

CHARTER TOWNSHIP OF MERIDIAN  
TOWNSHIP BOARD REGULAR MEETING - **APPROVED** -  
5151 Marsh Road, Okemos, MI 48864-1198  
853-4000, Town Hall Room  
TUESDAY, AUGUST 18, 2015 **5:00 P.M.**

PRESENT: Supervisor LeGoff, Clerk Dreyfus, Treasurer Brixie, Trustees Scales, Styka, Veenstra, Wilson  
ABSENT: None  
STAFF: Township Manager Frank Walsh, Assistant Township Manager/Director of Public Works Derek Perry, Director of Community Planning & Development Mark Kieselbach, Police Chief Hall, Director of Human Resources Joyce Marx

1. CALL MEETING TO ORDER

Supervisor LeGoff called the meeting to order at 5:00 P.M.

2. PLEDGE OF ALLEGIANCE/INTRODUCTIONS

Supervisor LeGoff led the Pledge of Allegiance.

3. ROLL CALL

The secretary called the roll of the Board.

4. CLOSED SESSION

A. Township Manager Annual Performance Review

**Clerk Dreyfus moved that the Township Board go into closed session to discuss the personnel evaluation of the Township Manager pursuant to MCL 15.268(a). Seconded by Trustee Scales.**

VOICE VOTE: Motion carried unanimously.

Supervisor LeGoff recessed the meeting at 5:02 P.M.

The Board adjourned to the Administrative Conference Room for a closed session.

**Trustee Wilson moved to return to open session. Seconded by Treasurer Brixie.**

VOICE VOTE: Motion carried unanimously.

Supervisor LeGoff reconvened the meeting at 6:00 P.M.

5. PUBLIC REMARKS

Supervisor LeGoff opened Public Remarks.

Tim Potter, 4632 Van Atta Road, Okemos, spoke in support of completion of the pathway on the east side of Okemos Road between Central Park Drive and the Nancy Moore Park area. He suggested reconsideration be given to a width of eight (8) feet instead of the previously proposed 14 feet to reduce the cost in an effort to use Township or county millage funds for completion. He also spoke in support of the issues contained in three letters in the Board packet from the Tri-County Bicycle Association:

- Extension of the Inter-urban Pathway under Marsh Road when the county bridge project commences next year

- Motion-activated Rectangular Rapid Flash Beacon at the Okemos Road crossing of the Inter-Urban Pathway
- Need for non-motorized transport infrastructure along Okemos Road between Sandhill and Jolly Roads

Mr. Potter addressed the washed out pathways across from St. Martha's Church, one of which needs to be closed until it is repaired.

Ody Norkin, 3803 Sandlewood, Okemos, requested the Board take action on the Township's Redi-Ride program by expanding hours to offer 24/7, 365 day service to accommodate the needs of the Township's senior citizens and disabled. He expressed concern Meridian Township taxpayers are paying \$20 per ride, more than double the cost of an average taxi ride. Mr. Norkin requested the Township Board schedule a dialogue on this issue by placing it on a future agenda. He questioned why taxpayers would entrust the system with funds for improving CATA's Route #1 (\$168 million) if \$400,000 per year in millage funds has to be expended by CATA to facilitate Redi-Ride.

Dr. Lloyd Bingman, 1425 Ambassador Drive, Okemos, provided an update on his position relative to the Ember Oaks project, adding a meeting with the developer resulted in commitment via letter the next phase will be subject to the same restrictions as are currently in place. He expressed satisfaction the Schroeder's are trying to do what is needed for residents of the Ponderosa subdivision.

Leonard Provencher, 5824 Buena Parkway, Haslett, voiced concern there has been no advancement to reopening the pathway in front of the Aldi project on Marsh Road. He offered his support for the proposed improvements contained in the letters from the Tri-County Bicycle Association.

John Esser, 5448 Okemos Road, spoke in support of completion of the pathway on the east side of Okemos Road between Central Park Drive to just south of the entrance to Nancy Moore Park. He stated this pathway completion project has been overlooked for more than 20 years. Mr. Esser stated if the completion is projected into the future, it will be more expensive than the current estimate of \$1 million. He questioned the liability to the Township if there is another injury or death on the walkway along Okemos Road. Mr. Esser stated Township residents have waited for years for grant money which has never materialized.

Neil Bowlby, 6020 Beechwood Drive, Haslett, announced Liaison for Inter-Neighborhood Cooperation (LINC) will meet this Thursday in the Haslett Library community room beginning at 6:45 P.M. He corrected a comment he made two meetings ago regarding the availability of Freedom of Information Act (FOIA) documents by the Clerk, stating the Clerk was correct. Mr. Bowlby expressed appreciation to the Clerk for providing him with the previous FOIA response form as requested. He expressed concern there was no sewer cleaning data provided in the Manager's second quarter report. Mr. Bowlby assessed the slide which was included in the Manager's quarterly update which showed the Township is above where it needs to be for a five year sewer cleaning plan. He addressed Board behavior at the last meeting, speaking specifically to Board members usurping the authority of the Supervisor as outlined in the Board Policy Manual. Mr. Bowlby addressed Robert's Rules of Order relative to allowing the Supervisor to introduce the items of business, noting the Treasurer introduced a motion to appoint a member to the Greater Lansing Taxi Authority Board which was seconded by Trustee Scales. He requested Board members allow the Supervisor to introduce items of business before any motions are made or discussion ensues.

Sagar Singichetti, 3939 Crooked Creek Road, Okemos, voiced concern the cell tower to be located near Grand River and Park Lake Road would be located in the “gateway” from East Lansing into Meridian Township. He noted Clinton County postponed action on a proposal to construct a 300 foot 911 tower within its boundary.

Mike McCurdy, 5458 Okemos Road, Okemos, expressed safety concerns relative to the need for the extension of sidewalk along the east side of Okemos Road between Central Park Drive to just south of the entrance to Nancy Moore Park.

Nick Gavrilides, 3627 Stagecoach Drive, Okemos, spoke to the Forsberg Drive connection between the Ponderosa Estates subdivision and the next phase of Ember Oaks. He requested the Board consider the safety of neighborhood children which currently enjoy a cul de sac and low traffic volume.

Doug Federau, 5370 Okemos Road, East Lansing, stated there are 10,000-12,000 cars per day which travel Okemos Road, a road that is in substandard condition. He noted the extension of sidewalk along the east side of Okemos Road between Central Park Drive to just south of the entrance to Nancy Moore Park has been on the Master Plan for more than 20 years. He voiced concern with the ability for cars to pull off the road once the fire station is built, pedestrians are on the road and a fire truck or emergency vehicle is responding to a call.

Supervisor LeGoff closed Public Remarks.

#### 6. TOWNSHIP MANAGER REPORT

Township Manager Walsh reported on the following:

- Draft copy of the 2016 budget will be made available to Board members on Friday to comply with the 120 day requirement prior to the end of the calendar as indicated in the Charter Township Act of Michigan
- Township is working to reopen the sidewalk on Marsh Road in front of the Aldi construction project
- Staff is studying the issue of food trucks and information will be brought to the Board in an effort to determine how Board members wish to proceed with food truck legislation
- Staff is working with the Board to finalize questions to be placed on the citizen survey

#### 7. BOARD COMMENTS & REPORTS

Clerk Dreyfus noted the updates to FOIA policies and guidelines as well as the Request for Public Records have been completed as a result of action at the last meeting. He reported his attendance at today’s Regional Prosperity Initiative where partners reviewed the metrics of the prosperity dashboard, an online tool which contains 26 metrics (e.g., unemployment, housing costs, etc.) Clerk Dreyfus announced Jane Rose, Executive Director of the Meridian Historical Village has written a book called *Meridian Township*, a history of our Township. Copies of the book are available at [www.arcadiapublishing.com](http://www.arcadiapublishing.com).

Trustee Veenstra agreed with citizens who indicated the need for a pathway on the east side of Okemos Road; however, much of it will need to be boardwalk over wetlands. He added American Association of State Highway and Transportation Officials (AASHTO) standards require it to be built 14 feet in width, which he believed could be reduced to eight (8) feet to lower the cost of pathway installation. Trustee Veenstra believed filling in other pathway gaps would be a more effective use of pathway funds. He endorsed the letters from Tri-County Bicycle Association, as there is a need to extend the Inter-urban Pathway under Marsh Road at the same time the bridge over the railroad tracks is rebuilt by the county and a need for an improved pedestrian bicycle pathway in the vicinity of Jackson National Life.

Trustee Veenstra supported the Board holding a thorough discussion on Redi-Ride and requested it be put on a future Board agenda. He agreed with earlier citizen comment that something needs to be done with the continued sidewalk closure in front of the Aldi project on Marsh Road. Trustee Veenstra spoke in favor of the Township offering to pay half of the rezoning fee for Mr. McCurdy.

Trustee Wilson indicated she spoke with the Ingham County Drain Commissioner (ICDC) regarding the ongoing drain work outlined in the Pinnavaia letter. She reported the ICDC spoke with Mrs. Pinnavaia and they are having a conversation about the drain work required to be performed on her property in order to alleviate her concerns.

Trustee Scales reported Director Perry, County Commissioner Nolan and he met with residents in the eastern section of the Township regarding road conditions and is looking to engage our state representative, state senator and our US congressman regarding the road program in the state as a whole. He attended the August 14<sup>th</sup> ribbon cutting ceremony of Premier Dance Studio in Haslett. Trustee Scales announced Meridian Township resident, Judge Laura Baird, was sworn in yesterday as the next president of the Michigan Judges Association.

8. APPROVAL OF AGENDA

**Treasurer Brixie moved to approve the amended agenda as provided. Seconded by Trustee Styka.**

VOICE VOTE: Motion carried unanimously.

9. CONSENT AGENDA

Supervisor LeGoff reviewed the consent agenda.

**Treasurer Brixie moved to adopt the amended Consent Agenda. Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Styka, Scales, Veenstra, Wilson, Supervisor LeGoff,  
Treasurer Brixie, Clerk Dreyfus

NAYS: None

Motion carried unanimously.

