EMMET COUNTY PLANNING COMMISSION
REGULAR MEETING MINUTES
THURSDAY SEPTEMBER 4, 2014, 7:30 P.M.
EMMET COUNTY BUILDING
200 DIVISION
PETOSKEY, MI 49770

MEMBERS PRESENT:    John Eby, Dan Plasencia, Kelly Alexander, Bert Notestine, David Laughbaum, Tom Urman, Steve Neal, Shawn Wonnacott

MEMBERS ABSENT:     James Scott

STAFF:              Tammy Doernenburg, Monica Linehan

I    Call to Order and Attendance
The meeting was called to order at 7:30 PM by Chairman Eby. All members were present except Scott.

II   Minutes of August 7, 2014
Notestine made a motion supported by Neal to approve the minutes of the August 7, 2014 meeting. The motion passed unanimously by voice vote of the members present.

III  Cases

1.    Case #15-14 Leocadia Marszalec Tavenner, REZONING (FF-1 to B-1), 2961 N Larks Lake Rd, Section 20, Center Township
Legal Notice: A request by Leocadia M. Tavenner to rezone the 5.775 acre parcel at 2961 N. Larks Lake Road from FF-2 Farm and Forest to B-1 Local Tourist Business. The property is tax parcel 24-04-09-20-200-005 and is located on the southwest corner of N Larks Lake Road and W. Van Road. The request is per Section 2408 of the Emmet County Zoning Ordinance.

Doernenburg presented this case noting that it is the second month on the agenda due to the fact that the township met the same night as our Planning Commission last month. It was reviewed briefly last month at this board. The property is located on the southwest corner of N. Larks Lake Road and W. Van Road. The property is vacant other than a dilapidated building as shown on the aerial. The parcel is 5.775 acres currently zoned FF-2. The adjacent uses include bar/restaurant, township hall, and a residence. The zoning map was shown as well as the future land use map and photos of the property. All surrounding property is zoned FF-2 other than the bar property which is zoned B-2. Doernenburg noted that the Future Land Use map in the Emmet County Master Plan shows this area as mixed use. The B-1 zoning district would be consistent with mixed use. There has been no proposed development for the property. There is no sanitary water or sewer service. Doernenburg reminded the commissioners that they should consider all uses for the B-1 district when making their decision. A comparison of uses was included in the packet information. Center township recommended denial stating that they wanted a specific development plan for the property. At last month's meeting, the possibility of a PUD was discussed. Doernenburg stated that she did discuss this with the applicant as an option. The applicant wishes to move forward with this request tonight. The request is to rezone the parcel from FF-2 to B-1.

Leocadia Tavenner, applicant, stated that she has had the property for 47 years and it has been on the market many times as residential with no offers made. She can't imagine living on that corner residentially and thinks it should be rezoned. If rezoned, she could move forward with another option
for resale. Tavenner stated that she believes a gas station/store could work well there and it would help the community. There used to be a store 75 years ago.

Urman asked about the township recommendation. Doernenburg stated that they denied it and stated that they preferred to see an accompanying use request. Alexander asked if someone could propose a request and then rezone it. Doernenburg stated that even if it were done that way, with the rezoning all of the uses for that district would be allowed. A PUD would be similar to a conditional rezoning which is not allowed in our ordinance and could allow specific uses on the property.

There was no public comment on this case.

Eby explained that what is on the table tonight is a straight rezoning. We would have to accept all of the uses. If she were to explore a PUD, it would be an overlay. Ms. Tavenner asked if it were rezoned and then a development project was proposed, would they have to come back for approval or denial? Eby stated that often if someone thinks that there is a possibility of a PUD approval for a site it is advertised and sold as a potential PUD contingent upon that approval. Tavenner stated that leaves her in the same situation. Residential use doesn't make sense on this property. There is the bar and the hall and it is located on two main corners. If a gas station and store were there it would have easy access with good traffic flow on the corner. Eby stated that he thinks that there is agreement on the board that this may be a good idea but there have been other issues in the area with use of property that the community has issue with. All of the B-1 zoning uses would have to be allowed if rezoned. Tavenner stated that she can't see where a gas station wouldn't be acceptable as it is needed in the community. Eby stated that the community wants some reassurance that the use would be something that they want there. Urman stated that if she went the PUD route, uses could be specified. Eby stated that she would have to go through the process though and be responsible for all of the costs involved with the request. Doernenburg stated that it could be reviewed as a preliminary PUD request which would keep the underlying zoning and add acceptable uses. This would only be good for two years and re-application would be necessary after that point if no redevelopment began within that time. A PUD-2 rezoning review could also occur which would list allowable uses. Eby noted that the full rezoning is what we are reviewing tonight. We could advise the applicant that the proper alternative to this request would be a PUD request rather than the complete rezoning that she is asking for. Doernenburg stated that either the applicant can withdraw this request and reapply for a PUD or the case can be acted on. Tavenner stated that since she doesn't live here and has to leave soon, she'd rather have the case acted on tonight. Laughbaum stated that he doesn't fear rezoning this to B-1.

