

PLANNING COMMISSION MEETING
Sept 21, 2021

Meeting was called to order at 1:35 pm

Roll call : present :Jesse LaPorte, Louise Sullivan, Cindy Polom and Rob Ross
also present: Rick Durrell and 5 community members

Agenda approved: All yes

Minutes for the last Planning Commission meeting were approved with an amendment to the section regarding the time allowed for persons to speak to the issue. The corrected wording reads:

"All interested parties were allowed to speak with no time limit."

Motion Louise Sullivan

2nd,Rob Ross

Jess LaPoret yes, Louise Sullivan yes , Cindy Polom yes, Rob Ross yes.

Public Comment:

Pat Devlin expressed an interest in joining the Planning Commission.

Beth Besom expressed concern over the maps going into the master plan. Rick Durell addressed the issues.

Old Business:

The up dated Master Plan schedule was discussed and a copy was sent for each township board member.

Chapter 2 of the master plan was covered. The survey results are completed and will be posted. The short-term rental issue will continue to be on the planning commission's agenda.

A motion was made to hire Lynn Turner as recording secretary for the Planning Commission at the rate of \$45.00 per meeting. Louise Sullivan motion, Jess LaPorte 2nd.All in favor.

New Business:

Requesting an exemption to the meeting rules so that the Planning Commission can meet virtually through the winter months.

ATV use and private vs public roads with the thought that this issue be addressed in the master plan.

Resolution denying Special Land Use Permit: Enbridge -TEMPORARY COMMUNICATIONS AND VIDEO FACILITIES TOWER. (Resolution Attached)

The resolution was read with no changes to the Lawyer's copy .

Motion to adopt the resolution made by Louise Sullivan, 2nd Jess LaPorte

Vote Jess LaPorte yes, Louise Sullivan yes ,Cindy Polom yes , Rob Ross yes. Motion carried

Meeting adjourned at 2:50 pm

**TOWNSHIP OF BOIS BLANC
PLANNING COMMISSION
COUNTY OF MACKINAC, MICHIGAN
(Resolution No. 2021-01)**

At a special meeting of the Planning Commission for the Township of Bois Blanc, held on the 21st day of September, 2021, at 1:30 PM, local time, Planning Commission Member Louise Sullivan made a motion to adopt this Resolution, which motion was supported by Planning Commission Member Cindy Polom:

**A RESOLUTION DENYING A SPECIAL LAND USE
FOR A TEMPORARY COMMUNICATIONS
AND VIDEO FACILITIES TOWER**

[Enbridge – West End]

1. Background

Enbridge Energy, Limited Partnership (the “Applicant” or “Enbridge”) has applied for a special land use pursuant to the Bois Blanc Township Zoning Ordinance (the “Zoning Ordinance”) in order to install a temporary telecommunication and video facilities tower at the West End of Bois Blanc Island (the “Island”) within Bois Blanc Township (the “Township”) on property owned by William and Diane Akright commonly known as 3154 N. Lime Kiln Point Drive, Bois Blanc Island, Michigan 49775, and also as Permanent Parcel No. 001-014-003-00, and legally described as follows:

Beginning at the corner common to Lots 2, 3, 6 and 7 of Section 14; thence North 28 degrees East 700 feet; thence South 62 degrees East 800 feet; thence South 28 degrees West 700 feet; thence North 62 degrees West along lot line between Lots 2 and 7, 800 feet to Point of Beginning. except for the road Right-of-Way. Approximately 10.5 acres more/less. Parcel No. 001-014-003-00 (the “Parcel”).

The proposed temporary tower (the “Tower”) is intended to be utilized by the Applicant to view and video record ships and vessels traveling through both the North Channel and the Straits

of Mackinac in order to prevent anchor accidents or strikes regarding Enbridge's submerged Pipe Line No. 5 within the Straits of Mackinac near the bridge. It is also possible that the Tower could be utilized for co-location of other facilities such as cell tower transmitters, Bois Blanc Township Fire Department transmitters and other emergency telecommunications equipment.

In order to install and utilize the Tower, the Applicant must obtain a special land use approval under the Zoning Ordinance pursuant to Subsection 2.05.3(11). Furthermore, given that the Tower might be located closer than 1 ½ times its height to the existing house on the Parcel, the Applicant needed to obtain a variance from the Zoning Board of Appeals for Bois Blanc Township (the "ZBA") which would become effective if special land use approval is granted for the Tower by the Bois Blanc Township Planning Commission (the "Planning Commission"). (The ZBA approved the requested variance following a public hearing on May 21, 2021.)

The Planning Commission held multiple public meetings at which the Applicant's special land use request was considered and comments received, including on February 8, 2021, May 21, 2021, and August 2, 2021. The public hearing was held on May 21, 2021.

The Planning Commission has carefully considered the application, the comments at the public meetings and hearing, many documents and other matters and has determined that the special land use request for the Tower should not be granted.

2. The Planning Commission proceedings.

The Township received the application for the Tower from Enbridge on January 20, 2021. The Enbridge tower matter was reviewed by the Planning Commission at numerous different meetings, including during the public hearing of May 21, 2021.

