EMMET COUNTY PLANNING COMMISSION
REGULAR MEETING
THURSDAY DECEMBER 2, 2010
7:30 P.M.
COMMISSIONER’S ROOM
EMMET COUNTY BUILDING
200 DIVISION STREET
PETOSKEY, MI 49770

MINUTES

MEMBERS PRESENT: Leroy Gregory, Dan Plascencia, James Scott, Jack Jones, Kelly Alexander, Steve Neal, John Eby, David Laughbaum

MEMBERS ABSENT: Sue Anderson

STAFF: B. Michalek, T. Doernenburg

I Call to Order and Attendance
The meeting was called to order at 7:30 PM by Eby, all members were present except Anderson.

II Minutes of November 4, 2010 meeting
Alexander made a motion, supported by Gregory, to approve the minutes of the November 4, 2010 meeting as presented. The motion passed by a unanimous voice vote.

III Cases
1. Case #27-10 Lake Effect Energy Corporation for Craig & Mary Rapin, SPECIAL USE PERMIT-On-Site Wind Energy System over Sixty Feet, 5322 Hill Road, Section 1, Cross Village Township
A request by Lake Effect Energy Corporation for Craig & Mary Rapin for a Special Use Permit for an On-Site Wind Energy System over Sixty Feet at 5322 Hill Road, Section 1, Cross Village Township. The property is zoned FF-2 Farm and Forest and is tax parcel 24-05-08-01-300-011. The request is to allow a WES 140’ in height per Emmet County Zoning Ordinance Section 2102-16. Craig & Mary Rapin also own the adjacent parcel 24-05-08-01-300-008.

Distributed to PC Members: Turbine information, email received 11/8/10 from Steve & France Fay, email received 11/10/10 from Gene Reck, letter received 11/8/10 from Blissfest.

Additional items sent out one week prior to the meeting: letter received 11/23/10 from Richard & Audrey Morris

Second Hearing: Michalek explained the location of the proposed WES to be placed in front of the existing building as shown on an aerial photo. The discussion focused around the decibel levels which were identified as being over 35 dbA at the property lines. The additional information was provided as requested of the applicant. They are not able to meet the 35 decibel levels at the property lines. All other standards for the WES appear to be met. The applicant has applied for a variance from the Zoning Board of Appeals. The options for this case are: postpone a decision pending the ZBA review, approve, approve with conditions, or deny the request. Cross Village Township recommended approval.

Eby asked what impact the ZBA review has on the options. Michalek responded that if the ZBA reviews, it could eliminate the 35 decibel level requirement.

Alexander read the recommendation of the township and clarified their reason for recommending approving.

Mary Rapin pointed out that they do have a significant tree line. On the street side (west) there are three rows of staggered evergreen trees and on the north side rows of evergreen trees exist. The trees are approximately 20 feet high, and can reduce decibel levels by 2 to 10 decibels. She is hoping for a conditional approval. They
have laid out a procedure for complaint resolution. She is hoping that if it is deferred to the ZBA that they
could obtain a temporary use permit.

Neal stated that the trees add a variable.

Gregory asked what was requested of the ZBA. Michalek stated that it is a decibel level variance, such as a
setback variance. Plasencia stated that the ZBA should review, Alexander agreed. Scott stated that it cannot be
approved if it doesn’t meet the standards, and that it should be conditional approval or postponed. Jones stated
that a conditional approval puts pressure on the ZBA.

Stahl stated that to wait for the ZBA decision would place a great amount of pressure on their company to
complete the 20% requirement to obtain the grant.

John Slaggert, Hill Road resident, found data on decibels and relayed his information: a soft whisper is 30
decibels, light traffic is 50 decibels, and a large transformer is 55 decibels at 200 feet. He gave additional
decibel level examples. At the entrance to the County Building the decibel levels read 75 to 80 because of the
vent fan. He doesn’t understand why the electrical technology is treated differently than substations. They
operate at 55 decibels. Who’s impacted by the noise? Only pedestrians on the road, he and his neighbor would
see the project as a neighborhood improvement, and as positive economic development for the township and
county. It would provide jobs in the construction industry, the hardest hit sector of Emmet County. To not
follow the township’s recommendation is over-regulation by government.

Jim Gillespie, Blissfest Music Organization, asked the Commission if they consulted with Civil Counsel
regarding the regulation of the noise level. Eby stated that the townships have the right to have a noise
ordinance. A County Ordinance can regulate noise under zoning if it is related to land use. There was
discussion and explanation.

Mark Roslick, lives in the house closest to the project, and has no problem with the proposed wind machine.
He’ll be the one who would hear the turbine. He does not have a problem with it.