Doernenburg noted in response to Eby's comments about issues with adult entertainment in the area that sexually oriented businesses are not allowed in B-1 districts. Doernenburg read the list of allowed B-1 uses and special uses. Laughbaum stated that usually when a PUD is requested it is the business owner requesting it. If that business fails, the property then has to be re-marketed. He feels that it would be better to rezone to B-1 and let the market find a use for it.

Laughbaum made a motion to approve the request to rezone which failed due to lack of support.

Plasencia then made a motion to deny Case #15-14, Leocadia M Tavenner for a rezoning from FF-2 Farm and Forest to B-1 Local Tourist Business for tax parcel 24-04-09-20-200-005 in Section 20 of Center Township based on the Emmet County Master Plan approved January 15, 2009 which states that “The Future Land Use Map does not necessarily indicate the need for immediate changes, but rather acts as a guide for long-term growth.” And the goals of the Land Use Chapter to “Provide for land uses based on demonstrated need in their appropriate locations throughout Emmet County.” And the objectives of the Land Use Chapter to “Coordinate proposed land use patterns with adequate transportation, infrastructure systems, and required services to support development, while
encouraging the best use of land and discouraging sprawl.” The applicant has not shown a demonstrated need for B-1 zoned properties, and the township has recommended denial. The motion was supported by Notestine and passed on the following roll-call vote: Yes: Eby, Neal, Notestine, Wonnacott, Urman, Plasencia, Alexander. No: Laughbaum. Absent: Scott.

2. Case #16B-05 DWD Metal N’ Recycle Inc/Dale W Daniels, SPECIAL USE PERMIT-Metal recycling, 1415 Cedar Valley Rd, Section 10, Bear Creek Township

Legal Notice: A request by DWD Metal N’ Recycle Inc./Dale W. Daniels for a Special Use Permit for a metal recycling facility at 1415 Cedar Valley Road, Section 10, Bear Creek Township. The property is zoned FF-1 Farm and Forest and is tax parcel 24-01-19-100-006 & 014. The request is for a Type I metal recycling operation per Section 2102-13 Salvage Yard, Metal Recycling and Scrap of the Zoning Ordinance.

Doernenburg stated that the applicant did not have time to prepare the revised site plan and has requested postponement. The township cancelled their meeting because of this request. They have a site walk planned for September 24, 2014 at 5:30p.m.

3. Case #37A-03 Cherry Capital Connection LLC for Paul & Sara Matthews Trust, SPECIAL USE PERMIT-Internet Tower, 7330 W. Robinson Rd, Section 29, Readmond Township

Legal Notice: A request by Cherry Capital Connection LLC for Paul Matthews for a Special Use Permit for an internet tower on property located at 7330 W. Robinson Road, Section 29, Readmond Township. The property is zoned FF-2 Farm and Forest and is tax parcel number 24-12-08-29-400-001. The request is to erect a 120’ high guyed tower for internet reception per Section 2102-2 of the Zoning Ordinance.

This site is located on the north side of W. Robinson Road and is 194 acres zoned FF-2. The request is for a 120’ lattice tower for internet reception. The site plan was shown. All of the setbacks and fall zone requirements are met for both the tower and guyed wires and anchors. The tower has a 1,081’ front setback, 2,530’ easterly setback, 771’ westerly setback, and 1,535’ northerly setback. The property is well screened with trees as shown in the aerial. The township Planning Commission and Township Board both recommended approval. The applicant responded to co-location (none available) and have stated that anti-climb devices will be installed for safety. Photos of the site were shown with the location of the tower pointed out.

Bruce Vaughn, Cherry Capital Connections stated that they have been working with the Emmet County Planning and Building department staff regarding their towers in Emmet County. They had a meeting in February with staff and township representatives. The FCC has urged them to work with local government and ordinances for safety concerns. They agreed at the meeting in February to bring the existing towers into compliance and obtain required permits for them. This is one of those towers. Vaughn stated that it is a personal use tower which had the added benefit to provide service to the permitted Readmond Township tower. They are asking for the special use permit so that they can continue with the permitting process for the tower and bring it into compliance.