A voluminous amount of materials was submitted to the Township and the Planning Commission regarding the Enbridge tower application, including from Township staff, Enbridge

and various groups and members of the public. Some of the documents submitted to and considered by the Planning Commission include the following:

- A. The application and all supporting materials from Enbridge.
- B. A notebook dated July 12, 2021 from Enbridge containing the Enbridge tower application, Enbridge's supplemental responses to specific inquiries, Enbridge's compliance assessment with the relevant Zoning Ordinance sections, and several exhibits.
- C. Letters and emails from members of the public. (Attached hereto is **Exhibit A** which contains a summarization of the written public input received throughout these proceedings).
- D. Correspondence from more than one Michigan Native American tribe.
- E. Correspondence from the Michigan Archeological Conservancy.
- F. Correspondence from the Michigan State Historic Preservation Office.

At its meeting on August 2, 2021, the Planning Commission passed the following tentative motion:

To tentatively deny the Enbridge Energy Limited Partnership application for a special land use approval for a tower at the West End of Bois Blanc Island, contingent upon the Township Attorney and Township staff drafting a resolution to that effect with the proposed findings and the Planning Commission adopting the proposed resolution thereafter.

This Resolution will constitute the Planning Commission's final decision regarding Enbridge's requests for site plan and special land use approval for the Tower on the Parcel.

3. The relevant and applicable provisions of the Zoning Ordinance.

The Parcel is located within the C-1 Mixed Commercial zoning district under the Zoning Ordinance. Subsection 2.05.3(11) of the Zoning Ordinance indicates that telecommunication and similar towers are allowed within that zoning district with special land use approval by the

Planning Commission. In deciding whether or not to approve this type of proposed telecommunication tower, the Planning Commission must apply the general special land use standards found in Subsection 5.02(3) of the Zoning Ordinance, as well as the specialized standards for telecommunication and similar towers located in Subsection 6.01(20) of the Zoning Ordinance. The site plan standards found in Subsections 4.03(4) and (5) of the Zoning Ordinance must also be met. Under the Zoning Ordinance, it is the Planning Commission (and not the Township Board) that makes final decisions regarding special land use requests. See Subsection 5.02(4).

4. General findings.

- (a) A significant majority of citizens who spoke at the Planning Commission's public meetings and public hearing regarding the Tower proposal, as well as members of the public who submitted written emails, memoranda or letters to the Planning Commission, strongly oppose the proposed Tower. Although public opinion as expressed to the Planning Commission regarding the Tower is not determinative, it nevertheless is one factor that should be properly considered by the Planning Commission regarding the special land use request.
- (b) In general, there are multiple problems associated with the proposed Tower. First, it is generally not consistent with the topography, forest, and landscape of the West End of Bois Blanc Island. The West End is relatively natural and undeveloped. Apart from cottages, there really are no significant artificial structures that have marred the landscape over the years in the area. It is true that there is an old historic sawmill on the Parcel, but the old sawmill cannot be seen from Lime Kiln Point Drive, and it is generally obscured by forest. There is no visible commercial use or

activity on or from the Parcel. The installation and use of the proposed Tower would inject a large, person-created structure into an area of otherwise relatively pristine, undeveloped, and natural woodlands. This would be inconsistent with the character and environment of the West End of the Island.

Second, the proposed Tower would be located within approximately 1000 feet of the well-known excavated Juntunen archeological site. During the 1960s, graduate students from the University of Michigan performed significant archeological digging and work at the Juntunen site and discovered many historic Native American artifacts and remains. The Juntunen archeological work was documented in a publication from the University of Michigan published in 1967. Given the proximity to the Juntunen site and the likely prevalence of other undiscovered Native American artifacts and remains, any non-residential or similar development in the area should be carefully scrutinized, including the installation and use of a large tower facility. In general, the type of large and tall tower as proposed by Enbridge would be inconsistent with that area of the West End of the Island.

Third, Enbridge has not demonstrated to the Planning Commission a definite need for an observation tower specifically located at the West End. It appears that Enbridge has other alternatives available on other islands and land masses throughout the Straits of Mackinac, including other available alternatives such as satellite imagery and drones. The fact that other municipalities may have already denied Enbridge's proposed land use for towers elsewhere does not require the Planning Commission to approve this special land use request for the Parcel.

- (c) Enbridge's arguments that there are no other feasible alternate sites on the Island or at the West End are not persuasive. The Planning Commission is also not convinced that an observation tower could not be successfully installed on the Township's nearby property called "Bright Water Park."
- (d) Finally, the Planning Commission is concerned about negative impacts upon property values in the area should the Tower be installed. The Planning Commission fully understands that it has no jurisdiction over Pipeline No. 5, whether or not that pipeline should be allowed to continue, whether it should be decommissioned or be shut down or whether the proposed subterranean tunnel should ever be built. The Planning Commission also understands that, in general, the Tower proposal should be treated the same as a temporary tower proposal by Verizon, TDS or Mackinac County emergency services. Nevertheless, given the controversy surrounding the Enbridge pipeline, it is likely that an Enbridge tower would have a significantly higher negative impact upon adjoining and surrounding property values than a non-Enbridge temporary tower.
- (e) The proposed Tower would not be consistent with the existing Bois Blanc Township Land Use Plan (i.e. Master Plan) or the character of the West End of the Island.
- (f) The burden of proof is on the Applicant to demonstrate to the Planning Commission that all of the special land use and site plan standards will be met for the proposed Tower. Enbridge has not met that burden.
- (g) It should be noted that Enbridge has recently asserted that only the standards contained in Subsection 6.01.20 (specialized tower standards) and Subsections

