

Strategy Guide for Fighting Wind/Solar/BESS

by EDRA of MI, 11.25

The Paths to Permitting

Under PA 233, permitting of industrial wind/solar/BESS can be done at the local level—but only if the township or county has ordinances which regulate these facilities. If they don't, then developers can apply directly to the MPSC. Developers can also appeal directly to the MPSC if they are denied permits locally, or if their local permit was approved with conditions.

CREOs—MPSC recommends that local municipalities adopt a Compatible Renewable Energy Ordinance (CREO), which allows for the development of utility-scale wind, solar, and BESS, with minimal restrictions and setbacks. This keeps permitting local, but it opens the door for large-scale energy development with little restriction.

Workable Ordinances—These are stricter on development than CREOs, but they [still open the door for energy development](#). Depending on how it's written, these ordinances may still allow the developer to go over the township's head to the MPSC for permitting.

Incompatible Ordinances—These ordinances disallow for all wind/solar/BESS developments, or place what developers will likely consider “unreasonable restrictions” on energy development projects. Developers can ask MPSC to let them

bypass these local ordinances and apply directly to MPSC for permits.

However, in these cases, local governments receive intervener funds to pay for legal representation to contest the case to MPSC.

Zoning Overlays—A zoning overlay allows a township or county to limit certain types of development activities to certain areas. For example: an overlay could be designed to allow for solar development within 200 feet of a township's major electrical transmission lines—but not beyond it. Overlays let municipalities allow certain types of development, while controlling where they take place. Zoning Overlays can be a part of zoning ordinances, including CREOs.

The “reasonable restrictions” gray area—PA 233 does not clearly outline what constitutes as “unreasonable restrictions” against energy developments, so this is up to interpretation—by the MPSC, and by local and state courts.

A legal wild west—PA 233 is vague, and a new law. This means that nobody knows what will happen in court.



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Grassroots Strategies

Michigan communities can follow many different paths in fighting industrial energy projects. None of them are ideal.

Here are some of the strategies different grassroots communities have used to date:

1. Adopt a Compatible Renewable Energy Ordinance (CREO), as MPSC recommends.

Some experts view CREOs as the only way for local municipalities to maintain a semblance of local control. Others insist that CREOs open the door wide for these energy developments, and that the MPSC's pressure to adopt them equates to blackmail.

Reasonable minds disagree on whether CREOs help or hurt local communities' ability to fight these energy developments. Legal advice on the matter is split; some attorneys say CREOs are the only way, others advise staying far away from them.

2. Adopt an incompatible ordinance and deny permits.

Some communities get their municipal boards to adopt workable ordinances, or even to adopt ordinances openly blocking wind/solar/BESS. In most cases, this forces the developer to ask MPSC to intervene, and they most likely will—but

the process could significantly slow down the project, buying critical time.

The more permits MPSC has to deal with, the longer developers have to wait for approval. Some developers can't afford to wait 18 months for a permit approval. Still: it's a risky strategy, recommended by few.

3. Sue municipality and the developer for permit approval.

In some communities, residents are using local permit approvals as a way to litigate projects effectively. In these situations, local municipalities adopted CREOs or other compatible ordinance, then they approved solar permits. This gave local residents the opportunity to sue the developer in local courts.

When permits are approved locally, ensuing lawsuits must be handled in *local* courts, rather than state courts. This keeps the legal fight local, working its way up to state courts as needed. Projects cannot proceed so long as they are in litigation, and most energy developers can't afford to wait 18-48 months for a lawsuit to resolve.

Odd as this strategy may sound, it's been proving to be quite effective in Otsego and Cheboygan Counties, where residents are suing developers under the claim that PA 233 is unconstitutional



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and the project permits have been issued illegally. The [Otsego County lawsuit](#) has [already set new legal precedent](#) which favors local control.

4. Propose an alternative brownfield with Zoning Overlays

Some municipalities have used Zoning Overlays to propose alternative brownfield sites to developers, which has complicated things for developers. In White River Township, the township accepted a CREO ordinance which used a [Zoning Overlay to confine wind and solar development](#) to a 500 acre former Dupont site, which had the correct existing infrastructure. The project remains in [limbo](#), but if it ever goes to MPSC for a permit, the developer's turning down a qualified brownfield site will not rule in their favor.

5. Use intervener funds to defend permit denial against MPSC

This is considered the riskier, lower cost alternative to hiring an attorney. Not every community has the funds for litigation. In some such communities, grassroots have taken the track of asking local governments to tap into their "intervener funds". These funds are available to municipalities who have adopted incompatible ordinances and/or have denied developer permits, and they pay for the community's legal

defense of its local permitting to the MPSC.