A. Communications

(1) Board Deliberations (BD)

BD 11A/13B Ginger Yang, Owner/Therapist, LotusVoice Integrative Therapies, LLC, 4994 Park Lake Road, East Lansing; re: Appeal of SUP #15061 (Jacobs Engineering)

BD 13C James Sinadinos, Socrates Investment, LLC, 4706/4707 Okemos Road, Okemos; RE: Support for the Douglas J Project in downtown Okemos (SUP #13-12051)

(2) Board Information (BI)

BI-1 Susan Luks, 2292 E. lake Lansing Road, East Lansing; RE: Objection to the Newton Road Paving, SAD No. 43

BI-2 Judy Kindel, 2915 Margate Lane, East Lansing; RE: Goals and Objectives

BI-3 Thomas and Marilyn Pinnavaia, 5901 East Sleepy Hollow Lane, East Lansing; RE: Request for support to have the Ingham County Drain Commissioner make improvements to the Raby Drain in the Sleepy Hollow subdivision

- BI-4 Darryl Burris, President, Tri-County Bicycle Association, PO Box 22146, Lansing; RE: Request for the Township to extend the Inter-urban Pathway east under the Marsh Road bridge to Haslett Road and beyond
- BI-5 Darryl Burris, President, Tri-County Bicycle Association, PO Box 22146, Lansing; RE: Request for the Township to install a push-button or motion-activated Rectangular Rapid Flash Beacon at the Inter-urban Pathway crossing at Okemos Road
- BI-6 Darryl Burris, President, Tri-County Bicycle Association, PO Box 22146, Lansing; RE: Concern with the lack of non-motorized transport infrastructure in the planned improvements to Okemos Road between Sandhill and Jolly Roads
- BI-7 Mike McCurdy, 5458 Okemos Road, East Lansing; RE: McCurdy Goats
- BI-8 Mike McCurdy, 5458 Okemos Road, East Lansing; RE: McCurdy Goats
- BI-9 Thomas Cook, 300 R7umsey Avenue, Lansing; RE: Employment Protections in the Meridian Township Nondiscrimination Ordinance
- BI-10 Brent Forsberg, President, T.A. Forsberg, Inc., 2422 Jolly Road, Suite 200, Okemos; RE: August 1, 2015 incident on their Okemos Pointe property
- BI-11 Ann Zimmerman, 2344 Coyote Creek Drive, Okemos; RE: Response to the August 5, 2015 letter from Brent Forsberg
- BI-12 Brent Forsberg, President, T.A. Forsberg, Inc., 2422 Jolly Road, Suite 200, Okemos; RE: Request for the Board to consider action on the same night as discussion for MUPUD #15024 and SUP #15101 (Okemos Pointe)

(3) On File in the Clerk's Office(OF)

Material handed out at the August 4, 2015 Board Meeting

Angela McGuire, 6024 Newton Road, East Lansing; RE: Objection to the Newton Road Public Road Improvement Special Assessment District No. 43

Mike Bateman, 6031 Newton Road, East Lansing; RE: Objection to the Newton Road Public Road Improvement Special Assessment District No. 43

Pam Fraker, 351 Newman Road, Okemos; RE: Opposition to any CATA millage

Leon Puttler, Bath Township Trustee, 14480 Webster Road, Bath; RE: Review of the current Redi-Ride Program

Ziona Bisno, 6045 Oakpark Trail, Haslett; RE: Concern with the limitations of scheduling for Spec-Tran and a request for Board exploration of transportation alternatives for the elderly and disabled

Susan McGillicuddy, 5115 Country Drive, Okemos; RE: Opposition to renewal millage or increase for CATA Redi-Ride

Karla and Michael Hudson, 6009 Skyline Drive, East Lansing; RE: Suggested improvements to the service provided by Redi-Ride

Petition signatures to support the retention of goats on the property owned by Michael McCurdy at 5458 Okemos Road, East Lansing

Material submitted at the August 4, 2015 Board Meeting

Bettie and Paul Menchik, 4414 Cherry Hill Drive, Okemos; RE: Support to increase the availability of Redi-Ride

Thomas Bartley, 1527 River Terrace Drive, East Lansing; RE: Request for proper administration of the Red-Ride Program by evaluating who is the targeted ridership and how that ridership will best be served

Katy Kemeny, 3874 Sandlewood Drive, Okemos; RE: Support for a review of the Redi-Ride program

Wally Markham, 3815 Sandlewood Drive, Okemos; RE: Request for a review of the Redi-Ride program prior to 2018

Donald and Elizabeth Kaufman, 16763 Meadowbrook Drive, Haslett; RE: Concern with limited service currently offered by Redi-Ride and Spec-Tran

**Treasurer Brixie moved that the communications be received and placed on file, and any communications not already assigned for disposition be referred to the Township Manager or Supervisor for follow-up. Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Styka, Scales, Veenstra, Wilson, Supervisor LeGoff, Treasurer Brixie, Clerk Dreyfus  
NAYS: None  
Motion carried unanimously.

B. Minutes

**Treasurer Brixie moved to approve and ratify the minutes of the August 4, 2015 Regular Meeting as amended. Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Styka, Scales, Veenstra, Wilson, Supervisor LeGoff, Treasurer Brixie, Clerk Dreyfus  
NAYS: None  
Motion carried unanimously.

C. Bills

**Treasurer Brixie moved that the Township Board approve the Manager's Bills as follows:**

Common Cash	\$ 773,462.21
Public Works	\$ 333,913.29
Total Checks	\$ 1,107,375.50
Credit Card Transactions	\$ 7,547.60
Total Purchases	<u>\$ 1,114,923.10</u>
ACH Payments	<u>\$ 421,906.78</u>

**Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Styka, Scales, Veenstra, Wilson, Supervisor LeGoff, Treasurer Brixie, Clerk Dreyfus  
NAYS: None  
Motion carried unanimously.

(Bill list in Official Minute Book)

D. Set the 2016 Budget Public Hearing for September 1, 2015

**Treasurer Brixie moved that a public hearing be held at 6:00 P.M. in the Town Hall on September 1, 2015 for the purpose of taking comments regarding the 2016 Charter Township of Meridian Recommended Budget. Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Styka, Scales, Veenstra, Wilson, Supervisor LeGoff,  
Treasurer Brixie, Clerk Dreyfus  
NAYS: None  
Motion carried unanimously.

- E. Discharge of Property Rehabilitation Mortgage  
**Treasurer Brixie moved to approve discharging the Rental Property Rehabilitation Program Mortgage from 6132 Columbia St. Haslett, MI 48840, Parcel No. 33-02-02-03-408-001. Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Styka, Scales, Veenstra, Wilson, Supervisor LeGoff,  
Treasurer Brixie, Clerk Dreyfus  
NAYS: None  
Motion carried unanimously.

10. QUESTIONS FOR THE ATTORNEY (See Agenda Items #10, #11A, #13A)

Q. Our attorney here sent us an opinion about the procedure that we should follow when the question came up of a member of this Board recusing themselves. Unfortunately, that opinion was marked confidential. I believe there was nothing in that opinion that needs to be kept from the public. I would ask for a declaration that that mark of confidentiality no longer applies and we can share that opinion with the public which, I think, is a very good thing to do so the public will be informed about the procedure we need to legally follow if a member of this Board wants to recuse themselves.

A. I'm not sure that is a question, but let me respond to it. We always mark any communication to the Board as confidential to preserve the attorney/client privilege, but the Board controls the exercise of the privilege. If you, as a Board, decide that you want to make an opinion public, what we would ask is that you first consult with us, and if we don't see a legal reason or a liability reason, then it would be up to the Board to decide whether you want to make it public.

Q. And that's what I'm, in effect, doing. I'm asking is there any reason why we shouldn't make that opinion public.

A. There's no liability reason that I can see.

Q. Do we need a Board motion to make it public, or what?

Board discussion:

- Board member suggestion that from that legal opinion a policy be drafted for the Board to abide by and then move to strike the previous Board policy to be in alignment with the advice from the Township attorney

ATTORNEY COMMENT: It is a matter for the Board; we would be happy to work with you on it in the direction you would like to take.

Q. This brings up an interesting point. Just to clarify: if we get any legal opinion, it's all going to be marked confidential, discuss it with you to make sure it is vetted appropriately for any impact, and then if it's negligible and there is no impact to the Township, as a matter of course, we should always vote as a Board to be able to allow ourselves to release that information.

A. The Board controls...the Township isn't the client, the Board is the client, so it's a Board action.

Q. So we should all be committed as individual Board members to not divulge in that until there is a Board vote on it regardless of the issue.

A. Correct. No individual member of the Board has the ability to waive the privilege.

11. HEARINGS

- A. Appeal of Special Use Permit #15061 (Jacobs Engineering) – Request to Install a Cell Tower at 4980 Park Lake Road

Supervisor LeGoff opened the public hearing at 6:51 P.M.

Director Kieselbach summarized the Planning Commission’s approval of the special use permit to locate a cell tower at 4980 Park Lake Road as outlined in staff memorandum dated August 12, 2015.

- Applicant  
Rob Labelle, Williams Williams Rattner & Plunkett, 380 North Old Woodward Avenue, Suite 300, Birmingham, and legal counsel for Verizon Wireless, stated the Township’s ordinance encourages cell tower location in a highly business oriented area immediately adjacent to a highly traveled road in the vicinity of a variety of other things which are similar in use and intensity of use (e.g., railroad and billboard). He believed the decision made by the Planning Commission is entitled to deference and would be upheld in the absence of manifest error in their judgment. Mr. Labelle stated this appeal is also governed by the Telecommunications Act.

Mr. Labelle read Section 7b3 of the Telecommunications Act as follows: “Any decision by a state or local government or its instrumentality thereof to deny a request to place, construct or modify personal wireless services facilities shall be in writing and supported by substantial evidence contained in a written record.”

Mr. Labelle indicated assertions or conditions regarding aesthetics would not be considered evidence. He read from a decision out of the 6<sup>th</sup> Circuit Court of Appeals which specifically addressed a site in Michigan: “There must be evidence, and not just any evidence. Evidence that is substantial, and substantial evidence must be substantiated by something. General concerns from a few residents that the tower would be ugly or that a resident would not want it in his back yard are not sufficient. If, however, the concerns expressed by the community are objectively unreasonable, such as concerns based upon conjecture or speculation, then they lack probative value and will not amount to substantial evidence”.

Mr. Labelle noted Verizon Wireless works to find the least intrusive site, believing the proposed location to be consistent with the character of the area on a major thoroughfare near other tall structures relative to intensity of use in a business area. He stated it should not be surprising that such a business area needs cell phone service, as the potential to overload the capacity of existing towers to handle all the traffic within the business district exists. Mr. Labelle believed the cell phone provider clearly demonstrated the need for the proposed site by providing materials contained in the Board packet.

Mr. Labelle asserted the Board cannot apply the ordinance in a way which would create an effective prohibition (excerpt from the Telecommunications Act): The regulation of the placement, construction and modification of personal wireless services by any state or local government shall not prohibit, or have the effect of prohibiting, the provisional personal wireless services.” He alleged this language deals with the specific area Verizon is attempting to address (i.e., search ring) which delineates an area of inadequate service. Mr. Labelle offered an example by the appellant that if the cell tower can be seen from any location, it is unwanted and, because it is unwanted, is used as criteria for denial of the tower. He stated this rationale constituted an effective prohibition.