4.03.4 and 4.03.5 (site plan review) of the Zoning Ordinance can be applied by the Planning Commission to this special land use and site plan request. Enbridge notes that Subsection 6.01.20 states in part that “in considering such authorization, the Planning Commission shall apply the standards of Article IV: Site Plan Review, and the following standards” Since that quoted provision from Subsection 6.01.20 does not mention the general special land use standards contained in Subsection 5.02.3 of the Zoning Ordinance, Enbridge concludes that the Subsection 5.02.3 standards cannot be utilized by the Planning Commission for the tower review. However, that is contrary to the interpretation by the Zoning Administrator and the Township’s attorney from early on in this process. It is the Planning Commission’s interpretation/determination that the general special land use standards found in Subsection 5.02.3 of the Zoning Ordinance also apply to this case, as well as the standards found in Subsections 4.03.4 and 4.03.5 and in Subsection 6.01.20 of the Zoning Ordinance. The language quoted by Enbridge from the introductory paragraph to Subsection 6.01.20 does not indicate that the article for site plan review and the Subsection 6.01.20 standards are the only standards to apply or that the Subsection 5.02.3 standards do not apply. That wording is not exclusionary or exclusive. Furthermore, the introductory paragraph to Subsection 5.02.3 generally indicates that all special land use requests must comply with the Subsection 5.02.3 standards, as that subsection states in its introduction that:

Special land use approval shall be based on the determination that the proposal, will comply with all applicable requirements of this Ordinance, including site plan review criteria set forth in *Article 4 – Site Plan Review*

applicable site development standards for specific uses set forth in *Article 6 – Supplemental Site Development Standards*, and the following standards...

Also, Section 6.01 is entitled “Supplemental Site Development Standards” (emphasis added), such that the Subsection 6.01.20 tower standards supplement (or are in addition to) the other applicable standards (including those in Subsection 5.02.3).

Finally, Subsection 5.02.4 states that: “The Planning Commission may deny, approve, or approve with conditions, requests for special land use, based on the standards above.” Thus, by all indications, the Subsection 5.02.3 standards apply to all special land use requests, even telecommunication towers.

5. The site plan standards.

With every special land use request under the Zoning Ordinance, the Planning Commission must also review and approve a site plan pursuant to Article 4 of the Zoning Ordinance. The site plan standards are found in Subsections 4.03(4) and (5) of the Zoning Ordinance. The Planning Commission makes the following findings regarding the site plan standards as applied to the proposed Tower:

[Subsection 4.03(4) Site Plan Standards]

- A. **Standard** – The location and design of driveways and entrances features with respect to vehicular and pedestrian traffic. Access location and rights to the proposed development must be confirmed prior to final action on a plan, including permits from the Mackinac County Road Commission or Michigan Department of Transportation, and/or proof of the right to access a property in the form of a deed or easement stating such access is acceptable.

Finding – The Planning Commission finds that the site plan accounts for the access location and private driveway design off of Lime Kiln Point Drive. The Planning Commission understands that Enbridge may have commenced negotiations with William and Diane Akright, but has apparently not yet memorialized or finalized the right to access the Parcel. Therefore, the Planning Commission finds that this standard is **not met** based on insufficient proof that access to and within the Parcel is acceptable and definite.

- B. **Standard** – The arrangement of uses on the property, including the orientation of buildings, parking areas, and open spaces, and the visual exposure of waste storage facilities, loading docks and service doors so as to promote public safety, protect land values, and carry out the spirit and intent of the Zoning Ordinance.

Finding – The Planning Commission finds that the site plan provides for the arrangement of numerous added structures, fencing, and support equipment, including the clearing of a section of forest for contractor purposes. While removed from Lime Kiln Point Drive (a public road) and otherwise surrounded by forest, the end result of granting this special land use will be a large, erected tower, with an immense camera and Xenon searchlight atop, standing out and above all the surrounding property and trees. In line with the general findings listed above, the presence of such a tower, along with the added functions of recording and lighting capabilities, provides the Planning Commission with well-grounded concern that the value of adjoining and nearby properties will be negatively affected due to the change in the preserved, undeveloped, and natural feel of the West End. This runs counter to the spirit and intent of the Master Plan and the Zoning Ordinance. The

Planning Commission does not ignore that the Parcel is currently zoned as C-1 Mixed Commercial, and that a tower could theoretically be allowed. However, the overall spirit and intent is that the land remain in a generally preserved, undeveloped, and natural state. There was also testimony that even a temporary tower could adversely affect area property values. Therefore, the Planning Commission finds that this standard is **not met** based on the above and insufficient proof that area property values will not diminish due to the change in the preserved, undeveloped, and natural feel of the area.

- C. **Standard** – The traffic circulation plan and off-street parking with respect to public safety, on-site uses and adjacent properties.

Finding – The Planning Commission finds that the site plan sufficiently provides for the traffic circulation off of the private drive onto Lime Kiln Point Drive. Further, the Planning Commission finds that this standard is **met** because the public safety risk is minimal due to sparse population in the immediately surrounding area, that the minimal on-site uses would not increase traffic beyond reasonable levels, and that any off-street parking consideration is mostly inapplicable.

- D. **Standard** – Buffers, screens, fences, walls, greenbelts, and landscaping may be required by the Planning Commission in pursuance of the objectives of this Section and/or as a condition of the establishment of the proposed use.