Neal asked if the tower exists now. Vaughn replied, yes. Urman asked if it is for personal use or if it is a transmitting tower for others. Vaughn replied that it was paid for and installed as a personal internet tower for the property owners. They have since then leased back the tower in order to relay signal to the Readmond Township tower. Urman asked about that tower's location. Vaughn stated that it is on Wormwood Road behind the township hall. Doernenburg stated that zoning permits are not required for essential services. The towers located on township properties have been interpreted as being part of the public infrastructure and exempt from zoning as essential services.
Eby opened the floor to public comment.

Ron Ira, adjacent property owner to the west, stated that he can definitely see the tower from his property. About a year ago the same property owners didn't want another tower in the area that could be seen from the road but apparently don't mind if it is on their property. He cares and has to see this one and the township tower. Ira asked what stops more towers from going up? Evidently they can go up without proper permits.

Tim Maylone, owner of Cherry Capital Connections stated that in the twelve counties that they serve they have built over 100 towers. Until Emmet County, they had built under OTARD rules. There is a conflict between Emmet County zoning and what they are doing. The FCC ruling was petitioned both by the County and them. The ruling was that the FCC encouraged them to concern themselves with safety and only safety and work with local government. All building of towers were put on hold at that time. They sat down with Emmet County to discuss the situation. Maylone stated that he apologizes for not coming in to get zoning approval but they thought they were in compliance with Federal regulations. They have stopped the towers since then and have been working to bring the existing ones into compliance. Emmet County is the first one to question them and petition the FCC.

Neal stated that from what he understands of OTARD rules, they are set up for personal antennas, not for commercial use. Maylone stated that the property owner owns the tower. This tower was leased back to them to relay to the Readmond Township tower months later. They have no ownership of the tower. Neal stated that it is utilized as a commercial use. Maylone stated that it wasn't installed that way but it is used that way now. They have done this in other places as well. This tower allows them to service the Readmond Township tower and the residences surrounding. Neal asked if this was built with the intent of personal use or commercial use. Maylone stated that all of their towers are for the land owners. The primary concern of the FCC was the safety. Neal asked about the price of the towers. Maylone stated that they were installing them for $3,600 for the tower construction and materials. The added permit fees and installation issues have raised costs to $4,200. It is a very cost effective tower and they do the installation for their cost as they make their money off of the service fees for the internet from the customer. The tower is paid for by the customer. This is their business model. Urman asked for clarification on the tower as to whether it is used as a relay for the Readmond Township tower. Maylone stated that it was originally put up to provide the property owner with internet service. The township tower now gets fed from this tower and it is used as a relay.

Gene Reck, Cross Village Township supervisor, stated that they are beneficiaries of the relayed signal. There is a big problem getting rural internet with the terrain in tree coverage in their area. There are other areas that have multiple options for internet; this is not the case in the northern rural areas. Fiber is not economical and will not happen anytime soon. Mr. Maylone has offered a solution to the problem. Internet is extremely important to the area from students to businesses. Reck stated that part of the function of zoning boards is keep things the way you'd like them but also to plan ahead with forward thinking. He thinks what is being offered is an essential service to the area and they are doing a very good thing for the area.

Chuck Scott, Gaslight Media, stated that he is and has been an advocate for rural broadband many times to the detriment of his company. As an internet provider he is very familiar with OTARD rules. They are intended specifically for satellite dishes and end user services to deal with deed restrictions. They are not intended for large towers. Scott stated that the statement from Cherry Capital that the FCC is only concerned with safety is probably incorrect. The other concern is that there should not be a regular process that allows one provider to go through and circumvent the normal approval, permitting, engineering, and inspection processes. This is a detriment to other providers that would
have to abide by those rules. This may also harm the proper development of broadband because it deters other providers that may be able to provide either better quality or a broader range of services from coming in and competing for the market. As a broadband advocate Scott stated that he finds that disturbing. Scott stated that Emmet County should find a way to require that this provider follows the same requirements and rules that anyone else has to. Scott stated that he is now withdrawing all of his broadband services in Emmet County and only providing to Otsego County as of the end of the year. This is due in some extent to these practices.

Jeff Warner, Good Hart Association board member stated that he has been involved in the process to bring internet to Good Hart. They have tried many providers. The terrain and distance is the issue. They were not successful in finding anyone interested in bringing service to them. Through the Connect Michigan broadband initiative they connected with Cherry Capital who have worked diligently for the past few years to bring their services to Good Hart. He is familiar with the process. This tower was a private tower to service the property owner. Once installed others said that they would like to use the service. That is when the township requested service. The routing through this tower was the most economical route but it was originally installed as a personal use tower. The Matthews' own the tower. If they choose to get rid of the service provider when their lease is up they can do that. Most towers are commercial and put up as for-profit models. This is not one of those towers. This tower is solely for the purpose of bringing signal in. Warner stated that he read many of the correspondence between Cherry Capital, Emmet County, and the FCC. He believes that the FCC got a very accurate read of what the situation was. In his opinion, Warner stated that the FCC ruling was that the tower was a personal tower and that they needed to comply with local ordinances for safety reasons. Warner stated that he feels that Cherry Capital has worked with Emmet County to meet their standards and safety requirements. Economically it is important to the area to bring them internet. It brings in a lot of economic activity and allows people to stay at their cottages longer and still do business. These are small, low-impact towers. The view from the road is small and much different than a big commercial tower. It is the lowest impact for the community to have internet access. Warner stated that he would advise that this request be approved.

