EMMET COUNTY PLANNING COMMISSION
REGULAR MEETING MINUTES
THURSDAY OCTOBER 4, 2012
7:30 P.M.
COMMISSIONER’S ROOM
EMMET COUNTY BUILDING
200 DIVISION STREET
PETOSKEY, MI 49770

MEMBERS PRESENT: Paul Hramiec, Dan Plasencia, Jack Jones, Kelly Alexander, John Eby, James Scott, Paul Desy, Steve Neal

MEMBERS ABSENT: David Laughbaum

STAFF: Tammy Doernenburg, Monica Linehan

I Call to Order and Attendance
The meeting was called to order at 7:31 PM by Eby. All members were present except Laughbaum.

II Minutes of September 6, 2012
Alexander made a motion, supported by Desy, to approve the minutes of the September 6, 2012 meeting as presented. The motion passed by a unanimous voice vote of the members present.

III Cases

Legal Notice: Attached
Packet items: lands available for WES systems maps-Susan Barber, Maple River Twp revised recommendation, Carp Lake Twp recommendation, 9/7/12 Bliss Twp recommendation letter, 9/17/12 email from Susan Barber, Emails from Rick James with attachments, House Bill 5859, 9/28/12 letter from Mason Lampton-Bliss Polo Club
Passed out at meeting: Readmond Twp recommendation, 10/4/12 email from Judith & John Knoppe, 10/4/12 email from Norm & Shirley Schneider, 10/4/12 email from Mary Fortney, 10/3/12 email from Robin Mallory, 10/3/12 letter from Susan Mallory.

Doernenburg noted that this is the second hearing on the proposed text change to the wind energy system section of the ordinance. The proposed changes were highlighted. Because of the amount of public input and the suggestions and comments from this board at the last meeting, Doernenburg stated that she went to the Board of Commissioners to ask for financial support to hire an outside consultant to review this proposal as well as the current ordinance. Prior to that meeting new information has been received including House Bill 5859 which would require zoning to allow a MET tower or anemometer at any height. There is also an initiative on the ballot in November to ask Michigan voters whether 25% of the state's energy should come from renewable resources by 2025. There is a possibility that regulation would be taken from local jurisdictions if these pass. The Commissioners have delayed hiring a professional until after elections due to the ballot proposal. Doernenburg stated that she is not recommending moving forward on this proposal until outside review is gained if the Commissioners allow for this after the elections in November. She pointed out that there have been additional township recommendations received since last month. Bliss Township has recommended leaving the ordinance as is, Maple River Township revised their recommendation to retain the lowest decibel level that is legally defensible, Readmond Township recommended 4-1 to retain the current ordinance to preserve the rural character, and Carp Lake Township recommended approval 4-1. There has also been further public input including letters or emails from Bliss property owners Mason Lampton, Susan Barber, Robin Mallory, Susan Mallory, Mary Fortney, and Norm & Shirley Schneider and also from Richard James of E-Coustics Solutions. All correspondences have been provided to the Planning Commissioners. Doernenburg stated that Richard James had been hired by the County two years ago to review sound and provide technical support. She had a lengthy conversation with him today and he still supports the 35dB level and his
position. He has an extensive background and is an instructor at CMU and MSU and feels that he is very qualified to offer his expertise. The list of people who sent letters or emails for last month's meeting was reviewed. Doernenburg noted that there were many other public comments at the meeting. Civil Counsel has reviewed the proposed text amendment and the additional information. She would still like to see sound scientific review and is comfortable staying where we are now until that can be done. Doernenburg stated that at this point she believes that we are in a wait and see situation but it is up to the board to see where they want to go with this.

