

ORDINANCE NO. 08-14-23

AN ORDINANCE OF THE TOWNSHIP OF WEST PROVIDENCE, COUNTY OF BEDFORD, COMMONWEALTH OF PENNSYLVANIA AMENDING, REPEALING AND/OR REVISING SECTIONS 4(12) AND 5(9) OF WEST PROVIDENCE TOWNSHIP ORDINANCE NUMBER 5-09-22; RE-AFFIRMING ALL OTHER PARTS PORTIONS OF ORDINANCE NUMBER 5-09-22; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the Township of West Providence previously adopted Ordinance No. 5-09-22 pertaining to solar energy systems; and

WHEREAS, the Board of Supervisors for the Township have determined that it is necessary for the best interests of the health, welfare, and safety of citizens within such Township to amend Ordinance Number 5-09-22, particularly Sections 4(12) and 5(9) so as to increase the types of financial security to be provided to the Township;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Bedford as follows:

1. Paragraph 12 of Section 4 of Ordinance No. 5-09-22 is hereby amended to read as follows:

12.Decommissioning

- a. Before a permit may be approved and/or issued to an ASES Owner and/or Operator, the said Facility Owner and/or Operator must submit to the Township financial security (which shall be in addition to any other financial security required pursuant to any applicable Subdivision and Land Development Ordinance) in the form of a bond, irrevocable letter of credit, or bank-certified check which shall be deposited with the Township in an amount sufficient to cover the costs of decommissioning all improvements or common amenities including, but not limited to, the solar panels and any base and footing, storm water detention and/or retention basins and other related drainage facilities, and electrical apparatus and restoration of the land to its original condition including forestry plantings of the same type and density as the original.

1. Such financial security shall be in the form of a bond, irrevocable letter of credit, or bank certified check, satisfactory in form to the Township Solicitor whose review of same shall be reimbursed to the Township by the Facility Owner and/or Operation, and posted with a bonding company chosen by the party posting the financial security, provided that if a bond is given as financial security, said bonding company is authorized to conduct such business with the Commonwealth.

- a. Such financial security shall provide for and secure to the Township the decommissioning of any improvements.
- b. The amount of the financial security to be posted for the decommissioning of any improvements shall be equal to One Hundred and Ten (110%) Percent of the estimated cost thereof. The Township may adjust the required amount of the financial security by Resolution every three (3) years. Subsequent to said adjustment, the Township may require the ASES Owner and/or Operator to post additional and/or an increased amount of financial security in order to assure that the financial security equals said One Hundred Ten (110%) Percent. Any additional security shall be posted by the ASES Owner and/or Operator in accordance with this subsection, and any additional review of any future financial security by the Township's Solicitor shall be reimbursed by the ASES Owner and/or Operator to the Township.
- c. The amount of financial security required shall be based upon an estimate of the cost of decommissioning of any improvements, submitted by the ASES Owner and/or Operator and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The Township, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the ASES Owner and/or Operator or developer and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Township and the ASES Owner and/or Operator. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the ASES Owner and/or Operator.
- d. As the work of decommissioning of any improvements proceeds, the party posting the financial security may request the governing body to release, or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board of Supervisors and the Board of Supervisors shall request the Township engineer to certify, in writing, to the Board of Supervisors that such portion of the

decommissioning of any improvements has been completed. Upon such certification, the Board of Supervisors shall authorize release by the bonding company or other financial institution involved, to the extent applicable, of an amount as estimated by the Township engineer fairly representing the value of the decommissioning of any improvements.