Finding – The Planning Commission finds that the site plan provides for ground level invisibility of the Tower due to existing trees and woods and safety fencing and gates. However, as stated above, while removed from Lime Kiln Point Drive and otherwise surrounded by forest, the end result of granting this special land use

would be a large tower with an immense camera and Xenon searchlight atop, standing out and above all the surrounding properties. Ground level visibility diminishing structures and foliage would have no effect in concealing the Tower above, and as a result, there can be no successful effort made to leave the area preserved, undeveloped, and with the natural feel so valued by area residents and the public. The Planning Commission finds that this standard is **not met**.

- E. **Standard** – Open Spaces, right-of-ways, easements, and related site plan elements needed to serve the proposed use or development for such services as fire protection, sewage disposal systems, water supplies, and solid waste, storm drainage systems, and related. The Planning Commission may require Fire Department and Health Department approval of the plan prior to final Planning Commission action.

Finding – Absent sewage disposal and water systems services, the Planning Commission finds that the site plan does not address or distinguish the location and availability of open spaces, rights-of-way, easements, and related elements that would allow for the listed services necessary to serve the Tower. The private drive does allow access to the area involved. However, the immediately surrounding area is forested and not conducive for the providers of the listed services to accomplish the important functions necessary to serve the Tower in those types of emergency or rescue circumstances. Therefore, the Planning Commission finds that this standard is **not met**.

[Subsection 4.03(5) Site Plan Standards]

A. **Standard** – The sewage disposal and water systems meet the applicable health and sanitary codes and ordinances.

Finding – Not Applicable.

B. **Standard** – The location and nature of the use will not be in conflict with any principal permitted use of the district or vicinity.

Finding – The Planning Commission finds that the approval of this special land use and the erection and use of the Tower will directly conflict with at least one of the principally permitted uses of the district or vicinity. While the Island is not small by any means, it also is not so large that action or scenery changes of the proposed scale would not affect or be unseen by those around the West End of Bois Blanc Island. As a result, the effect of the Tower would reach a much larger vicinity. Within that vicinity, most properties are used for single family residential dwellings and other low impact uses. It is clear from the public response that there is strong opposition to the Tower from the neighboring and nearby landowners and residents within the vicinity to the Tower. Area landowners and residents decry the proposed Tower, stating that it will only detract from the preserved, undeveloped, and natural feel that has become dear to them at the West End. The Planning Commission also takes note of the photographs taken by Enbridge showing the minimal to nonexistent view of the Tower from the beach. However, it is not just from the beach that the perspective must be taken. The Planning Commission understands that the Tower does not *per se* inhibit area landowners and residents' use of their properties for single family dwellings residential use. But a tower in the vicinity would conflict with the landowners and residents' allowed uses as it would

diminish the very reason that they hold and use their land for low density residential and recreational functions. The public outcry repeats the theme that these individuals were drawn to the Island, and stayed, because of the preserved, undeveloped, and natural feel of the land. The Planning Commission finds that this standard is **not met** because the evidence submitted by the public and others substantially supports the conclusion that the erection and use of the Tower would conflict with the principal permitted use for single family detached dwellings and the rural setting in the district or vicinity.

C. **Standard** – The use will not create any significant traffic problem or hazard.

Finding – Not applicable.

D. **Standard** – The use will not be any more objectionable to adjacent and nearby properties than would be any permitted principal use of the district by reason of traffic, noise, vibration, dust, fumes, smoke, odor, fire hazard, glare, lighting, or disposal of waste and sewage.

Finding – The Planning Commission finds that the erection and use of the Tower would be more objectionable than other permitted uses to adjacent and nearby properties. Again, while not small by any means, the Island is not so large that the action and use as proposed by Enbridge would not affect or be unseen by those nearby, the focus being on those in the West End of Bois Blanc Island. The public has at numerous times cited their objection to the Tower based on the probable increase in ambient light that it will cast in the night sky and the increase of light pollution and glare, but also the concern about possible noise, vibration, smoke and fumes resulting from generator usage. While the Planning Commission does not

place reliance on the speculation of the latter, the Applicant does admit that light and glare, while minimal, will exist. Therefore, based on the public input that there will be objections based on light and glare increase, however small, the Planning Commission finds that this standard is **not met** because there will be more objectionable light and glare from the Tower than from adjacent or nearby properties.

E. **Standard** – The use will not discourage or hinder the appropriate development and use of adjacent premises and the neighborhood.

Finding – Again, similar to the findings detailed above regarding Standard B, the Planning Commission finds that approval of this special land use and the erection and use of the Tower would discourage or hinder at least the development and use of adjacent and nearby premises and the neighborhood for single family residential uses and low impact usage. The erection and use of the Tower will have a direct impact on the current neighbors, and potential future neighbors, regarding how they feel about and use the otherwise preserved, undeveloped, and natural area involved. It is clear from the public response that there is strong opposition from the neighboring and nearby landowners and residents to the Tower. The Planning Commission understands that the Tower does not prevent the landowners and residents' use of their parcels for single family detached dwellings and low impact usage. Nevertheless, a tower in the neighborhood or on adjacent property would appear to discourage residents as they use their properties for single family residential and recreational use. Again, the public outcry repeats the concern that these individuals were drawn to the Island, and stayed, because of the preserved,

undeveloped, and natural feel of the land. The Planning Commission finds that this standard is **not met** because the evidence submitted substantially supports the conclusion that the erection and use of the Tower would discourage or hinder current or future potential adjacent neighbors from using, or developing, their property for single family residential and recreational use. The presence of the Tower would lessen the desirability of the West End for cottage and other uses.

