ORDINANCE 2022-08

AN ORDINANCE AMENDING CHAPTER 11-283.2; ARTICLE 35.2 OF THE CODE OF THE TOWNSHIP OF KNOWLTON TO REQUIRE DECOMMISSIONING STANDARDS AND FUNDING FOR DECOMMISSIONING FOR MAJOR SOLAR FACILITIES

WHEREAS, the Mayor and Committee of the Township of Knowlton have determined that certain amendments to the Code of the Township of Knowlton are required.

NOW, THEREFORE, BE IT ORDAINED that the Mayor and Committee of the Township of Knowlton have determined that certain amendments and additions to Section 11-283.2 regarding major solar energy facilities are required as follows:

SECTION 1. Section 11-283.2(B)(2)(s) of the Code of the Township of Knowlton is hereby amended as follows (Additions indicated in boldface and italics **thus**; deletions indicated with strike-through ~~thus~~):

~~(s) All photovoltaic facilities including all solar arrays and associated equipment shall be dismantled and removed promptly after 180 continuous days of non-use. Applicants shall be required to submit a decommissioning plan at time of site plan approval.~~

(s) As a condition of approval, all applicants must agree to perform and shall conduct, with the oversight of the Township Engineer, site inspections and soil testing every two (2) years to ensure the integrity of the facility and to further ensure solar panels are properly sealed and do not leak or expose internal or improper materials to the surrounding environment. All testing costs and costs incidental to testing shall be paid by the landowner and owner/operator of the facility

SECTION 2. Section 11-283.2 of the Code of the Township of Knowlton is hereby amended to add subsection (C) as follows:

(C) Decommissioning and Disassembly of Major solar or photovoltaic energy facilities or structures.

(1) All photovoltaic facilities including all solar arrays and associated equipment shall be dismantled and removed within 180 days following the issuance of a demolition permit for decommissioning. Applicants shall be required to submit a decommissioning plan in conformance with Section 11-283.2(D) at time of site plan approval.

(a) "Abandonment" is defined as the facility being out of service for continuous 12 month period.

(b) Decommissioning process description.

[1] The decommissioning and restoration process comprises removal of aboveground structures; grading, to the extent necessary; restoration of topsoil (if needed) and seeding. The process of removing structures involves evaluating and categorizing all components and materials into categories of recondition and reuse, salvage, recycling and disposal. The project consists of numerous materials that can be recycled, including steel, aluminum, glass, copper and plastics. In the interest of increased efficiency and minimal transportation impacts, components and material may be stored on site until the bulk of similar components or materials are ready for transport. The components and material will be transported to the appropriate facilities for reconditioning, salvage, recycling, or disposal. Aboveground structures include the panels, racks, inverters, pads and any interconnection facilities located on the property. The aboveground structures and below-ground structures are collectively referred to herein as the "project components."

[2] Temporary erosion and sedimentation control best management practices will be used during the decommissioning phase of the project. Control features will be regularly inspected during the decommissioning phase and removed at the end of the process.

(c) Project component removal. Control cabinets, electronic components, and internal cables will be removed. The panels, racks and inverters will be lowered to the ground where they may be transported whole for reconditioning and reuse or disassembled/cut into more easily transportable sections for salvageable, recyclable, or disposable components.

(d) PV module removal. Solar photovoltaic modules used in the project are manufactured within regulatory requirements for toxicity based on toxicity characteristic leaching procedure (TCLP). The solar panels are not considered hazardous waste. The panels used in the project will contain silicon, glass, and aluminum which have value for recycling. Modules will be dismantled and packaged per manufacturer or approved recycler's specifications and shipped to an approved off-site recycler.

(e) Component pad removal. Pads will be excavated to a depth sufficient to remove all anchor bolts, rebar, conduits, cable, and concrete to a depth of 24 inches below grade. The remaining excavation will be filled with clear subgrade material of quality comparable to the immediate surrounding area. The subgrade material will be compacted to a density similar to surrounding subgrade material. All unexcavated areas compacted by equipment used in decommissioning shall be decompacted in a manner to adequately restore the topsoil and subgrade material to the proper density consistent and compatible with the surrounding area.

(f) Electric wire removal. DC wiring can be removed manually from the panels to the inverter. Underground wire in the array will be pulled and removed from the ground. Overhead cabling for the interconnection will be removed from poles. All wire will be sent to an approved recycling facility.

(g) Racking and fencing removal. All racking and fencing material will be broken down into manageable units and removed from the facility and sent to an approved recycler. All racking posts driven into the ground will be pulled and removed.

(h) Concrete slab removal. Concrete slabs used as equipment pads will be broken and removed to a depth of two feet below grade. Clean concrete will be crushed and disposed of off site.

(i) Access road. During decommissioning, the processed stone access roads will be stripped, exposing the geotextile beneath. The geotextile will then be removed and disposed revealing the original soil surface. The compacted soil beneath the road fill may require ripping with a subsoiler plow to loosen it before it can be returned to crop production.