Mike Tiedeck, resident of Readmond Township, asked where the basis on the current levels came from.
Michalek stated that the examples and research used were based on world wide and local information. The
process was a six month process and approved by the Board of Commissioners. The information is available
for public review.

Mary Fortney asked what the decibel level in prior drafts was prior to the adoption of the current Ordinance.
Michalek stated that it was 55. Fortney stated that Bliss Township was against changing the current Ordinance
for utility grade WESs.

John Woodcock, stated that it’s unfortunate that they (Rapins) are in the position, the room is divided. They
have walked into a situation where they are providing power to one property as opposed to the conglomerate
being proposed in Bliss Township. It is not fair to the applicant, but there are concerns about amending the
ordinance because of what might occur.

Eby stated that there are concerns if the decibel level is relaxed between types of turbines. Neal stated that it is
increasingly difficult because in this particular case, most property owners in the vicinity are supportive.

Roberta Svatora stated that she attended the meetings when the ordinance was adopted. Realistically the
purpose of the Planning Commission is to protect neighbors from each other. The information is different from
different perspectives. She is not opposed to wind energy, but there has to be rules, or people will get hurt.
Mary Rapin stated that if the SUP is approved conditionally, it takes into account how neighbors feel about it.
If it is put up, it is fairly easy to remove. The location of the property owned by the property owner opposed
was pointed out. Rapin added that when a variance is requested, people automatically oppose. They are using
other forms of alternative energy including wood and solar power.

Phil Lechovich stated that if they could put it up, it would show what the noise level is. If people could visit the sites that have wind energy systems, then they could hear it and understand the noise levels that are created.

Bob Archer, Levering resident, stated that he lives ¼ mile from a logging operation, and can hear it every day. There are no decibel levels set on them.

There being no additional public comment, Plasencia made a motion, supported by Jones, to postpone Case #27-10, Lake Effect Energy Corporation for Craig & Mary Rapin for a Special Use Permit to place a 140 ft Wind Energy System (WES) to be located at 5322 Hill Road, Section 1, Cross Village Township, Tax Parcel 24-05-08-01-300-011, to give the applicant more time to address issues and pending the Zoning Board of Appeals decision. The motion failed on the following roll call vote: Yes: Eby, Jones, Plasencia. No: Neal, Scott, Gregory, Laughbaum, Alexander. Absent: Anderson. The motion to postpone failed.

Discussion prior to the vote of the previous motion: Laughbaum stated that the property is off the beaten path, the gigantic corporations can do anything. He doesn’t know how much study has been done, but he is reaching the conclusion that the Ordinance sets the level too low. He thinks that the Ordinance may have in effect eliminated wind power, and he thinks it’s wrong. If we don’t use wind or solar, he added, it will set states up for nuclear when oil is too expensive to use. Oil lines are all over the state of Michigan. This is a rural area; he’s been around noise all his life, maybe everyone is not opposed to noise. The levels outside of a tractor are 80 decibels, inside is 70. On this site, the wind is generally west/northwest, and likely will not be heard from the road. He thinks last months speaker came with predetermined facts. FF-2 uses make noise. He would be in favor of the use.

Scott then made a motion to approve Case #27-10, Lake Effect Energy Corporation for Craig & Mary Rapin for a Special Use Permit to place a 140 ft Wind Energy System (WES) to be located at 5322 Hill Road, Section 1, Cross Village Township, Tax Parcel 24-05-08-01-300-011, because of the evidence presented in this case, their appears to be no detrimental impact on the surrounding land uses; and on condition that the ZBA approves a variance for the setback. The motion failed for lack of support.

Discussion on the motion: Jones felt that a conditional approval was putting Planning Commission authority onto the ZBA. Scott disagreed; he stated that it avoids the case from coming back to the Planning Commission. There was additional discussion regarding the ZBA’s duty in this case.

After the failed motion to approve, Scott made a motion, supported by Plasencia, to postpone Case #27-10 until the next Planning Commission meeting. The motion passed on the following roll call vote: Yes: Eby, Neal, Jones, Scott, Plasencia, Alexander. No: Gregory, Laughbaum. Absent: Anderson.

Mary Rapin stated that they started the project when the previous ordinance was in place. Eby responded that the Rapins should provide documentation to the ZBA when they review their case.

A break was taken.