Mr. Labelle read from the Telecommunications Act: “No state or local government or instrumentality thereof may regulate the placement, construction or modification of personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” He cautioned the Board to distinguish the types of radiation relative to a cell tower. Mr. Labelle defined radiation as any point source which emits waves, offering an example of the ripples resulting from throwing a pebble into a pond. He clarified ionizing radiation is the type which damages human tissue, noting a cell tower emits radio waves, which are non-ionizing radiation. Mr. Labelle cited a statement on the American Cancer Society’s website which states there is no evidence suggesting emissions from a cell tower cause any type of health effects. He presented several examples of devices (radios, televisions, cell phones, wireless devices, etc.) which emit radio waves exponentially higher in intensity than a cell tower at ground level. Mr. Labelle believed if the type of radio waves emitted from the aforementioned devices had a negative health impact on humans, that evidence would have surfaced many years ago.

Mr. Labelle did not believe the Land Division Act applies in this case, citing language from the act which states land division: “applies to a division for the purpose of sale or lease of more than one year.” He alleged the Land Division Act was never intended to apply to leases relative to utility services. Mr. Labelle alleged Verizon “stepped down” its legal rights when it moved from a lease to an easement agreement. He indicated an easement agreement is different than a lease, as it grants fewer rights than a lease. Mr. Labelle asserted a lease entitles a tenant to all the benefits (and protections) of the landlord-tenant provisions, which are not afforded in an easement agreement. He offered an example of a dispute between the land owner resulting in “padlocking” the site, and Verizon would not have recourse. Mr. Labelle alleged when the Land Division Act was created, it was not intended to apply to utility type uses because if it was applicable to utilities, every Consumer’s Energy and Detroit Edison easement would have to be a separate piece of land which could not meet the requirements under the Land Division Act. Mr. Labelle believed Verizon is similar to utilities and offered a switching building in an electrical substation owned by Detroit Edison as a comparative example.

Leland Calloway, Jacobs Engineering, PO Box 2297, Southgate, indicated the property is located in a C-2 district with a billboard and commercial building on site in a high traffic area with “similar” intensities. He noted the appellant’s letter alleged the Planning Commission made its decision without enough proof presented to support the cell tower at the proposed site, as only one representative for the applicant provided favorable evidence during the three (3) Planning Commission meetings. Mr. Calloway reminded Board members the Planning Commission met three (3) times to perform their due diligence on this proposal with evidence presented by experts (Michigan certified engineers) for Verizon Wireless, and decided to approve the cell tower at the proposed location. He stated Meridian Township’s cell tower ordinance does not require the Township to hire independent engineers to affirm or deny evidence presented for a project before them.

Mr. Calloway also read a statement contained in the appellant’s letter which stated, “The proximity of the proposed site for this project is the front gate to the Township. The 90 foot tall structure right by the gateway would become a destructive and distasteful welcome sign for people entering Meridian Township.” He stated Mr. Labelle adequately covered the Township’s obligation concerning decisions made about cell phone towers with regard to aesthetics. Mr. Calloway stated the Planning Commission vetted Ms. Yang’s comment during the three (3) meetings where this was discussed and decided her allegations did not have substantiation relative to this application.

Mr. Calloway noted another statement contained in the appeal indicated: “There’s a cluster of health related businesses [and she names quite a few] within one (1) mile of the proposed project.” He alleged since the issue of health effects had been thoroughly vetted and addressed under the Telecommunications Act, he did not believe the appellant’s statement relative to this application.

Mr. Calloway noted another point in the appeal stated: “During the last meeting, several Commissioners were concerned about legal issues should the Commission ultimately deny the application.” He clarified that at the last meeting, Planning Commissioners reviewed the Telecommunications Act relative to cell tower location to delineate their rights under the Act, determining the legal extent of the Township’s exposure in the event of denial. Mr. Calloway believed such action was their due diligence in considering the cell tower application. He did not believe Commissioners were “traumatized” about the Township being sued, as alleged by the appellant.

Mr. Calloway addressed the last allegation in the appeal: “The proposal for the first cell tower application before the Township in a long time and the process of approval/denial should be set as an example for future reference, given that wireless communication is a growing business in general.” He responded that one of the issues discussed during a Planning Commission meeting was the proposal meets the requirements of the Township’s cell tower ordinance, alleging a denial “to set an example” contradicts what is allowed for cell towers by ordinance. Mr. Calloway indicated the necessary remedy would be to amend the Township’s cell tower ordinance to prohibit cell towers in the C-2 district.

- Appellant

Ginger Yang, LotusVoice Integrative Therapies, LLC, 4994 Park Lake Road, East Lansing, offered a photograph of her business in relation to the proposed cell tower, highlighting it is proposed to be located adjacent to her business. She indicated she owns the building and recently paid off her loan. Ms. Yang added that she has been a residence of Meridian Township since 2000 and provided other personal information about her background in the Township. Ms. Yang extensively described the nature of her health care business.

Ms. Yang indicated when the proposal first came before the Planning Commission at its June 8, 2015 meeting, the original application indicated it would be a land lease, proposed a 1,000 gallon liquid propane tank for the backup generator, made no mention of colocation for other carriers and did not indicate it would be of stealth design. During that meeting, she asserted the representative for Verizon Wireless stated he would provide additional data at the June 22, 2015 Planning Commission meeting. She maintains that, instead, the applicant came back with a revised plan at that June 22<sup>nd</sup> meeting, changing the type of agreement from a lease to an easement, the fuel for the backup generator from liquid propane to diesel, and the applicant would now allow colocation on the tower.

Ms. Yang provided the Board with a legal definition of an easement. She referenced staff documents which delineated lot width and lot area requirement for leasing within C-2 zoning district standards. Ms. Yang believed that by claiming the application is a renewable easement v. a lease, the Township is allowing Verizon Wireless to circumvent Township ordinances. She discussed the pros and cons of various fuels for the backup generator. Ms. Yang stated her clientele are health conscious and sensitive to environmental elements.

Ms. Yang questioned the need for the cell tower at the proposed location, as the only data presented during all three (3) Planning Commission meetings was from the cell tower company. She alleged the Planning Department failed to present an unbiased, informed or verified engineering analysis to the Planning Commission on the need for the cell tower in

that specific location, requesting more evidence be provided to justify the Commission's decision.

Ms. Yang believed it made more sense to construct a new tower at the Dawn Avenue location with a subsequent need to request several variances than to construct a tower at the proposed location. She showed pictures of buildings and sites on Dawn Avenue, adding industrial sites already emit noise and odors. Ms. Yang also mentioned other sites on Park Lake Road which she believed could serve as an alternative site for the location of the cell tower.

Relative to the legal ramifications which could result from denial of the cell tower application, Ms. Yang believed the legal concerns expressed by Planning Commissioners at their July 13, 2015 meeting should be verified by a legal consultant rather than by speculation or self-interpretation of the law by Planning Commissioners. She referenced a May 31, 2015 news article in the *City Pulse* titled, "Attack of the 300-foot mushroom" which discussed the denial of a cell tower proposal in Clinton County.

Ms. Yang asserted the proposed location for the cell tower is not the best choice as Grand River Avenue is the most important business district inside Meridian Township and is considered the "frontgate" to the Township. She questioned if a 90-foot tower should be a welcome sign to visitors entering the community. Ms. Yang challenged the Board to consider whether this tower fits into the vision of future development of the Township.

Ms. Yang alleged that given wireless communication is a growing business in general and this proposal is the first cell tower application before the Township in a long time, the process of approval/denial should be set as an example for future reference. She questioned the number of antenna which could be placed on cell phone towers.

Ms. Yang believed the Planning Commission approved the proposal "out of fear" of being sued and all legal issues needed to be verified by a legal "consultant." She referenced a July 1, 2015 on-line article ([www.paloaltoonline.com](http://www.paloaltoonline.com)) titled "New Rules Approved for Proposed Cell Tower" and discussed its merits.

Ms. Yang concluded by stating the Township should be involved in master planning, "not rubber stamping." [Appellant submitted a Powerpoint presentation identified as Board Deliberation #11A/13B in the August 18, 2015 Board packet]

- Planning Commission representative:  
Planning Commissioner Deits addressed the myriad issues vetted by the Planning Commission:
  - This location is the type of preferred location indicated through the Commission's reading of Township ordinance
  - He indicated the Planning Commission felt both of the aforementioned issues were consistent with the Township's ordinances and, therefore, there was no substantive basis to reject the project on those grounds.
  - Issue of the easement  
Planning Commission members were "puzzled" by the question of the legal definition of a permanent renewable easement v. lease and how that would impact the positioning of this tower and the Land Division Act's impact on that decision.

Planning Commissioners did not hear the argument from the applicant during their meetings that this should be treated like a public utility. Commissioner Deits determined that cell tower companies are not a public utility.

The staff report contained in both the Planning Commission packet and the Board's packet stated the applicability of the Land Division Act would be dealt with by the Zoning Board of Appeals (ZBA), since a variance would be required. It is customary that if a variance is required, the Planning Commission conditions its approval on the "necessary variances." Commissioners concluded this issue was "not one they would weigh the decision based upon."

- Height of the tower

Planning Commissioners agreed the tower was to be constructed according to the height limitations, etc. embodied in the Township's cell tower ordinance.

Commissioner Deits reiterated the "sense" of the group was that, given the applicant is willing to allow collocation on the tower, having the tower there at that height allows for collocation. He added that since this is a line of sight communication, the higher up on the tower, the more effective the signal. Commissioner Deits stated a short tower becomes less desirable to collocate and another tower needs to be built, with a resulting question on the balance between how many towers in the Township (i.e., one 90 foot tower vs. several shorter towers).

- Backup diesel generator

Planning Commission members preferred the diesel backup powered generator instead of a liquid propane tank for storage reasons. He reminded Board members this backup generator will only operate if the power is out and, in all likelihood, there will be no lights and power in the adjacent businesses at that time. Commissioners did not believe there was an adequate concern regarding the interference with the activity of the nearby businesses during the time the backup diesel generator was in operation.

- Aesthetics and nature of the gateway to the Township

Planning Commissioners acknowledged they were strongly constrained by the Federal Communications Commission (FCC) with the "things" they could bring forward. It was the Commissioners' opinion those points were not factors they could take into account. He mentioned the clock tower on Township property, but added the Township negotiated as the owner of the property.