Carolyn Southerland, owns the Good Hart store and runs a rental management business. She stated that because she has high speed internet, the rental business increased 30% this year. These people support the community and they are able to employ more people. It is a huge trickledown effect. Southerland stated that they ship 10,000 meat pies per year. She cannot utilize any shipping service unless she has high speed internet. The only one she can use is the post office by filling out triplicate forms; the post office is losing money. Please don't take away our internet.

Pat Proctor stated that he was here a couple of years ago. None of the neighbors wanted a tower in his field. The Matthews' didn't want to see his tower. They did things legally and went through the process and were shut down.

Gene Reck stated that the towers he is discussing were very different towers than what these internet towers are. These towers are low impact. He doesn't like looking at power lines but recognizes that they are an essential service and need to be there.

Jeff Warner stated that there is a huge difference between a 420' lit tower designed solely for commercial purposes and these towers. These are very low impact towers that can be put up for the internet signal.

Gordon Kruskie stated that internet is very important. There are students that park in the township hall parking lot at night to utilize their internet to do their homework. Soon they will be able to afford their
own towers and will want them up for internet service. Kruskie stated that he thinks it is a service that is going to continue and we should support it.

Chuck Scott stated that Gaslight could provide their service throughout the county, they have relay towers in the County that are existing broadcast towers that offer a 180mb service and can relay to any location in Emmet County but they need to end up with a proper financial business model to do so. They are not predatory and when they found out that Cherry Capital was providing services in particular areas they backed off but were assuming this work was being done through the proper permitting procedures. He would be glad to provide services just about anywhere in Emmet County. He is still a broadband advocate.

Rachel Smolinski, HARBOR Inc., stated that she has been working through the Connect Michigan program and it is very difficult to get services into these areas. Internet is moving into being an essential service. There has been a great movement to bring broadband into rural areas. They appreciate when providers work within the regulations and she stated that she feels that moving forward, Cherry Capital will be following the regulations. HARBOR Inc is working on long-term solutions but short-term service is important now. They support broadband through proper regulation and feel that this is beginning to happen with Cherry Capital Connections.

Neal stated that no one here disagrees with the need for internet. He is one of the biggest advocates for broadband but he feels that there is a process for a reason. Part of our job is to protect the aesthetics in the area. He feels like any property owner could stick up a tower without a permit and will probably get an approval after the fact. Neal stated that he doesn't want this to happen and feels that it is getting out of control and that the need for broadband is getting confused with the means to get it. There is no argument for the value but the proper procedures should be followed to get there.

Doernenburg stated that it is and has been staff's position that any tower over 50' in height requires a special use permit. Less than 50' can be administratively approved. Antennas are exempt if they are replacement antennas. If new, a permit is required but can be approved administratively. The ruling request to the FCC was from Martie VanBerlo, Emmet County Building Official, not zoning. Civil Counsel looked into OTARD rules in 2011 and felt that our zoning ordinance is valid and towers over 50' would require special use permit review. A private property owner had asked for an FCC ruling on OTARD rules in the past but they never ruled on his request.

Plasencia asked how many other towers are out there with the same conditions. Doernenburg stated that in our jurisdiction she doesn't think that there are any others that have been installed already. There is one coming to us next month that hasn't been installed and she knows of two others installed outside of our jurisdiction; Little Traverse and West Traverse Townships. Maylone stated that there is one on Vorce Road. Paperwork will be coming in for that one. Maylone stated that he made a commitment in February to take care of them and this one was missed.

Laughbaum asked if there was anything in writing from Civil Counsel regarding her opinion on OTARD rules. Doernenburg stated that she doesn't recall if there is something in that file or not but the opinion was that OTARD rules do not exempt them from local zoning. Cherry Capital was under the impression that they were exempt and they are not.

The climbing barriers were discussed. Maylone stated that an 8' climbing barrier has been installed.