**2. Case #30-10 Victor Daily, SPECIAL USE PERMIT-Exceptions to Accessory Building Standards of the Emmet County Zoning Ordinance, 10294 Winters Dr, Section 11, Carp Lake Township**

A request by Victor Daily for a Special Use Permit for Exceptions to the Accessory Building Standards of the Emmet County Zoning Ordinance to apply to 10294 Winters Drive, Section 11, Carp Lake Township. The parcel is zoned RR-1 Recreation Residential and is tax parcel 24-03-06-11-300-004. The request is to allow two accessory buildings on a residential parcel and to allow one of those accessory buildings to be 80 sq. ft. larger than the standard permits. The exceptions are per Section 2201-8 of the Zoning Ordinance.
Michalek explained the proposal to allow an accessory building which has already been built to remain on the property which is approximately three acres. The building is 80 sq. ft. larger than the zoning ordinance permits, and it is a second accessory building on the property, but the zoning ordinance permits one for the parcel size in the RR-2 Zoning District. The building is screened from the public roads and four letters of support have been received from neighboring property owners. Carp Lake Township recommended approval.

Jones stated that there could be two residences on the property since the minimum lot size is ½ acre. Michalek added that possibly four residences could be built each with an accessory building.

Plasencia asked why the building was built without permits. Mr. Daily stated that he did not have an excuse.

Jones asked about building permits. The case is a result of building enforcement, a building permit will be required.

Plasencia made a motion to approve Case #30-10, Victor Daily for a Special Use Permit for a Exceptions to the Accessory Building standards to allow a second accessory building at 10294 Winters Lane, in Section 11, of Carp Lake Township, tax parcel 24-03-06-11-300-004, as shown on site plan stamped received on November 3, 2010 by Emmet County Planning and Zoning, because the property owner has shown that no good purpose would be served by strict compliance with Section 2201, the building is to be used for personal use only, Township recommended approval, the motion passed on the following roll call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Laughbaum, Plasencia, Alexander. No: None. Absent: Anderson.

3. Case #29-10  HD Group/Melissa McPherson for Walgreens, SITE PLAN REVIEW AMENDMENT-Add Redbox Machine, 1301 N US 31, Section 34, Bear Creek Township

A request by HD Group for Walgreen, Co. for Site Plan Review – amendment at 1301 N US-31 Hwy, Section 34, Bear Creek Township. The property is zoned B-2 General Business and is tax parcel 24-01-16-34-100-062. The request is to allow additional retail space on the outside of the existing retail establishment. The request is per Section 900-1 and 2405.

This case was withdrawn by the applicant.

4. Case #32-10  Juliann Holzschu for Lawrence Sterly Estate, SPECIAL USE PERMIT-Land Development Standards, 2020 E Gruler Rd, Section 33, Bear Creek Township

A request by Juliann Holzschu for Lawrence Sterly Estate for a Special Use Permit per Land Development Standards to create six (6) parcels on property located at 2020 E. Gruler Road, Section 33, T34N-R5W, Bear Creek Township. The property is zoned FF-1 Farm and Forest and is tax parcel 24-01-19-33-100-017. The request is per Section 2102-14 of the Zoning Ordinance.

Distributed to PC Members: Request & location map, tax parcel map, application, impact statement, 11/8/10 letter from road commission, 11/9/10 zoning evaluation, split/survey information
Additional items sent out one week prior to the meeting: Bear Creek Township minutes 11/23/10
Michalek explained the request under Land Development Standards to divide the approximately 35 acre property into six parcels, one exceeds the 15 acre area so five parcels are subject to review. One residence and accessory building exists. Four parcels east of Sterly Road and two west of Sterly Road are being created. All parcels meet the minimum size for the FF-1 zoning district. All parcels have access to a county road. The Road Commission and Bear Creek Township have recommended approval.

Juliann Holzschu stated that each family member wanted a piece of her father’s farm. There are no plans for development. The property for Jim will be used for farming; each family member will receive a piece of the family farm. Jones pointed out that Sterly Road is a seasonal road.

Jones made a motion, supported by Neal, to approve Case #32-10, Juliann Holzschu for Lawrence Sterly Estate, Special Use Permit for Land Development to create 6 parcels; five under 15 acres and one over 15 acres, from the property at 2020 E. Gruler Road, Section 23, T34N-R5W, Bear Creek Township, tax parcel number 24-01-19-33-100-017 because of the facts presented in the case and the plan dated Received November 4, 2010 meets the standards of Section 2102-14 of the Zoning Ordinance, and Bear Creek Township recommended approval. The motion passed on the following roll call vote: Yes: Eby, Neal, Jones, Scott, Gregory, Laughbaum, Plasencia, Alexander. No: None. Absent: Anderson.

IV Other Business
• Balance 4 Earth
  Balance 4 Earth distributed a PowerPoint presentation handout. Martin Nehls addressed the Planning Commission stating that they hope to clarify and provide education regarding WESs. Tom Covert with Atwell was present and began the presentation. He was followed by Eddie Duncan, a sound expert from Resource Systems Group.

