. U-18419, April 27, 2018 Order, available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t00000022QIPAAU>.

⁵ See Michigan Public Service Commission Case No. U-20471, February 20, 2020 Order, available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000009jWc2AAE>; Michigan Public Service Commission Case No. U-20471, April 15, 2020 Order, available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000BRC3HAAX>.

⁶ See Michigan Public Service Commission Case No. U-20590 et al., August 20, 2020 Order, p. 6, available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000DcfWIAAJ>. The Commission Staff did note capacity shortfalls in the interim years 2021/2022 and 2022/2023, but "note[d] that these figures are subject to change based on new load forecasts, unknown resource additions or subtractions, changes in generator performance, increased or decreased zonal import ability, or changes in MISO requirements." At any rate, a large fossil fuel generated plant could not be built in time to impact capacity in MISO Zone 7 before the time when Zone 7 will have a surplus.

Rives Township Planning Commission
March 15, 2021
Page 4

- **SECTION 17.57A - INDUSTRIAL DIMENSIONAL REQUIREMENTS:**

CKRR supports the increase of the front yard setback in the Industrial District from 35 to 50 feet. CKRR would like to clarify that the Township may impose more stringent setback requirements for conditional uses in the Industrial zone pursuant to Section 17.86.

- **SECTION 17.85C – WAIVERS FOR CONDITIONAL USES:**

CKRR is concerned that the proposed waiver language for conditional uses could allow the Township to permit conditional uses that are unsuited for a particular area. If a proposed conditional use cannot comply with all of the standards in Subsection B, then it is reasonable to assume that a use does not belong in a particular area. CKRR recommends that the amendment require that the applicant demonstrate **both** “That architectural or structural integrity and quality are not undermined” **and** “That any deviations from the above standards will still provide for a harmonious development and serve to minimize any possible impacts to adjacent properties and residences.” – not one or the other as the amendment currently proposes.

- **SECTION 17.99 – PERFORMANCE GUARANTEES, ESCROWS, DECOMMISSIONING AND RECLAMATION:**

CKRR supports including these new provisions to require a performance guarantee to ensure project completion and site rehabilitation. However, the Planning Commission and Township Board should not rely on a performance guarantee to permit land uses that would have an irrevocable impact on Rives’ environment and rural character and are inconsistent with neighboring uses and the Master Plan.

Thank you for this opportunity to provide comments on Rives Township’s proposed Zoning Ordinance amendments. We encourage the Planning Commission to incorporate CKRR’s recommendations prior to adopting the amendments. If you have any follow-up questions, please do not hesitate to contact me.

Sincerely,



Lydia Barbash-Riley
lydia@envlaw.com