- Dawn Avenue

Planning Commissioners had considerable discussion on the Dawn Avenue site, which was prior to Board approval of the multi-family project scheduled to be constructed adjacent to Dawn Avenue. Commissioner Deits noted the Commission did not have a choice, as it is presented with a need and they act upon that need. He indicated it is not their job to "second guess" engineers on these matters.

- Health effects

Commissioner Deits qualified his remarks by stating the Commission would be more than happy to have a legal opinion on any portion of its decision, as they are "lay people" performing their due diligence. He showed an excerpt on the overhead projector from the FCC website which clearly elucidated what authority state and local governments have in citing cell towers as follows: "The statute also preempts local decisions based either directly or indirectly on the environmental effects of radio frequency." He offered an example of a direct effect such as someone claiming their health would be impacted by

the tower. Commissioner Deits offered an example of an indirect health effect claim as individuals who had an opinion about cell towers making the decision to not frequent a business in the area. He asserted that both examples are specifically precluded from consideration.

Commissioner Deits maintained the Planning Commission is so constrained in its ability to act in these matters that if it denied the cell tower, the Federal Communications Act enables any person to appeal the decision for expedited consideration in court. He noted litigation could be brought from the applicant but also from any resident of the area who feels their cell service has been compromised by failure to approve the tower.

Commissioner Deits concluded by indicating the Planning Commission, on balance, could not find a substantive reason upon which it could build a case to allow denial of the cell tower application.

- Public

Nora Kuo, on behalf of Kathleen Donahue-Brown, 2221 Burcham Drive, East Lansing, read Ms. Donahue-Brown's statement in opposition to the cell tower location near Park Lake Road and Grand River Avenue. She asserted Planning Commission approval was based on its fear of being sued. Ms. Donahue-Brown requested other locations be reviewed, the need for the cell tower at this location be verified, and the issue of renewable easement v. lease be addressed and resolved. She questioned whether a legal consultant had been retained by the Township to interpret the FCC regulations regarding cell towers. Ms. Donahue-Brown also questioned whether the Planning Commission Chair's suggestion of natural gas for the backup generator had been explored. She inquired if the Township had reviewed the Master Plan for the proposed location and cell tower locations in general, or is it reacting to the applicant's request for a particular location. Mr. Donahue-Brown also questioned whether the proposed cell tower fit the vision of the Mid-Michigan Program for Greater Sustainability. She asked if there was consideration given for an alternate location.

Lori Reyes, 4211 Southport Circle, Okemos, noted her review of the minutes did not indicate data was provided about the number of complaints about poor service, and she would like to be provided with that hard data. She voiced concern that the question of whether the land owner has provided a lease or easement is still unclear. Ms. Reyes indicated her research for a definition of renewable easement did not provide any results. She believed placement of the tower at the proposed location could be a detriment to surrounding businesses and requested the Board consider other location sites.

Daniel Kroth, 4320 Kenosha Trail, Okemos, believed the Township has the duty to defend its residents and businesses within it as well as reflect the views of its residents. He noted aesthetic effects do cause economic detriments to the nearby properties, homes and businesses. Mr. Kroth cited a 2014 study by the Pennsylvania Association of Realtors which revealed out of the 1,000 people polled, 79% of the respondents indicated under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or cell antenna. He cited a different 2014 study undertaken by the National Institute for Science, Law and Public Policy which found that 94% of homes buyers would pay less for property located near a cell tower or antenna. He believed it appropriate for the Board to look after the interests of its residents, both aesthetic and economic in nature through protection of property values around the proposed site.

Neil Bowlby, 6020 Beechwood Drive, Haslett, stated the applicant identified two specific needs which would be met by the cell tower; need for increased coverage in the area to the north and east and bandwidth. He stated that during a conversation with Mr. Calloway, Mr.

Calloway indicated that bandwidth issues were not height dependent; only coverage was dependent upon height. Mr. Bowlby stated the four (4) maps included in the Board packet showed coverage and signal strength at the existing condition, a 50 foot tower, a 75 foot tower and a 90 foot tower, with a colored coded legend which correlated with the intensity of signal. He alleged overlaying the two (2) maps would allow computation of the difference. Mr. Bowlby displayed graphs he created which illustrated what he believed were signal strengths at various tower heights, culminating in a statement that there is little increase in signal strength between a 75 and 90 foot tower.

Mr. Bowlby requested the board remember that capacity and band width are not dependent upon tower height. He explained his system of using the block of color, assigning them a number value, summing them up and looking at the increase. He calculated them as follows:

- 90 foot tower would provide 100%
- 75 foot tower would provide 91%
- 50 foot tower would provide 76%

Mr. Bowlby questioned whether the applicant had provided a notarized letter of intent to lease excess space on the facility to the Township as required by the Wireless Communications Overlay District Ordinance. He questioned the legality of Verizon Wireless charging a reasonable fee for a shared use lease for something on which they only have an easement, also as required by the Wireless Communications Overlay District Ordinance.

Curtis Huo, 2233 Burcham Drive, East Lansing, a 2014 graduate of Okemos Public Schools. He stated cell phones should be placed in unobtrusive locations. Mr. Huo acknowledged the official East Lansing/Meridian Township border is near the Coral Gables Plaza, but the bridge feels like the gateway into Meridian Township. He stated Mr. Kroft has provided “unbiased expert estimates and surveys” to support an alternative site for the cell tower. Mr. Huo believed property devaluation near cell towers to be a real concern and urged the Board and the applicant to reconsider the site for the proposed tower. He urged the Board to “not approach the future of this Township in the hands of biased outside corporations and planning with empty stamps of approval.”

Procedural steps for the appeal: (Questions for the Attorney (See Agenda Item #10))

Q. Do you think we should ask our questions of the staff, the applicant and the appellant now during the hearing or if it is appropriate to have those questions asked during the discussion part of the appeal?

A. It would be preferable if we did it now. This is the time where we’re building a record to support whatever decision we make, so to the extent that you have questions that are going to draw information from either the appellant or the applicant, now is the time to do it to put in on the record. I’d be happy to address a couple of questions that were raised here at the appropriate time.

Q. Also, would it be appropriate for the applicant to have a time to address what the appellant brought forth. Did we forget that step?

A. Some kind of rebuttal time would be typical in a public hearing of this type where you’re building a record.

Q. Then it would also be appropriate for the appellant to be able to respond to the applicant’s comments back, so it is basically a cross rebuttal?

A. They each get one more shot.

Q. Should we ask our attorney if it’s fair for us to limit the time to three (3) minutes?

A. For the applicant and the appellant, I think you can give them a little more time because

they do have to respond to all of the comments that have been received, as opposed to the comments that you heard from other folks; you don't give them two (2) bites of the apple. But, certainly the appellant and the applicant ought to have an opportunity to address each other's remarks.

Q. So, how much time are you talking about?

A. Whatever you think is reasonable under the circumstances; there is no test.

- Applicant's rebuttal:

Rob Labelle, legal counsel for Verizon Wireless, stated the Land Division Acts specifically states it applies to leases of more than one (1) year and specifically excludes an easement from the definition. He stated that Verizon, in this case, is receiving an easement. Mr. Labelle pointed to the definition applied by the appellant as an example, not a definition. He indicated the difference between an easement and a lease is that an easement is a right to use and a lease is the right to occupy, adding that difference is substantial. Mr. Labelle noted when you occupy something, you gain a right that requires legal requirements in order to house your usage, whereas a use is a more limited entity. He emphatically stated Verizon will not occupy the site, but use the site the same way as any other utility. Mr. Labelle clarified he was not suggesting that Verizon Wireless is a utility, but with regard to the context of the Land Division Act, Verizon is analogous to what a utility would do rather than someone who is leasing or renting an apartment. He iterated Verizon's use is distinctive from occupying the site. Mr. Labelle again used his earlier example about Detroit Edison's creation of a substation to highlight it would obtain an easement for that purpose, construct the same buildings and towers as Verizon is proposing, noting the Land Division Act is not applicable to Detroit Edison.

Mr. Labelle clarified the applicant has never used the term "renewable easement" and was unsure as to the origin of that term. He stated an easement is not required by law to be perpetual, and can be for a limited amount of time, a specific term of years, or a period of time and then renewed.

Mr. Labelle objected to an assertion the proposed project is a violation of the Land Division Act and will require a variance. He indicated if it is defined as an easement, then it is not a violation of the Land Division Act and no variance is required. Mr. Labelle believed the determination of whether the request is determined to be an easement is central to this issue. He stated Verizon has provided the information and necessary evidence to prove that is the fact in this case. Mr. Labelle emphatically declared that should the Township legally challenge there was a violation of the Land Division Act, Verizon would defend the lawsuit. He offered that legislative history for the Land Division Act makes clear it was never intended to be applied to this type of use as opposed to occupancy.

Mr. Labelle addressed the shot clock that is applicable under Michigan law, the specific time period under which the Township must act before it will be deemed approved. In this case, he noted the application was deemed administratively complete on May 18<sup>th</sup> and, as a result, August 16<sup>th</sup> was the last date this case could be acted upon. Mr. Labelle alleged it is not true the Board needs to do more review, as the Planning Commission discussed this proposal at three (3) of its meetings, with additional information provided at the last two. He believed the deliberation summary provided by the Planning Commission representative demonstrated the Planning Commission was ensuring it complied with the law applicable to the Township, which included the Telecommunications Act.

Mr. Labelle noted Verizon chose the proposed location because it complies with all requirements of the Township's Wireless Communication Ordinance, does not require a

variance and is consistent with the Township's Master Plan. He added that under the Telecommunications Act, Verizon is required to allow colocation, and is amenable to sign a notarized letter of intent because Verizon is already bound by law to do so.

Mr. Labelle addressed the graphic information supplied by Mr. Bowlby regarding the different cell tower heights and accompanying information which went along with those heights. He stated he is unsure where such "data" was obtained. Mr. Labelle refuted Mr. Bowlby's claim regarding the content of a conversation he had with Mr. Calloway from Jacobs Engineering, as line of sight is important and capacity is dependent upon height. He stated the Township's ordinance compels the applicant to provide for colocation on the tower, which Verizon could not do if the tower was not sufficient in height.

Mr. Labelle added the proposed cell tower is a grey monopole with no guy wires or lights on a site that is surrounded by trees on a major thoroughfare in a commercial district.

- Appellant's rebuttal  
Ginger Yang did not understand why the cell tower does not occupy the land. She asserted the term "renewable easement" was first used by Mr. Calloway at the June 8, 2015 Planning Commission meeting. Ms. Yang maintained the proposal is for a lease, not an easement. She believed the shot clock bullies the citizens and the Township Board into making a quick decision. Ms. Yang requested an unbiased engineer confirm the data presented by the applicant and determine whether there is a better location for the tower.