Covert and Duncan provided information relative to wind farms. Information used to evaluate sites includes background sound level monitoring, modeling, and wind data to correlate masking issues. Duncan would recommend regulating decibel levels, rather than regulating distance – let the noise level regulate the distance. Duncan stated that pre-construction surveys can be done at a significant cost, but they’re done all the time to responsibly develop a wind farm and mitigate impact. He stated that turbines are programmable. He suggested looking at specific frequencies – a-weight mimics how the human hears – c-weight measures HVAC systems. There are different frequencies of sound to consider. He suggested that the commissioners look at each frequency to see if there will be issues. The State of Illinois regulates based on octave bands.

Eby opened the floor to questions by the public.

Bill Marshall asked: if 55 decibels creates serious annoyance, what does 50 decibels create? Dunkin responded that less than 3 decibels cannot be detected…10 levels are perceived as double loudness. Five decibel levels are perceivable. 50-55 is moderate annoyance, over 55 creates annoyance according to the World Health Organization. Normal speech is 50-65 decibels, and frequencies vary.

If the recommendation to 50 decibels, what would it be protecting from? Dunkin replied: sleep disturbance and speech interference. The levels proposed would be audible – but would not cause
Paul Mooradian asked what percentage of efficiency is gained between a 10 year old turbine and current technology. Nehls responded that new generations of turbines are released about every 3-4 years. They do not expect to go far beyond what is shown in the presentation. How much efficiency is in the generator – not just the height that increases efficiency? The market is driven by cost, getting higher and larger blades get a larger return on investment.

Phil Lechovich is concerned with land values and concerned with changing for possible future residences. Michalek stated that is one of the reasons the regulations have been established to the property line.

Mary Rapin stated that property owners cannot build on the property line. Michalek agreed, they must build 20’ from side property lines in the FF zoning districts.

Dunkin stated that it’s not typical to regulate for future use of a property.

Alexander asked about specific noise, as heard from his residence. Dunkin explained that the different frequencies and that his situation is likely that the turbines were built too close to his home.

- **Discuss Wind Turbine Noise presentation from November 4, 2010**

  Scott stated that it seems to make sense to regulate the frequencies differently. He would like to review the Illinois example. He added that his only issue with property line regulation is on the road side as it has the potential to be significant between the property line and where it might impact someone; it would normally be 100 feet (66 ft. r-o-w, plus setbacks). Neal added that the paper calculation isn’t realistic – they may wish to require a pre-approval site evaluation. He added that the property owners of the current case were honest, and he appreciates their honesty. Alexander stated that his concern is for the neighboring property owners. Eby suggested that a possibility might be a Wind Turbine overlay district – it would require commitment by the property owners. An on-site WES and a utility grid wind farm are two very different cases. Laughbaum added that there is still a visual impact. The tall towers require strobe lights – and the Ordinance has limited light pollution in northern Michigan. It will take more study to get the ordinance right. If the community doesn’t get to a place where they feel it’s a benefit, it will be hard to sell it to anyone. How does the Planning Commission know if it’s sustainable?

  Eby asked the members if they’re interested in seeing a specific proposal from Balance 4 Earth? Most commissioners seemed to agree that they’d rather create their own Ordinance. They are not opposed to change, but it needs to be researched more. They were not comfortable making a decision during this meeting, but need to take time and review the new information.

  The issues include: height, decibels, how to measure sounds at different octaves, burden of proof to the applicant, and combining properties. Eby asked members of the Commission to bring their suggestions to the next regular meeting in January. Staff was asked to send email reminders.

- **True North-Minor deviation from site plan**

  The revised plan was distributed to PC Members: 11/11/10 approved site plan. The plan does not modify density, but changes the roadway and road surface. They will be using pervious surfaces in some locations
for parking. There was no objection to the modifications.

- **Thomas J. Framboise—Proposed paintball park in R-1B zone**
  Items sent 1 week prior to meeting: Bear Creek Township minutes 11/23/10
  Staff explained a property owner’s desire to establish a paintball park outdoors on a parcel zoned R-1B on Atkins Road. They had attended the Bear Creek Township Planning Commission meeting. There seemed to be little support for changing the Ordinance to allow the use in the residential zoning district. The property is surrounded by property zoned R-1B. No action was taken.

- **Enforcement Report—**
  Petoskey Pennzoil – Michalek explained that tickets had been issued to the property owner after a letter was received from the Manager. Jason Lepird, manager of Pennzoil, was present and explained the history of the violation from his perspective. The fence that was in place previously has been re-installed. He felt that he had done what was requested of him. He was told one thing and then told another. Members agreed that there may have been a miscommunication, but that with the installation of the fence, the issue has been resolved. Michalek stated that he’d conduct a follow-up visit on Friday (12/3/10).

V Public Comment:
None.

VI Adjournment
There being no other business, and no additional public comment, Eby called the meeting adjourned at 10:35 p.m.

________________________________________   ____________________________
James Scott, Secretary        Date