Notestine made a motion to approve Case #37A-03, Cherry Capital Connection LLC for a Special Use Permit for a 120' internet tower at 7330 Robinson Road in Section 29 of Readmond Township. The
property is zoned FF-2 Farm and Forest and is tax parcel 24-12-08-29-400-001. Approval is based on
the application and site plan dated Received 7/7/14, the standards of Section 2102-2 have been met,
the tower is located in a wooded area and has a deep setback, it will not be lit, approval is on condition
that the tower be equipped with devices to prevent unauthorized climbing and because there has been
support from the surrounding townships. The motion was supported by Wonnacott and passed on the
following roll-call vote: Yes: Eby, Notestine, Wonnacott, Laughbaum, Plasencia. No: Neal, Urman,
Alexander. Absent: Scott.

4. Case #27C-10 Craig Rapin, SPECIAL USE PERMIT-Modification to approval
conditions, 5322 Hill Rd, Section 1, Cross Village Township

Legal Notice: A request by Craig Rapin for a modification to the Special Use Permit conditions of approval for the Wind
Energy System located 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 remove the following conditions of the 2011 approval: 16)
a bi-monthly report of wind noise recorded at the site be provided to the Zoning Department for as long as the turbine is up,
17) an expense of $2,500.00 consultation fee will be required for AECOM to verify the installation and calibration of the
monitors. Review is per Section 2102, Paragraph 16 of the Zoning Ordinance.

Doernenburg explained that a wind energy system was approved with conditions in December 2011.
The final zoning approval was not received as not all of the approval conditions have been met. This
request is to allow the owner to operate the WES at wind speeds that produce dB levels not more than
ambient plus 5dB at closest property line. The request would remove two conditions (15 & 16) put in
place by the Planning Commission's motion including: 15) on condition that the applicant is required
to follow the recommendations of the engineers report to have an on-site review of the installation and
calibration of the equipment, 16) a bi-monthly report of wind noise recorded at the site be provided to
the Zoning Department for as long as the turbine is up. Doernenburg explained that rather than supply
this information as required, the applicant would like the Planning Commission to allow the WES to
operate at the wind speeds that will keep them under the current maximum noise levels (35dB or
ambient plus 5dB). A manufacturer's data sheet has been submitted to show what the dB levels will be
a specific wind speeds. Doernenburg explained that while the WES was operating, there had been
complaints from the neighbors that the levels are outside what the manufacturer's specs show. The
new ordinance is not satisfied either as a maintenance schedule is required. The aerial view was
shown. The township recommended denial. Their recommendation stated that "everyone is
supportive of getting the generator to work properly but also concerned about the noise level the
generator makes while operating. It is a complex issue but the board felt it could not support any
modifications in the permit at this time. We are hoping that some way may be found to get the wind
generator operating in such a way to meet the ordinance and make all involved happy."

Craig Rapin, applicant, stated that they haven't been able to meet the conditions that they were
approved under. The ordinance has now changed and they would like the conditions removed now to
reflect the current ordinance maximum noise levels.

Plasencia asked if anything has been done to improve the tonal noise that occurs when the WES is
operating. Rapin stated that nothing has been done. They haven't been able to operate it for over a
year now and can't determine if there is an issue without it running. Plasencia stated that the last time
he was out there when it was operating he measured the dB levels at 48dB; there is an issue. He
doesn't think that the motion should be discarded. Rapin stated that he just wants to be reviewed under
the new ordinance not the old one. Plasencia stated that he still wouldn't be under the maximum noise
level if nothing changes with the unit. Rapin explained that the monitors have been installed but they
can just record the sound information. He is unable to comply with the reporting aspect of the
condition because there is so much data recorded. There has been some compiled average data
detailing ambient noise for the last two years when the meter had been on.
Notestine stated that when measuring dB it is a large scale when going up; not like a percentage-this can be a big change in noise level.

Gene Reck stated that the township would like this system to operate but the noise level is unacceptable. They would like to find a solution to solve his problem and reduce the noise. The township didn’t want the conditions removed because they didn’t know what the implications of that would be.

Neal asked Rapin how long the WES would have to operate in order for an engineer to determine what the issues are and come up with a solution. Rapin stated that they would have to listen under different wind conditions and directions. It could be turned on when a tech is there and then turned off again. Doernenburg stated that when she looked into having an acoustic study done they stated that they would need two weeks under ideal conditions; one week with the system on and another with it off. It is not an inexpensive venture. According to the ordinance a qualified acoustics professional is required for these measurements. Neal asked what normal practice is when an ordinance changes. Doernenburg stated that the current ordinance is actually more restrictive except for the actual dB levels which include the ambient plus levels during the daytime. It is up to the applicant to provide proof of those levels and if there is a complaint, the system has to be shut down. Eby stated that because these were special conditions to a motion it wouldn't be connected to the ordinance. The request doesn't seem to stack up to the problem at hand. Wonnacott asked Rapin if he believes that there is a problem with the turbine and if he needs a certain period of time to determine what the issues are. Rapin stated that he cannot say that there is not something wrong with it; it is very possible. He can't deny the noise it makes. He would like to run it again to see if the noise is still present and try to figure it out.