Eby stated that if the Commissioners want to wait, we need to as well. Jones stated that most of the opinions were that if these proposals go through, we are wasting our time with reviewing this because the State will come in and regulate them. Eby stated that he is not comfortable moving forward without commissioner input. Scott stated that if we pass something that the Commissioners are going to set aside anyway, it is a waste of time and would be going against their wishes. Alexander stated that people should vote in November on these issues. Jones added that the Commissioners are also listening to the public as well. Eby noted that if we raise the decibel level and the Commissioners weren't comfortable supporting the change it would go to court and who knows where it would go. Plasencia added that some of the information that has been received in the past month has solidified his opinion to keep the ordinance where it is now. Jones stated that would be fine if we can support that level. He added that the Commissioners received an email asking for a resolution from the Board to support supplementing the wind energy systems. The tax breaks are set to expire soon and they want these extended.

Eby opened the floor for public comment.

Susan Barber asked if the map that she sent in has any relevance. Doernenburg stated that the State put that map out to show areas that may be appropriate for a wind energy system. There is a 6.32 mile and a 10 mile buffer worked in. Doernenburg showed maps with both of those buffers outlined from Pellston airport. Barber stated that her understanding is that there are also regulations to restrict around wetlands, three miles in from the shoreline and five mile from waterfowl, migratory birds, eagles, etc. She wondered if the map holds any legal grounds. It seems like the airport would be because of safety concerns. Doernenburg explained that there are different regulatory levels, we only look at zoning issues. This map was meant to determine areas that may or may not be a good spot for a wind energy system; it is more of a reference. Jones stated that there was an article in the newspaper regarding restricting wind energy systems within a certain area of helipads.

Dr. Timm stated that zoning should try to assure domestic tranquility and make sure that uses that disturb that tranquility don’t get too out of hand. A wind turbine is a kind of pollution-noise. There are technical issues with attempting to capture all of the noise a turbine can make using one number on the dB(A) scale. It is completely un-weighted and doesn’t take into account low frequency noise. Dr. Timm gave an example of a system in England which shakes the ground but makes no noise. At 40dB(A), at 1000htz, a system could be making 60dB or more of low frequency noise. By using only the one scale, you are throwing away a lot of information. The animals respond to these lower frequency noise. The dB(A) scale does not capture the obnoxious spectral noises. These are now easily measured with a cheap microphone and laptop with a cheap spectral analyzer program. This noise is what should be strongly regulated because it is what drives people nuts. The commercial wind farm in Bliss as been proposed on the Bliss Plateau. Dr. Timm presented the board with a topographical map of the 820' contour overlaid on a plat map to illustrate the Bliss Plateau. Dr. Timm stated that he has concerns because of where it is. At the highest elevation, which is about five miles from the Headlands and about ten miles from his house on the top of Middle Road. These big machines get loud. You would have to be about a mile away to get down to 35dB(A) according to his data. This would require an awful lot of space. There are also local airports to take into consideration;
Harbor Springs, Indian River, and Mackinac Island. The turbine at the Rapin farm, according to the research report from a consulting firm in England states that the turbine only makes hissing noises and doesn't make any spectral noises. Dr. Timm stated that he has heard this turbine and it does make spectral noise. This machine has all of the challenges that we may face. It is an interesting test case. It may or may not meet the 35dB(A) levels. The sound could be amplified in different weather situations. Ambient conditions are very important. Reports were passed out that show the differences between the decibel scales.

Alfred Lacount stated that he read an article in a magazine 20 years ago about a sound lab in Paris. They analyzed the sound from construction outside and shut the lab down and went home because the sound was dangerous to their health. Possibly an environmental medicine engineer may find that there are certain frequency ranges that affect humans very much and other frequency ranges that have less effect. You will have to define the frequency ranges. This will take a lot of time and research. Lacount suggested that maybe the people that have a real interest in this issue should put a committee together to do some of the work and research and save the County some time and money.

Mary Fortney, Treasurer of Bliss Township stated that there were at least twelve residents that were at their last meeting against the ordinance changes.

Dr. Timm stated that the decibel scale is a logarithmic scale. If you are giving someone 3 dB over, it doubles the noise; 10 dB is ten times the noise.

Jones made a motion to table this case until the December 6, 2012 meeting to allow for time to see what happens with State legislation and initiatives. Scott supported the motion which passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Hramiec, Desy, Plasencia, Alexander. No: None. Absent: Laughbaum.