(j) Site restoration process description. Following decommissioning activities, the subgrade material and topsoil from affected areas will be decompacted and restored to a density and depth consistent with the surrounding areas. If the subsequent use for the project site will involve agriculture, a deep till of the project site will be undertaken. The affected areas will be inspected, thoroughly cleaned, and all construction-related debris removed. Disturbed areas will be reseeded to promote revegetation of the area, unless the area is to be immediately redeveloped. In all areas restoration shall include, as reasonably required, leveling, terracing, mulching, and other necessary steps to prevent soil erosion, to ensure establishment of suitable grasses and forbs, and to control noxious weeds and pests.

(k) Decommissioning terms. The project shall be fully decommissioned within 180 days of the end of the project's operational life. Areas disturbed during the decommissioning phase will be seeded with a drought-tolerant grass seed mix appropriate for the area, unless such areas are being immediately redeveloped for other uses.

SECTION 3. Section 11-283.2 of the Code of the Township of Knowlton is hereby amended to add subsection (D) as follows:

(D) Decommissioning Plan Requirements

(1) Provisions for the removal of all components of the facility/system from the site and the full restoration of the site to its predevelopment condition; and the safe disposal of all components of the facility/system, including the recycling of all recoverable materials, consistent with prevailing best practices relating to the disposal and recycling of photovoltaic waste.

(2) Provisions that the Township shall notify the landowner and owner/operator of the facility of the pending determination of abandonment and order proof of the resumption of energy generation to at least 80% of the facility's capacity or removal of the facilities in accordance with the approved decommissioning plan, subject to the issuance of a demolition permit.

(3) A provision that within 60 days of service of the notice of abandonment, the landowner or facility operator shall apply for and obtain a demolition permit for the decommissioning in accordance with the decommissioning plan.

(4) Provisions that, as a condition of site plan approval and prior to the issuance of any building permits, the landowner or operator of the facility shall deposit with the Township escrow funds sufficient to finance decommissioning as set forth in the decommissioning plan accompanied by an agreement approved by the Township Attorney to ensure that there will be sufficient funds available for decommissioning and site restoration. Such funds shall be in an amount, as determined in detail by the Township Engineer or his designee, which shall be adequate to cover the estimated cost of such removal and site remediation.

The escrow funds shall not be subject to revocation or reduction prior to the completion of the work covered by the demolition permit and decommissioning plan and the full restoration of the site as required by the decommissioning plan.

The escrow account shall be reevaluated to reflect inflation every five (5) years from the start of operations which shall be defined as the date of issuance of the

certificate of occupancy for the generation of power. Such reevaluation shall be submitted no fewer than 30 days prior to the end of the five-year period by the owner/operator and/or landowner to the Township Attorney and Township Engineer for review and approval. If it is determined that the anticipated cost of decommissioning has increased, the property owner or operator of the facility shall deposit additional funds into an escrow account to reflect the increased amount.

(5) Measures to provide for the protection of public health and safety and for protection of the environment and natural resources during both the removal and site restoration stages, as well as the schedule for the completion of all site restoration work in accordance with the decommissioning plan.

(6) Provisions that, if the escrow funds as described above, plus any supplemental funding that may have been provided by the owner/operator, is insufficient to fully implement the decommissioning plan or if the owner/operator fails to fully satisfy the obligations described herein, then the landowner shall be held responsible for any and all costs associated with the decommissioning to the extent that such costs are not covered by the escrow deposit and any supplementary funds provided by the owner/operator, if applicable.

(7) Provisions detailing the anticipated life of the project.

(8) The estimated cost of decommissioning in current dollars and an explanation of how the cost was determined, which shall be prepared by a neutral third party professional engineer or contractor who has expertise in the removal of solar facilities. The cost of said estimate shall be borne by the owner/operator and/or landowner. Salvage value shall not be considered when determining the estimated decommissioning cost.

SECTION 4. Section 11-283.2 of the Code of the Township of Knowlton is hereby amended to add subsection (E) as follows:

(E) If said decommissioning has not been completed within the requisite 180-day period following issuance of the demolition permit, then the Township's Zoning Officer shall provide written notice by certified mail to the landowner requiring that decommissioning be completed within 30 calendar days of the receipt of said notice. If the decommissioning has not been completed within 30 calendar days of the receipt of said notice, the Township may utilize the funds and undertake the decommissioning. The Township may charge the landowner and/or facility owner and operator for all of the costs and expenses thereof, including reasonable attorney's fees. Nothing herein shall prevent the Township from taking appropriate legal action to compel the decommissioning. All

costs, including attorney and engineering fees incurred by the Township shall be billed to the landowner and if not paid within 60 calendar days of billing, shall become a lien against the property.

SECTION 5. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. This Ordinance shall take effect upon final passage and publication according to law.

Introduction: July 11, 2022

Motion Starrs

Second Cuntala

Roll Call: Cuntala—yes, Mazza—yes, Shipps—yes, Van Horn—yes, Starrs—yes

Adoption: August 8, 2022

Motion: Starrs

Second: Cuntala

Roll Call: Cuntala—yes, Mazza—yes, Shipps—yes, Van Horn—yes, Starrs—yes