Eby opened the floor to public comment.

Kathryn Casadonte lives across the street and there has been a complaint ever since it started operating. When it was first put up they agreed to allow it to run for a month at one point, several weeks at another to try to figure out what the noise issues were. It hasn't run in a long time because it hasn't been compliant. She stated that she doesn't think any changes to the motion should be made because the original compliance has not been met.

Kent Casadonte stated that his understanding was that the permit let the tower go up. It hasn't been right from the start. They were told that it needed to be broken in. Techs have been there. The tower makes the same amount of gear noise no matter what the wind speed is. He believes that no changes to the approval motion should be made.

Eby stated that he thinks we should get some compliance before backing off on approval conditions; this seems premature.

Laughbaum stated that if the current ordinance allows what he is requesting he should be able to do that. The system was defective when he shut it off. Laughbaum stated that he doesn't think we should be involved with turning the system on and off.

Notestine stated that the data from the monitors should point out the noise levels regardless of the wind speed. Doernenburg stated that she hasn't received any data in quite some time. When it was received, AECOM was asked to provide the status. They haven't been in compliance and until that data is received we won't know if they are in compliance. Rapin stated that AECOM's report stated
that the sound monitoring system is functioning. The reporting piece is what he can't come up with. Doernenburg stated that AECOM wasn't able to confirm the functionality on site. They looked at the equipment and confirmed it was installed as per manufacturer's specifications. No reporting information was received and they weren't able to say that it was ok based on that. Rapin stated that their tech witnessed it functioning and wrote a letter that says that the system works. Doernenburg explained that data needs to be provided to support that claim. Rapin stated that he cannot provide those reports.

Notestine made a motion to deny Case #27C-10, Craig 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 for the following reasons: no maintenance schedule has been provided, no sound level assessments have been provided, and because AECOM have stated that the system is not in compliance. The motion was supported by Alexander and passed on the following roll-call vote: Yes: Eby, Neal, Notestine, Wonnacott, Urman, Plasencia, Alexander. No: Laughbaum. Absent: Scott.

5. Case #234A-73 Joe Warner, SPECIAL USE PERMIT-Home Occupation-auto repair, 4268 Lightfoot Rd, Section 26, Friendship Township

Legal Notice: A request by Joe Warner for a Special Use Permit for a Home Occupation for an auto repair business at 4268 Lightfoot Road, Section 26, Friendship Township. The property is tax parcel 24-06-12-26-200-023 and is zoned FF-2 Farm and Forest. The request is per Section 2102-12 of the Zoning Ordinance.

Doernenburg explained that this property is 3 acres zoned FF-2. The applicant resides on the property. The request is to use a 576sf portion of an existing accessory building as a home occupation for auto repair. The remaining square footage of the building would remain for personal use. The proposed hours of operation are Monday-Friday 8am-5pm and they expect 1-2 vehicles daily. The existing driveway is proposed to be used. The township Planning Commission has recommended approval unanimously. The township board meets tonight but the supervisor didn't see any reason to hold up the decision. The site plan and aerial were shown. The site is very well screened.

Joe Warner, applicant, stated that he is a certified mechanic, has obtained his facility license from the state and has all the required certifications to work on vehicles. He'd like to be able to do this work from his house.

Plasencia asked if any additional review is required for the driveway. Doernenburg stated that a home occupation doesn't require additional review and they are utilizing the existing driveway. Plasencia stated that the property is well screened and seemed pretty orderly when he was there.

There was no public comment on this case.

Plasencia made a motion to approve Case #234A-73, Joe Warner, Special Use Permit for a Home Occupation to operate an auto repair facility at 4268 Lightfoot Road, Section 26, Friendship Township as outlined in the Home Occupation Use Plan and as shown on the site plan dated Received August 5, 2014 because the use meets the standards of Section 2102-12, the use will not conflict with the residential character of the neighborhood, only people living on the premises may be employees of the home occupation, and a sign 2 sq. ft. is permitted and because the township planning commission recommended approval. The motion was supported by Neal and passed on the following roll-call vote: Yes: Eby, Neal, Notestine, Wonnacott, Laughbaum, Urman, Plasencia, Alexander. No: None. Absent: Scott.
6. Case #117A-83  Scott Gregory, SITE PLAN REVIEW-Amendment, 27 McRae, Section 33, McKinley Township

Legal Notice: A request by Scott Gregory for a Site Plan Amendment - change of use from lumber yard to auto repair at 27 McRae St. in Section 33 of McKinley Township. The property is zoned I-2 General Industrial and is tax parcel 24-10-10-33-400-006. The request is per Section 1300 of the Emmet County Zoning Ordinance.

