WHITE PAPER: The Michigan Blueprint for Local Land Use Integrity

Subtitle: *Defending Home Rule, Farmland, and Procedural Due Process*

[LEGAL DISCLAIMER: This document is provided for informational and educational purposes only. It summarizes successful legal strategies and precedents from the 53rd and 46th Judicial Circuits. It does not constitute legal advice or a formal attorney-client relationship. Users should consult with legal counsel regarding specific local land-use disputes.]

I. Executive Summary: The Victory of Objective Standards

A common myth perpetuated by industrial developers is that Michigan townships are powerless against state-level energy mandates. The successful litigation led by **David Delaney** in the 53rd and 46th Circuits proves the opposite. By focusing on **objective non-compliance**—the failure of an industrial application to meet the specific, measurable standards of a local ordinance—townships can successfully defend their Master Plans.

II. The Delaney Precedents: The Cheboygan & Otsego Victories

The legal landscape for Michigan land use was fundamentally altered by these victories, establishing that local boards are the final statutory gatekeepers of their own community's vision.

- **The Cheboygan Double-Victory (Grant Township / County-Wide):**
    - **Procedural Integrity:** Established that a permit issued in violation of **MZEA procedural notice requirements** is void *ab initio*. If the public is not properly notified, the developer's permit must be vacated.
    - **The CREO Shield:** Proved that if a township maintains a valid, non-exclusionary zoning ordinance, the MPSC cannot mandate the adoption of a "model" **Compatible Renewable Energy Ordinance (CREO)**. Local law remains the primary authority.
- **The Otsego Victory (Hayes Township):**

Confirmed that local boards retain the statutory authority to deny projects based on **competent, material, and substantial evidence** of non-compliance with the Master Plan.

III. The Procedural Shield: Moratoriums & Pending Ordinances

1. **The Pending Ordinance Doctrine:** Under ***Sabo v. Monroe Township*, 394 Mich 531**, once a Planning Commission formally votes to schedule a public hearing for a zoning amendment, that ordinance is **"pending."** A municipality may legally deny a permit if the proposed use violates this rule.

2. **The Zoning Moratorium:** Under the **MZEA** and ***Central Advertising Co. v. St. Joseph Twp.*, 125 Mich App 548**, a moratorium provides the legal "planning window" necessary to shield the board while new standards are finalized.

IV. Anticipatory Nuisance & The "Discovery Fear"

Under ***Adkins v. Thomas Solvent Co.*, 440 Mich 293**, a nuisance includes a **"threat of future injury that is a present menace."**

- **The Discovery Weapon (MCR 2.302):** Under **Michigan Court Rule 2.302(B)(1)**, plaintiffs in a nuisance suit gain broad access to internal corporate data. Developers often abandon a site rather than expose their private feasibility studies and internal communications to a public court record.

V. The Spot Zoning Plot & The Master Plan Mandate

Under **MCL 125.3203**, any zoning ordinance **"shall be based upon a plan."** When developers attempt "Text Amendments" to favor a few large farms within a protected agricultural zone, it constitutes **unauthorized spot zoning** under ***Penning v. Owens*, 340 Mich 355**. This strips the board of its "presumption of validity" in court.

VI. Constitutional Equal Protection & Arbitrary Siting

Under the **14th Amendment** and **Mich. Const. Art. 1, § 2**, the government cannot treat similarly situated property owners differently without a "rational basis." Stripping the zoning protections of a few farmers in a specific district while maintaining them for the rest of the township creates an unconstitutional "class" of victimized landowners.

VII. The PA 116 "Zombie Debt" & The Systematic Liability Shift

- **The Engineered Burden:** Developers and utilities often structure agreements so the primary financial burden of the PA 116 contract remains with the farmer. Per **MCL 324.36111**, the state’s lien for recaptured tax credits remains attached to the real property, not the developer's assets.
- **The Bankruptcy Trigger:** Under **MDARD’s "Solar Requirements" policy**, if restoration is incomplete, the farmer is left with a **"Zombie Debt"**—a lien for seven years of tax credits plus 6% interest.

VIII. The Definition Mandate: Square Footage vs. Megawatts

- **The Strategy:** Define "Utility-Scale Solar" by total square footage of panel surface area (e.g., anything exceeding 8,000 sq. ft.) rather than energy output. This keeps regulation focused on **Lot Coverage** and drainage—powers explicitly granted by the MZEA.

IX. ALL-INCLUSIVE BIBLIOGRAPHY & TABLE OF AUTHORITIES

- *Grant Twp. v. Northern Waters Solar Park* (53rd Circuit)
- *Hayes Twp. v. MPSC* (46th Circuit)
- *Sabo v. Monroe Township*, 394 Mich 531
- *Central Advertising v. St. Joseph*, 125 Mich App 548
- *Penning v. Owens*, 340 Mich 355
- *Adkins v. Thomas Solvent*, 440 Mich 293
- *Silva v. Ada Township*, 416 Mich 153
- MCR 2.302(B)(1) (Discovery)
- MCL 125.3203 (Master Plan Mandate)
- MCL 324.36111 (PA 116 Liens)
- MDARD Solar Requirements Policy