Ms. Yang indicated she asked the young adults who spoke earlier to share with the Board their vision for the future of Meridian Township.

- Board discussion:  
Trustee Veenstra requested clarification regarding the conversation between Leland Calloway and Neil Bowlby.

Mr. Bowlby replied he did not recall whether it was the first or second Planning Commission hearing. He alleged he approached Mr. Calloway after the meeting to distinguish between capacity and bandwidth as a result of discussion about the proposed cell tower helping with the capacity issues for the overloaded condition of the cell tower north of Haslett Road on Okemos Road. Mr. Bowlby maintained he asked Mr. Calloway whether capacity or bandwidth were dependent upon cell tower height and Mr. Calloway responded they were not.

Trustee Scales assured Ms. Yang the Board will not allow her to be bullied by any corporation. He stated the Board will get to the bottom of the issues and do what is appropriate in accordance with law.

Lease v. easement: (Questions for the Attorney (See Agenda Item #10))

- Q. In listening to all of this, I heard that originally this was presented to us as a lease and later presented to us as an easement. I'm not sure if I'm correct about that, but I think that's what I heard. What I'd like to know is is this a lease, is this an easement and how does whatever arrangement this is comply with the Land Division Act?
- A. It is probably the one issue that confounds the decision in this case. The question of the easement is what's at issue. There's the old saw that, you know, bad facts make bad law or good facts make bad law or the facts sometime result in a bad decision. What is troubling about this case is that it appears from the record that originally what was proposed is a lease. If there was a long term lease proposed then there's no question that the Land Division Act would require that there be a lot split, and under our ordinance in order to

have a lot split, you “gotta” have 100 feet of frontage on a public road. And, this parcel does not have 100 feet of frontage, which would mean that this parcel couldn’t be split, which means it couldn’t be leased, which means it would be an inappropriate place for a cell tower. Simple as that. So that’s why this easement v. lease question is such a big deal.

Now, Mr. Labelle is correct in that there is a difference between an easement and a lease and the principle difference is the exclusivity of possession. So, in a situation where you have an easement, you have a right to use; you don’t have a right to occupy. You have a right to cross over; you have a right to take advantage of the property, but you don’t have the right to necessarily exclude others and the like.

What’s confounding about this particular easement is there is an exclusive right to occupy. There is a 50 by 50 foot parcel that’s surrounded by a fence and has a building and tower on it, and there is a requirement by the grantor of the easement that there be non-disturbance with anything that Verizon wants with respect to that property. In other words, the grantor must assure that Verizon is in no way interfered with in its use of the 50’ by 50’ parcel. And, in fact, any mortgage that comes after, any easement that comes after, any lease that comes after, any sale that comes after must, again, affirm that there’s no disturbance that will interfere with Verizon’s use of that 50 by 50 foot parcel.

That said, there’s not a court in this state that has addressed the issue of whether you can use an easement in this situation and avoid the Land Division Act. So, what’s squarely presented for us is whether we want to be the test case. Do we want to finance the issue and do we want to take on an issue where I think the law is very unsettled and where I think Verizon has a very good argument on their side that, indeed, the Land Division Act does not apply. They are not a public utility, but it’s an easement. While it may look like a duck, walk like a duck and quack like a duck, you can have an easement that gives you a great deal of possessory right and can be non-exclusive and the like.

What confounds us in this case is it started out being proposed to be a lease and suddenly became an easement. What also confounds us (and something we don’t have) is how much is being paid every year for this easement. If it was a buck a year, it would be one thing; something tells me it is not a buck a year. If the rate is somewhere close to what Verizon is paying for leased space, that would be a fact that would go into the question of whether or not this is really a lease in easement clothing or truly an easement. I can’t give you the answer to that question and the courts can’t give you an answer to that question because they haven’t faced it. There’s no reported decisions.

Now, let me address a couple of other issues, though, because I think it does affect the public’s perception of this and the Board’s responsibilities. There was an article written by Larry Merrill (who is the Executive Director of the Michigan Townships Association) just last month, titled “Lamenting the Loss of Local Control.” He listed all of the things that the Legislature and the Congress have done to remove this Board’s ability to address matters of local concern. One of those things where Congress and the State of Michigan have removed a good deal of our authority is in the realm of cell towers. Both Congress and the Michigan Legislature have weighed in and have severely constrained this Board’s ability to regulate where cell towers go.

So, we have the shot clock; we have 90 days to decide. We have to accept the data provided by the cell company and if we want additional data, we “gotta” go get it ourselves and pay for it. We can’t charge more than \$1,000 for the fee, yet we’re supposed to go out and hire experts that may cost tens of thousands of dollars if we want to attempt to confound a cell tower proposal. We have several hands tied behind our

back when dealing with these situations, which is frustrating to the public because the public looks to this Board to defend its interest, and yet the Legislature and the Congress have taken away our ability to do so in many cases. This is one of those cases. I don't think the decision here made by the Planning Commission was based upon a fear of being sued, but on a recognition of the limited authority they had under the law. I thought Mr. Deits, frankly, did as good a job as a lawyer could do in explaining the difficulties that we have in addressing these issues. The Planning Commission should be complimented for taking those factors into account and recognizing the limitations that we have as a Township.

Whether a renewable easement is a lease or not is for somebody else to decide; not us. Whether we have a diesel generator as a backup, or a propane generator or a natural gas generator is not going to be a factor that we are going to be able to hang our hat on unless we can show by substantial evidence that the use of that diesel generator will have some clearly deleterious effect on the surrounding properties. It is a backup generator; it is going to be very tough to do so.

The question of need; we can address issues of need, but we have to be very specific in our findings of fact. Again, under the law that so severely limits our jurisdiction, we have to point to specific shortcomings in terms of the data that has been provided by the company with respect to need. Otherwise, we are essentially required to accept their data as being accurate. We have a great deal, again, of difficulty due to the federal and the state law.

With respect to the argument that there are other preferable locations, unfortunately that is also not the test. The test is whether this location is suitable, not whether there might be another location that others might find to be more suitable. That, again, constrains our ability to decide, which makes it very difficult.

And finally, with respect to aesthetics generally. I thoroughly respect the idea that this is the gateway to the Township. I've lived here for some 35 years as well. But, with respect to aesthetics, we need to have a specific expert report or some kind of substantial evidence that would show that the aesthetics command a different decision than approval. Again, it is a very high standard and a very difficult burden to overcome. When all is said and done, we're left with the decision of the Planning Commission and a decision by this Board will need to be made as to whether or not substantial evidence has been provided that addresses the limited factors that we can take into account to then justify denial of this application. The only one that I find to be troubling and difficult to answer one way or the other is the issue of this easement; is it a lease or is it not a lease. As a Township attorney, one of my goals is to make sure that while doing public service, I don't get you sued. I wish you to take that into account. There is not an answer to that question that I can give you.

- Q. So based on my original question and what the applicant's attorney stated to us when he stated that when they stepped down from a lease to an easement, they could actually be barred from the use of that property by the property owner, that was an incorrect statement.
- A. Again, it's one of those things where it depends. When I read this easement, when I look at the subordination and non-disturbance provisions and I combine it with the amount of the rent and the fencing of the property and what really becomes as a practical matter exclusive use, I could make a factual argument that what they have really done is leased the property and they're excluding all others from its use.

On the flip side, that's what lawyers do. There's another lawyer with a different point of view where this is a non-exclusive easement and somebody else can come in and use it provided they don't disturb Verizon's property and its use. If you get a judiciary that engages in strict construction; if it says it's an easement, it's an easement and the Land Division Act doesn't apply. If you get a judiciary that looks at it and says, "Well, if it looks like a duck, and it walks like a duck and it quacks like a duck, it's a duck", you may get a different decision. The courts have not addressed that issue.

- Q. So I can't go and buy the property tomorrow and say you can't build here.  
A. Once the tower is up, you cannot the way I read the non-disturbance agreement.

Sustaining the Appeal: (Questions for the Attorney (See Agenda Item #10))

- Q. Is there any way we can sustain this appeal?  
A. That's the decision for you to make, but I don't see a legal impediment to affirming the Planning Commission.

Evidence regarding need: (Questions for the Attorney (See Agenda Item #10))

- Q. We've been asked to be given evidence that there is a need for this. Is the need part of...the need isn't exactly in our criteria for the special use permit. I'm presuming it is somewhere in the ordinance.  
A. Well, the issue of need is one of the limitations in terms of what we can say about need based on the federal and the state law. That's the question. The applicant comes in indicating a need and we have to come up with our own evidence to countermand that. We have to have substantial evidence showing there is no need, for example, if we were going to deny this permit.  
Q. Okay. So they don't have to prove that there is a need.  
A. They have to give us some evidence, but then it falls to us to find other evidence that they're wrong.

Treasurer Brixie questioned whether the Board could add conditions which would provide remedy to some concerns expressed by the appellant. She addressed criteria number 4, 8 and 9 in the township's special use permit request standards. Treasurer Brixie read criteria number 4, which states the project will not adversely affect or be hazardous to existing neighboring uses. She indicated the appellant stated concern about the use of diesel fuel on the site and provided a comparison chart of different types of fuel. Treasurer Brixie referenced special use permit criteria number 8 which indicates the project will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any person's property or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare and odors.

Treasurer Brixie requested the appellant explain "what goes on inside your business, what types of things you are doing in there."

Ms. Yang responded LotusVoice is a wellness center. She stated she is a music therapist who works with McLaren's hospice patients and also works as a massage therapist with a osteopathic doctor who refers patients dealing with chronic pain. Ms. Yang indicated most of the clients who visit her business have a medical issue and need a tranquil atmosphere and calming surroundings. She believed the noise of a diesel powered generator, as referenced by Treasurer Brixie, would be disruptive.

Treasurer Brixie pointed out that in Ms. Yang's presentation, she stated diesel fuel had odors and was bad for the environment. She inquired if Ms. Yang was concerned about the

environment in the nearby vicinity of the cell tower.

Ms. Yang responded in the affirmative, stating she is an environmentalist.

While acknowledging the diesel powered generator would only be used in a situation where power was lost, Treasurer Brixie reminded fellow Board members of the December, 2013 ice storm where residents close to this location were without power for ten (10) days.

Placement of conditions on the approval: (Questions for the Attorney (See Agenda Item #10))

Q. Would it be appropriate for us to put on a condition that we have a natural gas generator put in there instead? Is that something that we can do within the....I mean, it seems like that can be a condition that we could add within the regular confines of the special use permit.