This property is located on the west side of McRae St. just outside of the Pellston Village limits. Road access here is controlled by the Village rather than the Road Commission and a letter from the Fire Chief recommending approval for access and requesting screening was handed out. The current site plan and previously approved site were shown. The original approved use was for a lumber yard. The building is now being utilized for auto repair. There are several cars on the property in disrepair. The parcel is zoned I-2 and the use is permitted. The applicant has offered on the site plan to screen the cars with a fence. There is also a chain link fence around the property. There is adequate parking shown for the use. Photos of the site were shown. Doernenburg stated that this was an enforcement issue and was brought to our attention by a neighbor. The property has been somewhat cleaned up since the enforcement process began. Doernenburg added that the township recommended approval.

Scott Gregory, applicant, stated that the fence will help with the appearance. It will look nice after the fence.

There was no public comment on this case.

Neal made a motion to approve Case #117A-83, Scott Gregory, for a site plan amendment at 27 McRae Street, Section 33, McKinley Township, to permit an auto repair facility as shown on the site plan dated Received 9/2/14 because the use is a permitted use in the I-2 Zoning District, the plan meets the standards of Section 1400-1 of the Zoning Ordinance, because the township recommended approval, and on condition that the screening fence be installed by October 31, 2014. The motion was supported by Urman and passed on the following roll-call vote: Yes: Eby, Neal, Notestine, Wonnacott, Laughbaum, Urman, Plasencia, Alexander. No: None. Absent: Scott.

7. Case #17-14  Chad Kalbfleisch, SPECIAL USE PERMIT-Accessory building exception, 4995 Van Rd, Section 17, McKinley Township

Legal Notice: A request by Chad Kalbfleisch for a Special Use Permit for an Exception to the Accessory Building standards at 4955 Van Road, Section 17, McKinley Township. The property is zoned FF-2 Farm and Forest and is tax parcel 24-10-10-17-400-005. The request is to allow a 1,344 sq. ft. accessory building where 1,200 sq. ft. is allowed per Section 2201-6 of the Zoning Ordinance.

This parcel is located on the north side of Van Rd. and is approximately 30 acres, zoned FF-2. The proposed building meets the setback requirements of the ordinance. The proposal is an addition (12'x32') to an existing accessory structure (30'x32'). A 1,200 sq. ft. accessory building is the maximum size able to be administratively approved. The photos of the building were shown as well as the site plan. The building is somewhat screened from public view as traveling on the road. The aerial was shown. The township did not give a recommendation as they had questions and the applicant was not at their meeting to answer them.

Chad Kalbfleisch, applicant, stated that he didn’t know the ordinance before the addition was put on. It is just used for storage. Urman asked him if he made any contact with the township. Kalbfleisch stated that he didn't know that he had to go to their meeting. He advised two neighbors of what he is
doing. Plasencia asked if there is a building permit in place for this project. Doernenburg stated that it is not issued yet because zoning approval is pending. This is an enforcement case.

The township didn't explain what their questions were in their email. Scott Gregory stated that he was at the township meeting and the discussion was that they didn't know if it was an addition to what is already there or not. He stated that it didn't sound like they realized that the addition had been built already prior to permits.

Plasencia noted that there is quite a bit of stuff on the property; will this be stored in the pole barn? Kalbfleisch stated that it will go inside the building. Nothing is encroaching any setbacks; the addition is to the east of the building.

Eby stated if the building was in the rear yard, it could be up to 2400sf or an additional 1200sf building could be built in the front or side. Plasencia stated that the back of the property drops off into a swamp. Kalbfleisch stated that he didn't put the original building up. He is just working with what was there.

Wonnacott made a motion to approve Case #17-14, Chad Kalbfleisch for a Special Use Permit for an Exception to the size standards of an accessory building on property located at 4955 E Van Road, Section 17 of McKinley Township on tax parcel 24-10-10-17-400-005, as shown on the plot plan dated 8/11/14 because no good purpose would be served by strict compliance with the size standards of the Ordinance and on condition that the building be used for personal use. The motion was supported by Notestine and passed on the following roll-call vote: Yes: Eby, Neal, Notestine, Wonnacott, Laughbaum, Urman, Plasencia, Alexander. No: None. Absent: Scott.