- F. **Standard** – The site plan is consistent with and meets the requirements of the Bois Blanc Township Land Use Plan.

Finding – It is true that the Parcel is currently zoned as C-1 Mixed Commercial. Interestingly, however, the Future Land Use Map of the Bois Blanc Township Master Plan of 2009 designates the desired future use for the Parcel as “General & Lakeshore Residential,” and not as “Commercial.” Chapter 7 of the Master Plan defines “Residential” and does not indicate that telecommunication towers would be a proper use. Therefore, the Planning Commission finds that the site plan and proposed Tower are generally not consistent with and do not meet the requirements of the Master Plan (also known as the “Bois Blanc Township Land Use Plan”). This standard is **not met**.

- G. **Standard** – The Planning Commission may distribute the site plan to Local Emergency services, including fire and rescue, or any other agencies deemed appropriate for comment prior to consideration for approval.

Finding – Not applicable.

6. Special land use standards.

[Subsection 5.02(3) Special Land Use Standards]

A. **Standard – Compatibility with Adjacent Land Uses.** The proposed special land use shall be designed, constructed, operated and maintained to be compatible with uses on surrounding land.

Finding – The Planning Commission finds that this standard is **not met**.

The site design of the proposed special land use approval shall minimize the impact of site activity on surrounding properties. In determining whether this requirement has been met, consideration shall be given to:

(1) The location and screening of vehicular circulation and parking areas in relation to surrounding development.

Finding – The Planning Commission finds that other than initial construction, the vehicle traffic and parking off the private road near the Tower will be minimal and have insignificant impacts in relation to the surrounding area. The Planning Commission finds that the standard is **met**.

(2) The location and screening of outdoor storage, outdoor activity or work areas, and mechanical equipment in relation to surrounding development.

Finding – The Planning Commission finds that the lack of outdoor storage structures or outdoor work areas, and the fenced in equipment necessary to support the Tower use and function, are sufficiently screened and optimally located in relation to the surrounding area. The Planning Commission finds that the standard is **met**.

- (3) The hours of operation of the proposed use. Special land use approval requests may be conditioned upon operation within specified hours considered appropriate to ensure minimal impact on surrounding uses.

Finding – The Planning Commission finds that the lack of on-site human work and operations, aside from daytime and emergency nighttime maintenance, will have minimal impacts. The Planning Commission finds that the standard is **met**.

- (4) The bulk and placement of construction materials for the proposed use in relation to surrounding uses.

Finding – The Planning Commission finds that the bulk and placement of construction materials for the Tower are sufficiently removed from Lime Kiln Point Drive and are otherwise surrounded by forest so as to not have significant or negative impacts on the surrounding uses and areas. The Planning Commission finds that the standard is **met**.

- (5) Proposed landscaping and other site amenities. Additional landscaping over and above the requirements of this Ordinance may be required as condition of the special land use approval.

Finding – Not applicable.

- B. **Standard – Public Services**. The proposed special land use shall be located so as to be adequately served by essential public facilities and services, unless the proposal contains an acceptable plan for providing necessary services.

Finding – The Planning Commission finds that certain essential facilities and services are not applicable to the Enbridge tower, i.e., sewage disposal and water

systems services. The Planning Commission further finds that Presque Isle Electric and Gas is identified as the electrical services provider, and that a propane fuel system will provide a separate fuel source for the Tower's backup generator. However, the application does not address any other essential public services accommodations, e.g., emergency rescue or firefighting services. This is a concern as the Island is heavily wooded and the Tower's electrical demand and the presence of a propane fuel system, fuel tanks, and generators that appear to abut a heavily forested area raise a reasonable concern that fire mitigation could be difficult in such an event. Lime Kiln Point Drive and the private drive do allow emergency rescue and firefighting services to access the Tower area. However, the immediately surrounding area is forested and could prove difficult for the providers of essential public services to accomplish the important functions necessary to serve the Tower area in an emergency fire or other situation. In contrast, and although offering no clear explanation, the site plan sketches do provide for several 12-foot wide emergency vehicle gates to allow access to the Tower and other ancillary structures and equipment, the implication being that Enbridge has contemplated how to provide emergency service providers with adequate access to the Tower if an emergency occurs. On balance, the Planning Commission finds that this standard is **met**, but reasonable concerns remain.

- C. **Standard – Impact of Traffic.** The location of the proposed special land use within the zoning district shall minimize the impact of the traffic generated by the proposed use. In determining whether this requirement has been met, consideration shall be given to the following:

- (1) Proximity and access to existing public and private roads.
- (2) Estimated traffic generated by the proposed use.
- (3) Adequacy of driver sight distances.
- (4) Location of and access to off-street parking.
- (5) Provisions for pedestrian traffic.
- (6) Existing vehicular traffic.

Finding – The Planning Commission finds that the site has direct access to Lime Kiln Point Drive (a public road); that there will be no traffic generated except for that of infrequent maintenance or inspection personnel; that driver sight distances are adequate given the private drive and reduced speed; that there are no off street parking issues because all required parking will be on site; that all pedestrian traffic is on site and that reasonable accommodations exist for that onsite pedestrian traffic; and that existing vehicle traffic on Lime Kiln Point Drive and the Parcel will be unaffected. Therefore, the Planning Commission finds that this standard is **met**.