- e. The owner of any participating property which is subject to decommissioning shall be given the option to keep the road(s) created on such owner's property by or in connection with construction of any ASES.
 - f. When the ASES Owner and/or Operator has completed the decommissioning of all improvements, such Owner and/or Operator shall notify the Board of Supervisors, in writing, by certified or registered mail, of the completion of the aforesaid decommissioning of all improvements and shall send a copy thereof to the municipal engineer. The Board of Supervisors shall direct and authorize the Township engineer to inspect the site. The Township engineer shall indicate to the Township approval or rejection of said decommissioning of all improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township engineer, said report shall contain a statement of reasons for such non-approval or rejection.
 - g. The Board of Supervisors shall notify the ASES Owner and/or Operator as to the Township Engineer's acceptance or rejection of the decommissioning. If the decommissioning is acceptable, the Township shall release the financial security. If the decommissioning is not acceptable, the ASES Owner and/or Operator shall, within thirty (30) days of notice by the Township of the deficiencies, correct the same and in the event the said deficiencies are not so corrected within the said time period, or in the event the decommissioning is not commenced, the Township may utilize the bond to accomplish the same as set forth herein.
 - h. If the components of the Facility being decommissioned are disposed of by the ASES Owner and/or Operator, such disposal shall be in accordance with all applicable Federal, state, and local laws, rules, and regulations.
2. In the event that any decommissioning of improvements which are

required have not been completed as provided in this ordinance and permit, the Board of Supervisors of the Township is hereby granted the power to enforce any corporate bond by appropriate legal and equitable remedies. If proceeds of such bond are insufficient to pay the cost of decommissioning of improvements covered by said security, the Board of Supervisors of the Township may, at its option, proceed with of decommissioning of all improvements and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements.

3. The ASES Owner and/or Operator shall reimburse the Township for the reasonable and necessary expenses incurred for the inspection of decommissioning of improvements, including review of any plans, documents, or materials by the Township's engineer and/or Solicitor in connection therewith, as well as view of the site, if necessary. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township engineer or consultant for work performed for similar services performed for the Township, as well as any attorney's fees incurred by the Township in connection therewith.
 4. Where herein reference is made to the municipal engineer, said engineer shall be a duly registered professional engineer employed by the Township or engaged as a consultant thereto.
 5. Each ASES and all solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by system owner and/or operator, or upon termination of the useful life of same.
 6. The ASES shall be presumed to be discontinued or abandoned if no electricity is generated by such solar collector for a period of twelve (12) continuous months.
 7. The ASES owner shall, at the request of the Township provide information concerning the amount of energy generated by the ASES in the last 12 months.
2. Paragraph 9 of Section 5 of Ordinance No. 5-09-22 shall be amended to read as follows:

9. Decommissioning

- a. Before a permit may be approved and/or issued to an PSES Owner and/or Operator, the said Facility Owner and/or Operator must submit to the Township financial security (which shall be in addition to any other financial security

required pursuant to any applicable Subdivision and Land Development Ordinance) in the form of a bond, irrevocable letter of credit, or bank-certified check which shall be deposited with the Township in an amount sufficient to cover the costs of decommissioning all improvements or common amenities including, but not limited to, the solar panels and any base and footing, storm water detention and/or retention basins and other related drainage facilities, and electrical apparatus and restoration of the land to its original condition including forestry plantings of the same type and density as the original.

1. Such financial security shall be in the form of a bond, irrevocable letter of credit, or bank-certified check, satisfactory in form to the Township Solicitor whose review of same shall be reimbursed to the Township by the Facility Owner and/or Operation, and posted with a bonding company chosen by the party posting the financial security, provided that if a bond is given as financial security, said bonding company is authorized to conduct such business with the Commonwealth.
 - a. Such financial security shall provide for and secure to the Township the decommissioning of any improvements.
 - b. The amount of the financial security to be posted for the decommissioning of any improvements shall be equal to One Hundred and Ten (110%) Percent of the estimated cost thereof. The Township may adjust the required amount of the financial security by Resolution every three (3) years. Subsequent to said adjustment, the Township may require the PSES Owner and/or Operator to post additional and/or an increased amount of financial security in order to assure that the financial security equals said One Hundred Ten (110%) Percent. Any additional security shall be posted by the PSES Owner and/or Operator in accordance with this subsection, and any additional review of any future financial security by the Township's Solicitor shall be reimbursed by the PSES Owner and/or Operator to the Township.
 - c. The amount of financial security required shall be based upon an estimate of the cost of decommissioning of any improvements, submitted by the PSES Owner and/or Operator and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The Township, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the PSES Owner and/or Operator or developer and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional

engineer licensed as such in this Commonwealth and chosen mutually by the Township and the PSES Owner and/or Operator. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the PSES Owner and/or Operator.