IV Public Comment: None

V Other Business:
- **Petoskey Brewing Company (P&L Investments):** Doernenburg explained that last month we reviewed a modification to their site plan regarding parking. At that meeting, Hramiec asked whether the tree caliper sizes were correct. Doernenburg had stated that the sizes on the site plan were correct but after further research, she discovered that the original approval motion in February 2012 was for 4-6" caliper trees as agreed to by the applicant. There are 3" caliper trees planted and they are irrigated. She explained that the trees do meet the ordinance standards (2 1/2" caliper) but do not meet the requirements of the original motion of the Planning Commission. Steve Steffes stated that they agreed to the 4-6" caliper trees when they only had the building under contract and were simply in for a site plan meeting. The site plan continued to show the 3" caliper trees. The trees are irrigated and are nice looking trees. He stated that he hopes that the board agrees and because it still meets the ordinance standards allow them to remain and not have to put in new trees. Eby asked what type of trees they are. Maple. There are five trees. Desy stated that we just had this issue with Tractor Supply. Doernenburg stated that the difference between the sites are that this site is irrigated. Doernenburg stated that the landscaper at Tractor Supply Company stated that the trees have a higher chance of survival if properly maintained regardless of size. Meijer was required to have irrigation. Jones stated that the request for larger trees came from the township. Alexander stated that they requested the larger trees for a reason. Desy stated that it was partly survival of the trees but also larger trees have a larger canopy when grown. Susan Barber stated that her husband is a gardener that takes care of trees and you can have the trees professionally root fed if need be and if there is no grass around the roots, they will grow faster. Alfred Lacount stated that he would ask the board to approve this change as you have a better chance of a smaller tree surviving with a smaller root system than a larger tree.
Dr. Timm stated that his wife planted two flame maples and in two years the diameter has increased about an inch and the height 8-10'. There was discussion on conditioning approval on professional maintenance.

Desy made a motion to allow the 3" caliper trees to remain on condition that they are irrigated and professionally maintained at a minimum of twice a year until the 4-6" caliper size is reached; proof of which shall be provided to the Planning and Zoning Department or the trees will be required to be replaced with 4-6" caliper trees. Neal supported the motion which passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Hramiec, Desy, Plasencia, Alexander. No: None. Absent: Laughbaum.

- **Rapin WES update:** Doernenburg reported that AECOM went to site to do the monitor inspection. The monitors were not operational and were apparently vandalized. AECOM said that the hardware seemed to be in order and it will be re-evaluated when the new equipment comes in. The turbine is not operating. Craig Rapin was present and requested that they be allowed to run the turbine for a 30 day period. He reported that there is a break-in period and the higher frequency noises that have been occurring shouldn't be. They need to run it in order for it to be broken in to see what happens with the noise. The Cassadonte's have agreed to allow this to happen. Rapin stated that they are in the process of replacing the sound meter components. There is a laptop computer that runs the program used to shut off the turbine. The USB port was blown as was the control box. The software is proprietary so the laptop has to be sent to the engineer that designed the software in order to reload it. After this has been setup, they would redo the test of the monitors. Alexander asked how long it would take to do all of this. Rapin replied 1-2 weeks. He added that the turbine was moved from its original location 60' farther from the road so the dB level is lower now at the property line. Also, according to manufacturer specs, at 23mph or less, the turbine is in compliance with the dB(A) level in the ordinance. Neal asked if the break-in period is in the turbine guidelines? Rapin stated that he would have to check with the manufacturer to verify but this is what he was told. If the monitor had been up on Thursday, they would have been up and running. There is a warranty on the equipment and they are willing to fix the noises that are driving the neighbors nuts if there is an issue. Doernenburg noted that one option that was originally discussed is to turn off the machine at 22mph so that it wouldn't generate the higher dB levels. Rapin stated that this can be done with the existing controllers on the machine. It can shut off at any speed. The brakes are put on and it shuts it off. This is actually required by the power company as well to protect from back feeding the lines. Plasencia stated that as long as the neighbors that have been complaining are ok with the break-in test, they should be allowed to get the machine 'tuned in' and then go from there with the measuring devices. Eby asked the Cassadontes if they are ok with this at night as well. Rapin stated that if it becomes an issue to them they will just run it during the day and do 60 days daytime hours only. Doernenburg stated that could be done as part of complaint resolution. It could be restricted to daytime hours if complaints come in. Neal stated that if the monitor was working and it passed the other day, the neighbor's opinion isn't factored in. If there is noise and it is driving them crazy but the levels are under 35dB(A), they don't have a say. Neal added that was what he was trying to get across last month when he said that if you can't hear your neighbors activities, you're ok with what they are doing. If the meters were working according to Mr. Rapin, it would have passed. Neal stated that this concerns him because the numbers on a meter may not reflect the impact on the neighbors. Mr. Cassadonte stated that he has not seen any difference in sound in comparison to wind speed but they are willing to give them the chance. Dr. Timm stated that this is a good test case and as an engineer would like to see this go forward. He is not sure that it will get better by itself; it isn't supposed to have to be broken in. Susan Barber asked if the mechanics are the biggest issues with the wind energy systems.