- D. **Standard – Detrimental Effects**. The proposed special land use shall not involve any activities, processes, materials, equipment, or conditions of operation that are detrimental or hazardous, and shall not be located or designed so as to be detrimental or hazardous to persons or property or to public health, safety, and welfare. In determining whether this requirement has been met consideration shall be given to the level of traffic noise, vibration, smoke, fumes, odors, dust, glare, light, use of toxic substances and hours of operation.

Finding – The Planning Commission finds that the Tower would likely have the specific negative effects of slightly increased glare and light. However, there has been insufficient evidence provided to establish that those effects would be detrimental or hazardous. Again, the public has voiced their objection to the Tower

based on the probable increase in ambient light that it will cast in the night sky and the increase of light pollution and glare, but also the speculated fear of possible noise, vibration, smoke and fumes resulting from generator usage. While the Planning Commission does not place reliance on the speculation of the latter, the Applicant does admit that the light and glare, while minimal, will exist. Therefore, based on the public input and the Applicant's admission that there will be a light and glare increase, however small, the Planning Commission finds that this standard is **met** because there has been no definitive showing that either will be detrimental or hazardous to persons or property or to public health, safety, and welfare.

- E. **Standard – Economic Well-Being of the Community.** The proposed special land use shall not be detrimental to the economic well-being of those who will use the land or residents, businesses, landowners, and the community as a whole.

Finding – The Planning Commission finds that the Tower will be negatively received by the community. In line with the general findings previously stated, the presence of such a tower, along with the added functions of recording and lighting capabilities, provides the Planning Commission with a well-grounded concern that the value of area properties may be negatively affected by the presence of the Tower due to the change in the preserved, undeveloped, and natural feel of the West End. This is supported by the public's claims that they were drawn to the Island, and stayed, because of the preserved, undeveloped, and natural feel of the land. It is reasonable for the Planning Commission to infer that development of the preserved, undeveloped, and natural area of the West End will negatively impact the property

values and market in that area consisting of people who want to escape to such preserved, undeveloped, and natural areas, which are becoming scarcer year to year. Via an email to the Township, an Island real estate agent did indicate that in her opinion, the Tower would adversely affect area property values. Furthermore, the Applicant presented no concrete evidence showing that the Tower would not adversely impact area or nearby property values. As discussed above in the General Findings, the fact that the Tower will be imprinted by the controversy surrounding Enbridge could potentially adversely affect area property values more than would be the case with a Verizon, TDS or emergency services tower. Therefore, the Planning Commission finds that this standard is **not met**.

- F. **Standard – Compatibility with Natural Environment**. The proposed special land use shall be compatible with the natural environment and conserve natural resources and energy.

Finding – The Planning Commission finds that the Tower would be incompatible with the natural environment and area given the historic Native American presence and cultural significance that requires that the land remain undisturbed, as well as the generally undeveloped, natural and pristine condition of the West End. The Planning Commission notes the voiced concerns by and from many members of the public, certain Native American tribes and other preservation societies about the disturbance that the Tower construction and presence may have on what many claim to be historic Native American sites. Specifically, the Archeological Conservancy has asserted that it owns a portion of the multi-component Juntunen (20MK1) site as a permanent archeological research preserve. The Conservancy

claims that the preserve includes a portion of government lots 3 and 4 in T40N, R2W in Section 14 of Bois Blanc Township. Based on the legal description provided, there appears to be an overlap with the Parcel. In rebuttal, the Applicant provided an archeological survey memorandum completed by Stantec Consulting Services, Inc. The memorandum explained that Stantec conducted a Phase I investigation to identify archeological resources in the project area and above-ground historic properties that are located in or within .5 miles of the Tower project site. The Phase I investigation (above-ground) confirmed that no historic properties listed on the National Register of Historic Places are located in or within .5 miles of the Tower site. Further discussion on the subject pointed out that there remained concerns for historically significant below-ground properties. On balance, the Planning Commission was not presented with sufficient evidence to rebut the below-ground concerns which the Planning Commission may reasonably infer from the assertions made by the Archeological Conservancy and Native American tribe representatives. That being the case, the natural environment of the area would be compromised given the area's mainly undeveloped, natural, and historical and cultural aspects. Therefore, given that the Planning Commission finds that it would be incompatible to allow the erection and use of the Tower in such a natural environment, this standard is **not met**.

[Subsection 6.01(20) Special Land Use Standards]

- A. **Standard** – The Applicant shall provide documentation to the Planning Commission that clearly establishes the legal ownership of the tower. The Applicant, its agents, successors, and assigns shall report to the Planning

Commission any changes in the legal ownership of the tower within thirty (30) days of the effective date of the change.

Finding – The Planning Commission finds that sufficient documentation establishing Enbridge’s clear ownership of the Tower has not been provided (i.e. here, a specific written lease agreement). The Applicant promises satisfaction of the standard in the future, subject to leasing arrangements with William and Diane Akright. However, the standard requires present satisfaction. Therefore, the standard is **not met**.

- B. **Standard** – The Applicant shall provide documentation to the Planning Commission documenting the need for a new tower and analysis of alternative options, such as co-location of an existing tower or structure.

Finding – The Planning Commission finds that the Applicant has provided extensive documentation demonstrating its desire and claimed need for a new tower and supplemental documentation following specific inquiry as to alternative options. Recognizing that the Applicant simply provided documentation demonstrating its needs along with additional options, the Planning Commission does not believe that an objective, general need has been proven with regard to the proposed Tower having to be located at this specific site or even within Bois Blanc Island. The Planning Commission finds that the standard is **not met**.