- d. As the work of decommissioning of any improvements proceeds, the party posting the financial security may request the governing body to release, or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board of Supervisors and the Board of Supervisors shall request the Township engineer to certify, in writing, to the Board of Supervisors that such portion of the decommissioning of any improvements has been completed. Upon such certification, the Board of Supervisors shall authorize release by the bonding company or other financial institution involved, to the extent applicable, of an amount as estimated by the Township engineer fairly representing the value of the decommissioning of any improvements.
- e. The owner of any participating property which is subject to decommissioning shall be given the option to keep the road(s) created on such owner's property by or in connection with construction of any PSES.
- f. When the PSES Owner and/or Operator has completed the decommissioning of all improvements, such Owner and/or Operator shall notify the Board of Supervisors, in writing, by certified or registered mail, of the completion of the aforesaid decommissioning of all improvements and shall send a copy thereof to the municipal engineer. The Board of Supervisors shall direct and authorize the Township engineer to inspect the site. The Township engineer shall indicate to the Township approval or rejection of said decommissioning of all improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township engineer, said report shall contain a statement of reasons for such non-approval or rejection.
- g. The Board of Supervisors shall notify the PSES Owner and/or Operator as to the Township Engineer's acceptance or


rejection of the decommissioning. If the decommissioning is acceptable, the Township shall release the financial security. If the decommissioning is not acceptable, the PSES Owner and/or Operator shall, within thirty (30) days of notice by the Township of the deficiencies, correct the same and in the event the said deficiencies are not so corrected within the said time period, or in the event the decommissioning is not commenced, the Township may utilize the bond to accomplish the same as set forth herein.

- h. If the components of the Facility being decommissioned are disposed of by the PSES Owner and/or Operator, such disposal shall be in accordance with all applicable Federal, state, and local laws, rules, and regulations.
2. In the event that any decommissioning of improvements which are required have not been completed as provided in this ordinance and permit, the Board of Supervisors of the Township is hereby granted the power to enforce any corporate bond by appropriate legal and equitable remedies. If proceeds of such bond are insufficient to pay the cost of decommissioning of improvements covered by said security, the Board of Supervisors of the Township may, at its option, proceed with of decommissioning of all improvements and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the improvements.
3. The PSES Owner and/or Operator shall reimburse the Township for the reasonable and necessary expenses incurred for the inspection of decommissioning of improvements, including review of any plans, documents, or materials by the Township's engineer and/or Solicitor in connection therewith, as well as view of the site, if necessary. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Township engineer or consultant for work performed for similar services performed for the Township, as well as any attorney's fees incurred by the Township in connection therewith.
4. Where herein reference is made to the municipal engineer, said engineer shall be a duly registered professional engineer employed by the Township or engaged as a consultant thereto.
5. Each PSES and all solar related equipment shall be removed within twelve (12) months of the date when the use has been discontinued or abandoned by system owner and/or operator, or upon termination of the useful life of same.

6. The PSES shall be presumed to be discontinued or abandoned if no electricity is generated by such solar collector for a period of twelve (12) continuous months.
7. The PSES owner shall, at the request of the Township provide information concerning the amount of energy generated by the PSES in the last 12 months.
3. All other parts or portions of Ordinance Number 5-09-22 are hereby re-affirmed.
4. This Ordinance shall be effective within five (5) days of the date of its adoption.

ENACTED AND ORDAINED this 14th day of August, 2023 by the Board of Supervisors of West Providence Township.

ATTEST:



Patti Foor, Secretary

WEST PROVIDENCE TOWNSHIP SUPERVISORS



Brandon Chamberlain, Chairman



Justin Harman, Vice Chairman



Thomas Brady, Supervisor