Rapin stated that if this is approved and there is an issue, the neighbors could just call him and they would shut it down without having to go through a complaint process. Dr. Timm stated that this is a good test case and as an engineer would like to see this go forward. He is not sure that it will get better by itself; it isn't supposed to have to be broken in. Susan Barber asked if the mechanics are the biggest issues with the wind energy systems.
months. The issues can be pursued after the turbine is running for a period of time. Neal stated that the manufacturer should be on the hook and should come to monitor it.

Scott made a motion to amend the decision on Case #27B-10 and to allow for a 30 day break-in period. Upon complaints from adjacent neighboring property owners the hours of operation will be restricted to daylight hours only. The motion was supported by Plasencia and passed on the following roll-call vote: Yes: Eby, Neal, Jones, Scott, Hramiec, Desy, Plasencia, Alexander. No: None. Absent: Laughbaum.

- **Dune Overlay District memo:** Doernenburg reported that she and Nancy Salar have spoken with Civil Counsel regarding the changes to the dune overlay district. A text amendment proposal is not yet ready but she stated that they wanted to provide the board with the changes and to advise that state statute will have to be followed rather than the zoning ordinance if a request comes in during the interim time. Further information will follow. A memo summarizing the changes was distributed.

- **Proposed Text-Non-conforming lots:** Doernenburg explained that this proposal was reviewed at last month's meeting. She showed the site plan of the ZBA case that brought this to light and discussed the case. The proposed text would require that if someone had multiple platted lots in single ownership that they would have to retain them in single ownership or at least a zoning lot that is equal to the required size of the lots in the zoning district. An example of some lots that would be affected in Ponsheawaing was shown. Eby stated that he understands the situation that triggered this proposal but there are other situations that this would affect. It is a broad brush that could affect not only the properties discussed but 1.5 acre FF-2 zoned properties that are non-conforming. Jones noted that this could be only for residential districts. Scott stated that he is worried that it would be looked at as a taking. Just because someone bought ten lots and put them under one ownership we shouldn't tell them that they no longer have ten lots. It could be a legal nightmare. Doernenburg stated that other counties and townships within our county have adopted similar standards. Eby stated that there is a reason that non conforming statuses were put into the ordinance. Hramiec stated that he doesn't like the heavy handedness; it is their property and it doesn't seem right to come in afterwards and change the status. Desy stated that if they can meet the setbacks we shouldn't tell them that they have to combine lots. Jones stated that zoning itself dictates what you can do on your property as a protection for yourself and neighbors. He stated that the 50' lots are too small for the size of houses being built today. After discussion there was a consensus to table this issue indefinitely.

- **Enforcement Report:** Distributed, no discussion.

**VI Adjournment**

There being no other business, and no additional public comment, Eby called the meeting adjourned at 8:50 p.m.

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James Scott, Secretary        Date