- C. **Standard** – The application for special land use approval for the tower shall include a visual impact analysis, prepared by the Applicant, which includes graphic depictions of the anticipated visual appearance of the tower from important vantage

points in the surrounding area. Methods used in preparing the analysis shall be reviewed and approved by the Zoning Administrator.

Finding – The Planning Commission finds that the Applicant has provided a visual impact analysis which includes graphic depictions of the anticipated visual appearance of the Tower from important vantage points in the surrounding area. Therefore, this standard is **met**.

- D. **Standard** – A cellular phone or other personal and business communications services antenna tower shall be exempt from building height limits established by zoning district regulations, provided that the tower height shall not exceed the minimum height necessary to serve its intended functions. Tower height shall not exceed two hundred (200) feet.

Finding – The Planning Commission finds that Tower's height as proposed will be approximately 137 feet, thus not exceeding the 200-foot limit. Therefore, this standard is **met**.

- E. **Standard** – The Applicant shall provide evidence of feasibility of locating the antenna on an existing tower or other existing structure in the Township or in neighboring communities.

Finding – The Planning Commission finds that the Applicant has provided evidence of feasibility regarding both collocating the antenna on the only other tower in the Township, the TDS tower, and locating the Tower at an alternative location. However, similarly to the Subsection 6.01(20) Standards B findings discussed above, this standard is a technical one. The Applicant's feasibility evidence established that the collocation of the Tower facilities on the existing TDS

tower would result in an ineffective location on the south end of the Island for the purpose of observing the traffic in the Straits. Separately, the location of the Tower on the westernmost location of the Island (at the Township's park parcel) was not feasible as it would result in a tower approximately 180 feet in height in order to elevate over the trees, it would obstruct the line of sight to the water for adjacent shoreline or nearby landowners, and it would require substantial clearcutting of vegetation and trees. As discussed above, however, the Applicant has not demonstrated definitively that the Tower could not be located elsewhere adjacent to the Straits of Mackinac and in other municipalities or locations not on Bois Blanc Island. Therefore, this standard is **not met**.

- F. **Standard** – The tower and any ancillary building housing equipment needed for operation of the tower shall not exceed the floor area and height minimally necessary for such equipment, and shall be of a size, type, color, and exterior materials which are aesthetically and architecturally compatible, such as tree style tower, with the surrounding area, and as minimally obtrusive as possible. Landscape screening may be required by the Planning Commission to accomplish screening of ancillary equipment buildings.

Finding – The Planning Commission finds that the Tower and ancillary building housing equipment does not exceed the floor area and height minimally necessary for such equipment. Being removed from Lime Kiln Point Drive and otherwise surrounded by forest, the base of the Tower and ancillary building housing equipment on the ground are naturally concealed. Further, the Applicant has asserted that William and Diane Akright have approved the size, type, color, and

exterior materials as being aesthetically and architecturally compatible with *their use of the property*. However, this standard is not based on the landowners' opinion alone. The standard addresses the surrounding area with the desire to be as minimally obtrusive as possible. Based on the public comments and the stark contrast of a large tower in the middle of undeveloped and natural woodlands, the Planning Commission finds that the Tower would not be aesthetically compatible with the surrounding area and that the Tower would not be as minimally unobtrusive as possible. Therefore, this standard is **not met**.

- G. **Standard** – The Applicant shall provide documentation of any lighting to be installed on the tower. If tower lighting is required or proposed, the tower may not be approved unless the Planning Commission determines that it will not have a significant adverse impact on properties and residents of the surrounding area.

Finding – The Planning Commission finds that the Applicant has provided documentation, via the May 21, 2021, 3rd supplemental response, of the Xenon searchlight proposed to be installed on the Tower. There being proposed lighting, the Planning Commission has insufficient evidence to determine that the searchlight constitutes a significant adverse impact. Again, various members of the public have voiced their objections to the Tower based on the probable increase in ambient light that it will cast in the night sky and the increase of light pollution and glare. The Applicant admits that light and glare, while minimal, will exist. The Applicant also asserts that the searchlight will emit 12,000 lumens of light in a concentrated beam with a distance range of approximately 5 kilometers (3.1 miles). To be fair, the searchlight is intended for use only in emergencies as determined by

the proper authorities, not Enbridge. It is evident that the light from the searchlight, if used, would be significant. The Planning Commission finds that this standard would be **met** because there has been no showing that while significant, a light used only during emergencies will adversely impact properties and residents of the surrounding area. In fact, such an emergency lighting system would be beneficial to the community.

- H. **Standard** – Towers shall be painted so as to be as unobtrusive as possible. The painting of towers in alternate bands of orange and white shall be permitted only if specifically required by Federal Communications Commission (FCC) or Federal Aviation Administration (FAA) regulations. If alternate band painting is required by FCC or FAA regulations, the Applicant shall provide documentation of such requirements and regulations.

Finding – The Planning Commission finds that the Tower is not subject to FAA licensing and regulation, thus there is no required painting scheme mandated by the FAA. Since the most recent Planning Commission meeting the Applicant submitted FCC authorization for the Tower dated August 16, 2021. Therefore, this standard is **met**.

- I. **Standard** – The Applicant shall provide documentation of conformance with any Federal Communications Commission and Federal Aviation Administration regulations.