A. We can put conditions on the approval for which we have substantial evidence to support applying them. I caution though, that we shouldn't rely upon opinion; we have to rely upon fact in establishing those conditions. So, to rely upon what somebody feels may be appropriate under the circumstances is not permissible under the Federal Communications Commission (FCC) rules and regulations and under federal and state law. Instead, we have to build a record where there is some evidence to support the kind of restrictions we are putting on. That's the difficulty.

Treasurer Brixie added a fuel comparison chart has been provided for us as part of the record.

Applicant's willingness to accept conditions on the approval: (Questions for the Attorney (See Agenda Item #10))

Q. We have the applicant sitting right here. What if the applicant just walked up to the mic and said that they would agree to do that if we put that in that condition?

A. Then it's a nonissue.

Trustee Scales believed any good community neighbor/corporate citizen would walk up to the mic and do that if they had the opportunity.

Treasurer Brixie added the site is located next to a railroad track and concern has been expressed about train collisions. She noted wherever a fuel tank it located, there is the risk of spillage. She believed it a good practice to eliminate external fuel storage tanks whenever possible. Treasurer Brixie inquired if the applicant would be amenable to installing a natural gas hookup for the generator instead of the diesel fuel.

Mr. Labelle responded they would not. He indicated the natural gas line would make the same amount of noise as the proposed diesel generator, which is similar in noise as the standard vacuum, and offered to provide the Board with specific details on that. Mr. Labelle added if there was a power outage, the Verizon generator would not be the only one on in the area. He believed the noise of the generator is not the issue. Mr. Labelle indicated the proposed diesel generator meets all requirements (and beyond) as it is double lined, has a spill containment segment placed underneath the generator and, as a general matter, is never used. He noted natural gas lines also rupture. Mr. Labelle stated that diesel, natural gas and all types of backup generators are under the same hydrocarbon regulations prescribed by the Michigan Environmental Protection Act (MEPA) as well as the Department of Natural Resources (DNR).

Mr. Labelle indicated a natural gas line would require trenching at the proposed location and

he believed it unnecessary. He stated he would take any proposed recommendation back to the applicant for consideration; however, he had not heard compelling evidence to suggest that a natural gas line was more justified than diesel, specifically given the protections required to ensure the safety of a diesel powered generator.

Clerk Dreyfus asked staff if the applicant brought to the Township an identical project but with a stealth design, would the Board be discussing the project, or is it a use by right.

Director Kieselbach responded that under the overlay district, stealth design is a use by right and would be reviewed by staff during site plan review. Director Kieselbach added that his decision on the site plan could have been appealed, but it would not have been before the Planning Commission for a special use permit.

Clerk Dreyfus requested clarification on the overlay district.

Director Kieselbach stated the Wireless Communication Ordinance is set up as an overlay district, which allows cell towers in any zoning district.

Clerk Dreyfus asked the applicant why Verizon did not choose to present a stealth design for this project.

Mr. Labelle responded the basic monopole is consistent with the character of the neighborhood, which he defined as commercial, immediately adjacent to a railroad track and a large thoroughfare. He added the site itself is an auto parts store. Mr. Labelle stated cell towers are a part of the urban/suburban landscape. Mr. Labelle added that a 90 foot stealth tower would effectively eliminate colocation, offering as examples the ramifications of antenna placement for a flagpole or tree stealth tower. He noted Verizon normally presents 200 foot cell towers for consideration.

Mr. Labelle stated the data shown by a member of the public which demonstrated different coverages at lower heights was “made up” and data does not exist which supports that assertion. He stressed that 90 feet in height is needed to close the capacity issue and deal with coverage at the same time, and indicated a stealth tower at this location would result in the need for another tower as colocation would not be feasible.

Mr. Labelle likened a cell tower to an electrical transmission tower, a water tower, telephone pole or light poles used in shopping centers in that they are all tall structures in an urban/suburban environment. He believed this grey non-corrosive tower will blend into the environment and “gerrymandering” it into something else will make it more visible. He believed making it stealth by creating it to look like a 90 foot pine tree or lit flag pole will make it stand out.

Clerk Dreyfus inquired of Director Kieselbach as to the precise time frame on the shot clock. He asked how much time is available for deliberation.

Director Kieselbach stated he did not have that information readily available.

Clerk Dreyfus inquired if the Board was required to make a decision at the next Board meeting.

ATTORNEY COMMENT: I wasn't aware that it was filed in May, but you're basically through your 90 days.

Trustee Styka inquired of the applicant as to the date the agreement with the property owner was changed from a lease to an agreement.

Mr. Calloway was unsure of the exact date, but recalled that he submitted the application and received staff review. He indicated that during staff review the Land Division Act was mentioned and when he discussed the land division with the principal planner, it was changed to an easement.

Trustee Styka believed is imperative to ascertain that date.

Mr. Labelle added it would have been before May 18, 2015.

Clerk Dreyfus pointed to a document in the Board packet dated June 4, 2015 which states the status of applicant is a land lease.

Mr. Calloway indicated a land lease was never provided to the Township.

Mr. Labelle explained that after receiving comments from the Planning Department, it was changed from a land lease to an easement. He noted the planning staff did not make changes to the application forms, as it was originally proposed as a land lease. Mr. Labelle reiterated that an easement is a “lesser” right than a lease.

Trustee Styka believed that a change in the application changes the application date, adding Verizon now has a different application.

Mr. Labelle stated that is not how the shot clock works.

Trustee Styka responded that would be an arguable point with any judge.

Mr. Calloway clarified his understanding that a complete application had to be submitted to the Planning Department to be placed on the June 8, 2015 Planning Commission agenda. He believed the Township deemed Verizon’s application complete as of May 18<sup>th</sup> or they would not have been placed on the June 8<sup>th</sup> agenda.

Date on which the application was considered administratively complete: (Questions for the Attorney (See Agenda Item #10))

Q. It has always been my understanding that an application is not submitted until it is complete and if it is changed, I believe that starts the clock over again. I would like Mr. Schultz to address that question, please.

A. Staff is going to have to tell you when they deemed the application complete. We have 90 days from when we receive an application that is administratively complete to complete this process. What I heard was May 18<sup>th</sup>. If there is a different date or if there were amendments to the application or changes to it, it would start the shot clock over.

Q. You would start it over?

A. If it’s a different application than what was submitted on May 18<sup>th</sup>, but I don’t know the answer to that question. Staff will have to answer it.

Q. Would changing it from a lease to an easement start the clock over again?

A. Based upon the form and the application we have, I’m not sure that would be sufficient to start the shot clock over again. You’ll have to look again at how staff processes these

applications and when they signed off on it so that it could be taken to the Planning Commission.

Q. Following on the time theme, if they did submit it on May 18<sup>th</sup>, does that mean that we have to decide tonight?

A. We do.

Treasurer Brixie suggested the Board take a short recess to allow the Township Attorney to work with staff to determine the date of application, which is germane to Board deliberation.

ATTORNEY COMMENT: Absolutely.

Q. If May 18<sup>th</sup> is the date, August 16<sup>th</sup> is the 90<sup>th</sup> day, and we don't have a say so anyway.

A. Potentially, only if the applicant decided to rely on the shot clock.

Attorney Labelle agreed to waive the two (2) days.

[Supervisor LeGoff recessed the meeting at 8:43 P.M.]

[Supervisor LeGoff reconvened the meeting at 8:57 P.M.]

Q. I guess we need to hear about when this clock expires.

A. Well, first of all, let Mark fill you in on when they deemed the application to be administratively complete. I think that's the first question.

Director Kieselbach explained in order to have the hearing on the Planning Commission's agenda for June 8<sup>th</sup>, the materials had to be submitted to the Planning staff and deemed complete by May 18<sup>th</sup>. The application was accepted and deemed complete on May 18<sup>th</sup> and the Planning Commission held the cell tower hearing on June 8<sup>th</sup>.

ATTORNEY COMMENT: Which means, then, regardless of what standard you pick, we're on the 92<sup>nd</sup> day, as of today, with the understanding that attorney Labelle has waived two (2) days' worth of time.

Q. Which brings it up to what date?

A. That means tonight is the night to decide this issue.

Q. I'm very concerned. I take it this 90 days is in what, federal law?

A. Well, there's federal guidelines and then there's state law. The state law is actually 60 days for colocation and 90 days for new construction.

Trustee Veenstra expressed concern that staff did not facilitate this application through the Township process before the deadline.

Trustee Scales clarified that staff did perform their duties; however, the special use permit was appealed to the Board.

Q. Does the time start after the appeal?

A. No, the time starts when the application is complete. The appeal is part of the process.

Q. Was this business about changing from a lease to an easement complete on May 18<sup>th</sup>?

A. Yes.

Clerk Dreyfus voiced confusion over why the document contained in the Board packet was dated June 4<sup>th</sup> and indicated it was a land lease.

Director Kieselbach explained it would be necessary to consult with Planning staff on that date. He added it could be deemed complete with what was originally provided.

Clerk Dreyfus inquired about when an applicant changes something within the application, questioning whether it is a change to the application from being complete to being revised as a new complete application.

Director Kieselbach explained the required lead time in order to schedule a public hearing, so if the material is received and is complete, a public hearing is scheduled. He stated if additional material is received after the application is deemed complete and before the public hearing, staff does not stop and start the clock over, as the project would need to then be renoticed and the applicant would have to pay a new fee.

Clerk Dreyfus reiterated the principal planner made the suggestion to the applicant to change the application to an easement and then the change was made, sometime after June 4<sup>th</sup>, as the document in the packet is dated June 4<sup>th</sup> and states it is a land lease. He was unclear how that could be the same application with such a significant change. Clerk Dreyfus believed the process is flawed as the appellant appealed within the proper timeframe, was brought before the Board at the next available Board meeting, and is past the 90 days. He stated there are several flaws within the process.

- Q. Apparently our Planning Department deemed the application complete on May 18<sup>th</sup>, but if there is a significant change to an application, doesn't that start the clock over again?
- A. Not necessarily. When I look at what we have in front of us, the staff memorandum is dated June 4<sup>th</sup>; the application was submitted on May 18<sup>th</sup> so the matter could be put on for a hearing in front of the Planning Commission. The question then is whether staff viewed the revisions or the modifications to the application to be so significant that it is a new application for a different kind of project. Based upon the discussion you've heard here tonight, the difference between this easement and this lease may be significant in terms of the Land Division Act, but it may not be significant in terms of the nature of the project. But that's a decision staff makes when they schedule the matter for a hearing.