Communities taking this path are preparing for the permit hearings by working directly with MPSC: clarifying permit guidelines and terms with MPSC officials, in writing, and preparing the local community to participate in MPSC's public hearings. Public hearing participation will be critical, for communities relying on intervener funds.

This is a risky and untested approach, but if many communities follow suit, MPSC could find themselves buried in lengthy permit hearings. These hearings could also be used in future legal arguments against PA 233 at large.

6. Conduct a strong grassroots public awareness campaign

The most successful communities are the loudest—regardless of what else they're doing. They build working groups of activists on social media; they communicate with the media and write op-eds; and they actively lobby their elected officials, from the township all the way to Washington DC.

All communities, regardless of their situation, benefit from grassroots activism, whether



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it's protesting on a street corner, calling legislators, or creating a petition that gathers 10,000+ signatures. There's no such thing as overkill, when it comes to boots-on-the-ground activism against Big Energy.

7. Do primary research and get expert opinions

Soliciting the opinion of experts, and documenting that opinion, early on can be a huge help further down the road. Likewise, doing primary research on the site itself can pay off. Real estate values, noise, shadow flicker, soil erosion, damage to farmland, wildlife habitat, the presence of wetlands, environmental impact—in all these areas, primary research and the opinion of experts can weigh heavily in permit applications and court cases.

For example: one community's audio expert found their developer's permit application to be out of compliance with PA 233. An affidavit from an audiologist M.D. warning against the harm of electromagnetic frequency (EMF) emissions from solar fields upon human and animal populations could sway a judge—and could set new legal precedent. Using [NFWS' Wetlands Mapper tool](#) to identify more than one acre of wetland or stream within the development could allow you to prompt the EPA to Red File the project, slowing it down significantly.

For more info on what to look for, see our **Community Action Checklist for Fighting Wind/Solar/BESS**.

Every community is different

There are no one-size-fits-all solutions for fighting wind, solar, and BESS. Each community's circumstances are different, and PA 233 has created a wild west of legal outcomes. What works perfectly in one community may prove to be disastrous in another township.

No one other than local community members can know what their community needs—not even attorneys. Each community must do the research and discern for themselves the best path forward.

On hiring attorneys

Some groups say that you can't win the fight against a large energy development without a great, expensive attorney. Others do well with legal representation that is more incisive, and less costly. And there are far more who couldn't afford to hire a lawyer even if they wanted to.

Here at EDRA, we say: a good attorney can be a wonderful asset, if you can afford to hire one. But hiring a lawyer is not the only way to beat a large development. There



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are other ways. They're difficult, and time consuming, and they require a lot of collaboration. But it's definitely possible.

And sometimes, lawyers can do more harm than good. You don't always get more bang for your buck, with legal representation. In fact, the higher an attorney's retainer, the more likely they are to bring your community to grief. That's our experience—reasonable minds may disagree.

Most important: if you choose to seek legal representation, ask for lots of referrals and vet as many attorneys as you can. Then listen to your gut. You need to feel like they care about what happens to your community. And remember: attorneys are there to help you meet your goals. It's still *your* job to choose the right strategy.

Resources

Learn more

- About Foster & Swift's [lawsuit representing 70+ municipalities against MPSC](#).
- [MPSC's Renewable Energy Siting and Storage Meeting](#), March 2024
- [University of Michigan's presentation](#) on what PA 233 means for local governments
- Find scientific research on wind and solar on our [Wind and Solar](#) page.

- Find scientific research on solar/EV supply chains on our [Resources](#) page.

Attorneys who have been recommended:

- Mike Homier, Foster & Swift
- David Delaney, semi-retired

Related Facebook groups & networks fighting wind/solar/BESS

- [Michigan Citizens United](#)
- [Our Home Our Voice](#)
- [Stop Solar-Wind-BESS-Carbon Capture Scams](#)
- [Groveland Township & Surrounding Communities / Stop the BESS](#)
- [Fort Gratiot MI - NO industrial solar on farmland](#)
- [Fremont and Speaker Twp. Salinac County Mich. INFORMATION PAGE!](#)
- [Wales Township St Clair County Comm Info Industrial Solar, Wind, and Battery](#)
- [Gratiot-Isabella Citizens for Local Choice](#)
- [Regulated Wind, Solar, and Mega Sites of SHIAWASSEE CO.](#)