Finding – The Planning Commission finds that the Applicant has submitted sufficient documentation to show FAA and FCC approval, and therefor determines that this standard is **met**.

J. **Standard** – The owner/operator of the tower shall agree to permit use of the tower by other personal or business communications services providers, including local government agencies, on reasonable terms, so long as such use does not interfere with the owner/operator's reasonable use of the tower.

Finding – The Planning Commission finds that Applicant agrees to the condition. This standard is **met**.

K. **Standard** – As a condition of approval, the Planning Commission may require an owner to deposit funds in escrow with the Township, or provide an insurance bond satisfactory to the Township's Attorney to assure the removal of towers and masts as prescribed in this Section. If required, such escrow deposit or insurance bond shall be in an amount equal to one and one-quarter (1.25) times the estimated cost of removal of the tower at the time of approval. Such escrow deposit or bond shall be maintained by successor owners.

Finding – The Planning Commission finds that the Applicant agrees to the condition. This standard is **met**.

L. **Standard** – If the Tower ceases operation for its original use or is abandoned for any reason, the Township may order its removal from the site by the owner of the tower within three (3) months of notification by the Township. If the cost exceeds the amount held in escrow, the current owner shall be responsible for additional costs.

Finding – The Planning Commission finds that Applicant agrees to the condition. This standard is **met**.

M. **Standard** -- If the height required for the tower to serve its intended function decreases from the installed height due to technological advancement, additional tower installations at other locations, or other factors, the Township may order that the tower be lowered to such decreased minimum height.

Finding – The Planning Commission finds that Applicant agrees to the condition. This standard is **met**.

N. **Standard** – The tower and any supporting or appurtenant structures shall be no closer to any dwelling than the distance equal to 1.5 times the height of the tower measured from its base at grade to its highest point of elevation.

Finding – The Planning Commission finds that the Zoning Board of Appeals approved a variance of this setback requirement on May 21, 2021. This standard is **met**.

7. The applicability of the standards.

Unfortunately, the Zoning Ordinance provisions for the site plan and special land use standards do not expressly indicate that all of the standards must be met for special land use approval. If the intent of the drafters of the Zoning Ordinance was that all standards for site plan and special land use approval must be met, then the Tower request must be denied as many standards will not be met. However, even if some standards cannot be met and the use could still be approved, the Planning Commission finds that the standards for site plan and special land use approval that have not been met are so important and overwhelming that the Tower request must be denied.

8. The final decision of the Planning Commission.

Based on all of the above, the Planning Commission hereby denies both the site plan and special land use requests by Enbridge for its proposed temporary tower on the Parcel.

The vote to approve this Resolution by the Planning Commission was as follows:

YES: Cindy Polom, Rob Ross , Louise Sullivan, Jessie LaPorte

NO: None

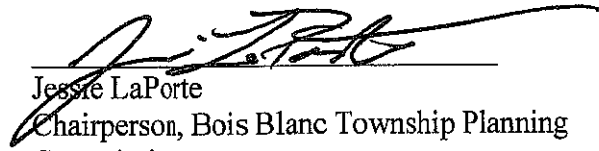
ABSENT/ABSTAIN: None

RESOLUTION DECLARED ADOPTED:

CERTIFICATION

I hereby certify that the above is a true copy of a Resolution adopted by the Bois Blanc Township Planning Commission at the time and date specified above, pursuant to the required statutory procedures.

Respectfully submitted by,



Jessie LaPorte
Chairperson, Bois Blanc Township Planning
Commission

EXHIBIT A – SUMMARY OF PUBLIC WRITTEN COMMENTS

- July 29 letter from Mary Struble Dreery – in opposition
- July 28 email from James Graham Whipple, Sr. – in opposition
- July 28 email from Susan Lenfesty – in opposition
- July 27 email from James Lenfesty – in opposition
- July 26 email and letter from Jacqueline Johnson, Ph.D. – in opposition
- July 6, May 31, and May 18 emails from Beth Beson – in opposition
- Jul 3, 2021 email from Lynn and David Kirkpatrick – in opposition
- June 30, 2021 email from real estate agent Julie Maynard – negative impacts on property values
- June 25 letter from Marie Richards, Sault Ste. Marie Tribe of Chippewa Indian – in opposition
- June 24 letter from Philip Millhouse, The Archaeological Conservancy – concerns and request to be heard
- June 21 email from Donna Makowski – in opposition
- June 15 email from Whitney Gravelle, Bay Mills Indian Community – concerns and request to be heard
- June 1 email from Eric Ratts – in opposition
- June 1 email from B.E. Nuemann – in opposition
- June 1 letter from Peter and Sally Struble – in opposition
- June 1, 2021 letter from Ron and Penny Kimmey – in opposition
- May 31 email from David and Karen Sabuda – in support
- May 21 email from Kristen Schoenborn – island resident – inquiring about concerns
- May 20 email from Stacy Tchorzynski, State Historic Preservation Office – request to consult
- May 20 email from Bruce Thibodeau – in support
- May 20 letter from Jim and Mimi Vosper, Julia Vosper, and Jon Olson – in opposition
- May 19 letter from Daniel Jahn – in opposition
- May 19 email from Connie Gask – in opposition
- May 19 letter from Henry and Sheila Hyde – neutral stance but with concerns
- May 17 letter from Daniel Kimmey – in opposition
- May 16 letter from Ron and Penny Kimmey – in opposition
- May 13, 2021 email from Jan Key – in opposition