Director Kieselbach added the applicant also has a right to go before the Zoning Board of Appeals (ZBA) to seek a waiver from the Land Division Act relative to the minimum standards for lot width and lot area.

Planning Commissioner Deits quoted from the June 8, 2015 Planning Commission minutes which stated, "He added a variance will not be necessary for the lease area, as the agreement with the landlord will be an annual renewable easement for the access and tower site itself."

**Trustee Brixie moved to modify the agenda to place the Appeal of SUP #15061 on as Agenda Item #12C. Seconded by Trustee Veenstra.**

ROLL CALL VOTE: YEAS: Trustees Scales, Styka, Veenstra, Wilson, Supervisor  
LeGoff, Treasurer Brixie, Clerk Dreyfus

NAYS: None

Motion carried unanimously.

Clerk Dreyfus addressed an article contained in the appellant's presentation about the City of

Palo Alto which unanimously denied a cell tower earlier in 2015. Palo Alto's council used a three (3) tier system for evaluating cell phone towers: 1) allowing 150 days to make a decision; 2) applicant must be compliant with the city's development standards and 3) architectural guidelines and permit conditions. Relative to the need for expertise to refute placement of the tower, he believed the Grand River Corridor has been studied extensively and there is visioning in place for the Bus Rapid Transit along this corridor. He indicated a case could be made that the cell tower is not appropriate in this area as it is part of the BRT line along Grand River and at the entrance of the gateway into Meridian Township. Clerk Dreyfus did not believe the Board's hands are completely tied.

Trustee Wilson believed the issue of lease v. renewable easement must have sufficient standing for the Board to reverse the decision of the Planning Commission. She inquired of staff if the ZBA has previously granted a variance for a cell tower application which did not meet the requirements of the C-2 district for land division purposes.

Director Kieselbach replied the clock tower located between the Municipal Building and the Public Safety Building received similar variances as it was treated as a land division and it did not have frontage on a public street.

Relative to a stealth tower, Trustee Wilson indicated she would notice a 90 foot artificial tree (which doesn't look like a tree) more than a cell tower monopole.

Prevailing legal argument: (Questions for the Attorney (See Agenda Item #10))

Q. It seems like the only argument that we really have that might take a chance and we could be the test case in Michigan, is this lease or easement question, am I correct, Attorney?

A. The legal issue.

Trustee Wilson stated if the Township spent thousands of dollars going to court and the appeal was upheld, it would not prevent the applicant from going before the ZBA to request variance noting the Township has set a precedent of granting those.

Trustee Wilson stated if the cell tower is not placed at this location it will be placed somewhere else and be always be in someone else's "back yard."

Clerk Dreyfus believed any zoning decision made by the Board can be appealed to the ZBA. He stated it is a fallback mechanism the Township has in place. He stated the Board is the fiduciary agent of the Township and has the responsibility to uphold Township ordinances. Clerk Dreyfus believed the ZBA is structured to make determinations based on unique circumstances by allowing a panel of five (5) citizens to make those types of decisions. He encouraged the Board not to be concerned about whether the ZBA would approve or not approve the variance(s), but review the case based on its own merits and how it applies to Meridian's zoning ordinance. Clerk Dreyfus believed a significant argument could be made regarding aesthetics and a direct economic impact; however the most compelling question is the one of lease v. easement.

Trustee Wilson countered the Planning Commission vetted this project at three (3) of its meetings, looking at the language contained in Township ordinances and what state and federal law mandate. She believed the proposed cell tower project meets the standards of Meridian's ordinance with the exception of the lease v. easement question relative to the Land Division Act. Trustee Wilson believed the Board is legally constrained by how it can approve or deny the cell tower.

Trustee Veenstra believed evidence presented showed the proposed cell tower would

adversely affect the immediate neighbor to the north (i.e., LotusVoice) and fails to meet the requirement contained in the special use permit criteria number 4.

Supervisor LeGoff disagreed that the neighborhood would be adversely affected by the cell tower.

Trustee Veenstra expressed concern with the 90 day clock, given the fact the clock has run out as compelling evidence that 90 days is not sufficient. While acknowledging a 90 day requirement in state or federal law cannot be changed, he believed Township ordinances can be changed accordingly. He requested the Township attorney address when an application is revised enough so it becomes a new application and the clock is reset. Trustee Veenstra noted the applicant justified the proposed site for cell tower placement because there is already a billboard on the property. He inquired of Director Kieselbach as to the height of the billboard.

Director Kieselbach stated he did not have that information with him this evening.

Mr. Labelle stated it is 50-60 feet, a figure disputed by several members of the public determined to be 45 feet.

Trustee Veenstra inquired as to the height of the clock tower between the Municipal Building and the Public Safety Building.

Director Kieselbach replied it is 180 feet.

Trustee Veenstra reiterated that Federal Communications regulations or federal law only allows the Board limited say in these circumstances. He posed a hypothetical about construction of a 300 foot tower, asking if the Board would have to approve a tower that tall.

Director Kieselbach the applicant would apply for a special use permit for the tower, and the same standards would be applied as the tower before the Board.

Trustee Veenstra also reiterated our ordinance requires a 90 foot setback, and asked if this project meets the 90 foot setback requirement.

Director Kieselbach responded in the affirmative, as the 90 foot tower meets the setback requirement on all four sides.

Trustee Veenstra asked if the application would be “rejected” if it didn’t receive the necessary variances from the ZBA.

Director Kieselbach responded in the affirmative.

Trustee Veenstra asked what variances need to come before the ZBA.

Director Kieselbach replied it would be the distance between the equipment enclosure and the backup generator, noting the ordinance requires a ten (10) foot separation and the applicant has proposed three (3) feet.

Trustee Veenstra addressed the letter from Saber Engineering which states the tower design can withstand 40 miles per hour in winter time with ice. He believed winter winds in Meridian Township can be stronger than 40 miles per hour and was concerned with tower safety in those circumstances.

Mr. Labelle responded the engineering letter addresses tolerances within engineering specifications which builds in “massive” safety factors. He noted no Verizon monopole or tower has ever fallen, even those struck by hurricanes, floods, tornadoes, and aircraft, etc.

Supervisor LeGoff closed the public hearing at 9:27 P.M.

## 12. ACTION ITEMS

Supervisor LeGoff opened Public Remarks.

Charles Barbieri, attorney on behalf of The Ponds Cooperative Homes, Inc., Foster Swift Collins & Smith, 313 South Washington Avenue, Lansing, offered rationale in support of the Daniels Drain Improvements. He requested the Board file a notice of intent which would allow the project to be placed on the ICDC’s “calendar” and also allow a public hearing to be established pursuant to Chapter 20. Mr. Barbieri supplied a copy of the ICDC procedures for the record, the proposed notice of intent, and a resolution approving the notice of intent.

Neil Bowlby, 6020 Beechwood Drive, Haslett, clarified the graphs he supplied relative to the cell tower. He indicated, in response to an earlier comment, the data was extrapolated from images depicting signal strength presented to the Planning Commission by Verizon, reasserting Verizon has not necessarily established the need for a 90 foot tower. Mr. Bowlby questioned whether Verizon can execute a lease for collocation given they are seeking to obtain an easement for the property. He encouraged the Board to renew the Manager’s employment contract as he has done a “great” job.

Min-Hao Kuo, 2233 Burcham Drive, East Lansing, requested the Board not allow corporations to take advantage of the legal loopholes to avert local regulations contained in Township ordinances relative to cell towers. He asked the Board if the proposed cell tower to be located in the “gateway” to Meridian Township is to be their legacy.

Ginger Yang, LotusVoice Integrative Therapies, LLC, 4944 Park Lake Road, East Lansing, voiced frustration at the bureaucracy and the lack of professionalism demonstrated in the decision making process regarding the cell tower. She expressed appreciation to Board members who have taken the time to meet with her and listened to her concerns. Ms. Yang reiterated she has been “bullied” by the so-called greatest democratic system in the world, and believed the Planning Commission did not have a legitimate reason to approve the cell tower, but succumbed to legal pressure. She voiced her resentment at the amount of time she has spent for what she alleged should have been the work of Township staff.

Rob Labelle, Williams Williams Rattner & Plunkett, 380 North Old Woodward Avenue, Suite 300, Birmingham, and legal counsel for Verizon Wireless, covered the elements the Board should consider, stating local law is effectively preempted by federal law under the Telecommunications Act. He objected to the characterization that the engineering firm was biased in the data it supplied, stating Jacobs Engineering had no incentive to do so. M. Labelle offered information that it costs 90% more to build a tower than to colocate and there would be no rationale to building a tower if it was not a business necessity. He concluded there must be substantial evidence presented upon which the Board can deny Special Use Permit #15061.

Supervisor LeGoff closed Public Remarks.

### A. Daniels Drain Improvements

Board and staff discussion:

- Appreciation to the Assistant Manager for the information provided in order to understand

this complex issue

- Assessment estimates are very costly
- Cost of the project for The Ponds Cooperative Homes is only a fraction of the total project cost, but the benefit is greater than any other affected property owner
- Preference to hold a hearing on the Chapter 20 Drain process, given the expense to the individual property owners in Forest Hills, Cornell Woods, and other subdivisions to the south

**Treasurer Brixie moved to hold an informational hearing on the Daniels Drain. Seconded by Trustee Styka.**

Continued Board and staff discussion:

- Staff will select the date to hold the public hearing and send out notices to affected property owners
- Staff originally anticipated using the Public Act 188 special assessment process, which requires Resolution #1 and #2
- Based on discussion with attorneys for the Township and the ICDC, it was determined a better approach was the Chapter 20 special assessment process (use of the Notice of Intent)
- Critical for residents to have an opportunity to offer input, especially on multi-million dollar projects
- Projects of this magnitude take time to engineer and design, so it is necessary for this to be correct from the beginning stage of the process
- Assurance that the Township's share of \$1.6 million could be passed on to the property owners who benefit from the assessment
- Inquiry if the language in the resolution included repairing the pipe under Grand River Avenue
- Culvert under Grand River would be part of the project

ROLL CALL VOTE: YEAS: Trustees Scales, Styka, Veenstra, Wilson, Supervisor LeGoff, Treasurer Brixie, Clerk Dreyfus

NAYS: None

Motion carried unanimously.

B. Township Manager Annual Performance Review and Employment Contract

**Trustee Styka moved to approve the Township Manager's 2014-2015 Annual Performance Review and 2015 Employment Contract. Seconded by Trustee Scales.**

**Trustee Veenstra moved to divide the motion. Seconded by Clerk Dreyfus.**

Board discussion:

- Manager received an overall rating of outstanding/superior
- Review included an impressive list of accomplishments

ROLL CALL VOTE: YEAS: Trustees Veenstra, Wilson, Supervisor LeGoff, Clerk Dreyfus

NAYS: Trustee Scales, Styka, Treasurer Brixie

Motion carried 4-3.