IV Public Comment: None

V Other Business:

- Cherry Capital Connection LLC, Request for Reconsideration and Civil Counsel opinion: Doernenburg explained that this is a request dealing with the case from last month's meeting. Additional information has been provided regarding co-location. They wanted to see if the Planning Commission could reconsider the motion. Legal opinion is that we aren't able to reconsider a case because it is not specifically allowed. They could re-apply or go through the court process to challenge the decision. Because it is a special use permit, if it were not re-applied for, neighbors would not be notified that there was to be any additional action on the case. Eby stated that in all the time he has been on the board, he can only remember looking at a case if there was a mistake made by the board. The case is now decided and gone off of the agenda so there isn't a case to review at this point. Doernenburg stated that Robert's Rules of Order would allow reconsideration as would the Board of Commissioners' Rules of Procedure but not for zoning cases. Laughbaum stated that he thinks if it were requested at the same meeting we could have reconsidered it. After discussion, it was the consensus of the board to not reconsider the motion. Tim Maylone stated that they will reapply with the new information. The motion passed by unanimous voice vote.

- Zoning Ordinance, Internet Tower Discussion: Doernenburg stated that a few months ago a proposed text amendment was reviewed. Since then changes have been made to be in line with the comments and direction from the Planning Commission. The proposed changes were reviewed. The changes include adding 'internet based communication facilities' to the introductory paragraph, adding the requirement that towers must have visible identification as to ownership, purpose, and emergency contact information, changed the maximum tower
height that can be administratively approved in Section 2102-2 C) from 50' to 60' to match the WES section, and add D) to the end of the section which itemizes several standards specific to internet based communication facilities. Internet towers over 60' will require Planning Commission review and an affidavit of personal use. These would no longer require co-location. Wonnacott stated that they should not be allowed to transmit or receive beyond the property that they were installed for. Notestine made a motion, supported by Wonnacott to publish the proposed changes for public hearing.

- **Zoning Ordinance, Scenic View Preservation-Cross Village Township request:**
  Doernenburg explained that Cross Village township is proposing a scenic view preservation ordinance. This was handed out tonight but she has not had the chance to review nor has Civil Counsel. Gene Reck explained that there is an issue in Cross Village Shores in which an application has been submitted to build a home on the primary dune. Since the County no longer regulates critical dunes, the application was made to the State of Michigan. The issue is that all of the other homes in the area were built under County jurisdiction for critical dunes and were required to build behind the primary dune. If this house is allowed where proposed, the neighbors' views will be blocked and they will be looking at the back of the house. Reck explained that the township would implement this ordinance themselves but because they are under County zoning, their legal counsel has advised them that they cannot. He also discussed a moratorium on building in this area until this was resolved but they advised him he cannot do that either. There are other areas in the County where views are important. For the Cross Village Shores property they still may be able to stop this as there is another hearing coming up regarding the request. Doernenburg stated that this isn't the only area in the County that has had these types of issues. The Planning Commission needs to decide if we want to regulate the view shed. There was discussion amongst board members on whether this addresses one issue and creates others. If an ordinance such as this were to be adopted, it would be County wide which could create issues. Wonnacott stated that he likes the idea of protecting a view but not so much that it restricts someone else's property rights. Laughbaum stated that the people behind the dune could rebuild under the new rules. Eby stated that if there is indeed a problem and we wanted to address it, it would need to be a much more narrow focus before he would support it. Rachel Smolinski asked if this could be mapped to show the areas in question. Eby stated that specific zoning districts could be looked at. Neal stated that the Master Plan does discuss views but no specifics or ordinances. Eby does not want a blanket ordinance. He would need to be convinced that this is a legitimate problem.

- **Zoning Coordinating Committee-Resort Township; Zoning Ordinance text amendments:**
  Doernenburg explained that Resort Township Planning Commission has proposed several ordinance amendments. They are formatting their ordinance similar to what we are doing by consolidating all of the standards in each section. There was a change to add a restriction on sleeping quarters in accessory buildings in all zones, the schedule of regulations was modified as well as some definitions and minor text modifications. The full text is available if anyone wants a copy or to review it. Doernenburg stated that she did review the proposal before the public meeting and offered some suggestions. Plasencia made a motion supported by Wonnacott to authorize the Chair to sign the memo to Resort Township. The motion passed by unanimous voice vote of the members present.

- **Zoning Ordinance, Overall:** To be reviewed next month depending on agenda length.
- **Master Plan Review:** To be reviewed next month depending on agenda length.
- **Enbridge Energy:** Doernenburg explained a slight modification that requires no Planning Commission review. Enbridge Energy is moving a tank from one side of the property to another in Wawatam Township. The aerial and photos were shown. They will enclose and fence in the property. As they are considered an essential service and exempt from zoning there is no action required.
• **Enforcement Report:** Distributed. No discussion.

VI Adjournment

There being no other business, and no additional public comment, Eby called the meeting adjourned at 10:00 p.m. The next meeting will be held on October 2, 2014 at the Emmet County Courthouse Commissioner's boardroom at 7:30 PM.

________________________________________   __________________________
James Scott, Secretary        Date