Continued Board discussion:

- Two meetings and various conversations with the committee and the Township Manager to create the performance review
- Request to read Number six (6) of the performance review labeled "overall performance" after the vote is taken

**Trustee Scales moved the question.**

ROLL CALL VOTE: YEAS: Trustees Scales, Styka, Veenstra, Wilson, Supervisor LeGoff,  
Treasurer Brixie, Clerk Dreyfus

NAYS: None

Motion carried unanimously.

On a point of personal privilege, Trustee Styka read the Overall Performance section of the Manager's Performance Review as follows: "Overall, Manager Walsh has done an outstanding job of leading and managing Meridian Township. During the evaluation period, he faced significant challenges. First, under this leadership the Township was able to move forward with the building of the new voter approved central fire station. He directed its redesign so it could be built within available funding, while still meeting the needs of the people of Meridian. He successfully led the Township to overcome a significant legal challenge to the project.

The Manager also reorganized and reinvigorated the Motor Pool Fund, increasing efficiencies and creating a plan to bring its balance from \$74,000 to \$700,000 plus. Third, through his leadership, the Township negotiated with Comcast, entering into agreements that both protected the Township in case of a change of cable provider and subsequently, gave the Township a favorable franchise agreement.

Next, Mr. Walsh led the Township by replacing key leadership personnel, including the HR Director, Township Engineer, Director of Public Works and the Township attorney. His work in this area also resulted in a reduction of positions and considerable savings to the budget.

Through Manager Walsh's outstanding management skills, the morale of Township staff has become very positive. During the evaluation period, the Township responded to 924 code enforcement issues, eliminated pathway hazards, developed a balanced project that includes a growing Fund Balance and began the process of studying the long term pension liabilities of the Township with a look toward finding a resolution to the problem.

In conclusion, under the direction of Manager Walsh the Township has continued to grow in positive ways becoming even more a place of choice for people seeking a good place to live, work and play."

**Trustee Wilson moved to approve the Township Manager's 2015 employment contract. Seconded by Treasurer Brixie.**

## Board discussion:

- Terms for this contract runs from August 1, 2015 to November 1, 2017
- Recommended two (2) percent increase in annual salary to \$110, 727
- Recommended increase in contribution to his 401(k) pension program from 8.5% to 12% of salary
- Recommended increase of car allowance from \$700 to \$800 per month
- Recommended increase in vacation days from 20 to 25 days with a maximum of 40 vacation days upon separation of employment
- Requirement for the Manager to use at least 15 vacation days per year
- Clarification of language relative to adoption of the most current personnel policy matters (e.g., benefits, workers compensation, sick leave, etc.)
- Township Manager has immersed himself in the Township as a community member and leader
- Township Manager has donated to many community causes (e.g., rotary, Garden Club, Highfields, Inc.)
- Appreciation that the Manager refused to accept a raise of more than 2% even though the data of similar peers showed his pay is lower

- Manager refused to accept a raise greater than the staff which reports to him
- Manager has brought residents together and moved this into a Township called Meridian
- Manager has spearheaded a “change of culture” in the Township
- Salary increase is one (1) percent per year, the same as employees received
- Pay freeze in 2008 for all staff for three (3) years
- Taking the cost of living into account, staff fell below the curve related to income
- Staff received a lump sum payment of \$400 in 2013
- Township Manager involvement in negotiations for 2014-2016 union contracts resulted in a salary increase of 1% per year for all employees
- Reminder that elected officials took various percentages of pay cuts, some significant and some in the area of 10%
- Preference for all employees to be on “the same page” relative to parity
- Board member belief all items raised total more than a 6.5% increase
- All department directors have a Township direct contribution to their 401(k) of 8.5%
- Proposed contract provides for an increase in his 401 (k) of 3.5% per year
- There are no legacy costs for the Manager’s pension once he leaves his position
- Past accounting and audits show the Township is doing fairly well with its legacy costs relative to the unfunded pension liability
- Board member preference for all non-union employees to receive a Township direct contribution to their 401(k) of 8.5%
- Board member preference to account for increases for all non-union employees solely through a salary increase
- Question is whether or not the Township Manager is being undercompensated

**Clerk Dreyfus moved to amend the employment contract on page 3 by deleting “The Township shall provide 12% of the Manager’s base salary into the pension plan and inserting “The Township shall contribute 8.5% of the Manager’s base salary into the pension plan.” Seconded by Trustee Veenstra.**

Board discussion:

- Increase in the annual automobile allowance equates to approximately 1.25%
- Rationale for looking at the proposed compensation as a whole would dovetail to next year when union negotiations will commence
- Increase in the Clerk’s salary in 2012
- Township Treasurer and the Township Clerk received a \$10,000 pay cut in 2012
- During the EOCC meetings, an increase was approved for the position of Township Treasurer and Township Clerk
- Township Treasurer stated she took a voluntary pay cut in 2012
- Board member belief the Township Treasurer reduced her hours as a basis for a reduction in salary
- Elected Officials Compensation Commission (EOCC) approved a pay increase for both
- Treasurer’s recollection the then Township Manager took a pay freeze longer than any of the employee groups
- When hired, Manager Walsh declined any increase in the salary of the outgoing Township Manager, even though the salary range of the position was posted at a higher amount
- Board member belief the proposed motion is offensive
- Concern with “bad politics” being brought forth during discussion of this issue
- Proposed contract is a compensation “package”
- Manager’s compensation was compared to the Manager’s salary in the cities of Midland, Mt. Pleasant, Marquette, Holland, etc.
- Township Manager is undercompensated
- Proposed salary is still significantly under salaries of individuals managing smaller communities and smaller total taxable value

- Manager of the Charter Township of Delta (smaller than Meridian Township) receives a salary of \$105,000 and Delhi Township's Manager receives a salary of \$104,000
- Board member concern the proposed rate of contribution to the Manager's 401(k) to 12%, is a 41.2% increase
- Board member explanation of the Township's dire financial situation relative to the legacy costs for defined benefit plans
- Board member belief the Township will probably have to cut employees pensions

**Treasurer Brixie called the question. The motion died for lack of support.**

ROLL CALL VOTE: YEAS: Trustee Veenstra, Clerk Dreyfus  
NAYS: Trustees Scales, Styka, Wilson, Supervisor LeGoff, Treasurer Brixie  
Motion failed 2-5.

ROLL CALL VOTE ON THE MAIN MOTION: YEAS: Trustees Scales, Styka, Wilson, Supervisor LeGoff, Treasurer Brixie, Clerk Dreyfus  
NAYS: Trustee Veenstra  
Motion carried 6-1.

**Trustee Scales moved to extend the Township Board's timeframe to proceed beyond 10:00 P.M. Seconded by Treasurer Brixie.**

ROLL CALL VOTE: YEAS: Trustees Scales, Styka, Wilson, Treasurer Brixie, Clerk Dreyfus  
NAYS: Trustee Veenstra, Supervisor LeGoff  
Motion carried 5-2.

C. Cell Tower

**Trustee Scales moved to sustain the appeal. Seconded by Trustee Veenstra.**

Board discussion:

- Board member concern with the applicant's characterization of Township residents as "liars"
- Applicant's characterization of its own engineer's information as incorrect
- Motion will support the Township's residents
- Acknowledgment of the applicant's generosity to allow two days beyond the 90 day clock
- Board member belief there is deficiency in the Township's process relative to the 90 day clock
- Concern with the applicant's use of the verbiage "occupy" v. "use"
- Board member belief the applicant is playing verbal games with use of lease v. easement

ATTORNEY COMMENT: You have a motion on the floor, but I have a concern. The concern is that the federal statute requires "that the Township decision to deny a request to construct a cell tower shall be in writing and supported by substantial evidence contained in a written record." So, it's not enough to move to deny. You have to move to deny and you have to give specific facts into evidence that support the denial so that a reviewing court will have the opportunity to see whether you are right or not under the standards that we have to operate under. I'm not saying the motion's out of order by any means, but I am saying you need support the motion with specific facts based on the evidence in the record as part of your motion.

Continued Board discussion:

- One reason to uphold the appeal is the application is not accurate and is a land lease, not an easement, and therefore subject to the Michigan Land Division Act

- Reason to uphold the appeal is a SUP is required to locate the cell tower on the site and SUP criteria number 4 has not been met (i.e., adverse effect on the neighborhood)
- LotusVoice (a health and wellness facility) will be adversely affected by the proposed cell tower location
- Under the Land Division Act, the site does not meet the frontage requirement on Park Lake Road

Board rationale for denial of the cell tower: (Questions for the Attorney (See Agenda Item #10))

- Q. Do we have to state all the reasons in the motion, or can we just pass the motion here tonight to deny and leave it to staff to perfect the reasons in a legal form that will hold up in court, if necessary.
- A. The decision, ultimately, to deny has to be in writing, has to be supported by substantial evidence contained in a written record. What I'm concerned about, and what I think Clerk Dreyfus just did an excellent job of outlining, is some of the facts based on the record upon which the motion to deny is based. So, what I'm saying is we can write it up in the minutes, but we have a record that was created here tonight at a public hearing. Clerk Dreyfus has referred to at least three (3) bases based on the record for the reasons to deny in the motion made by Trustee Scales. I think to the extent others want to indicate what that substantial evidence is, you should do so. Then the question is whether the maker of the motion will incorporate those by reference. Fair enough?

Continued Board discussion:

- Board decision must follow the guidelines of the Township's ordinances in our zoning
- Board member opinion the Planning Commission did their "due diligence" as the cell tower application met all of the guidelines for our zoning ordinances
- Exception to our ordinance is the question of lease v. easement
- Even if the application ultimately must go through the land division process and did not meet the requirements of C-2 zoning relative to the frontage requirement, it could still be approved through variances obtained from the ZBA
- Board member belief the frontage requirement is not a reason to support the motion to sustain the appeal
- Relative to the argument there is a better location, any landowner must give permission to give a lease or easement for cell tower location
- Township cannot mandate a land owner provide a lease or easement on their property
- Definition of a lease or easement and how that plays into land division
- Fuel comparison chart prepared by the appellant showed the use of a diesel backup generator would run counter to SUP criteria number 4 and have a hazardous and adverse effect on the use of her land
- Diesel backup generator would adversely affect nearby uses with noise, fumes and odors (violation of SUP criteria number 8)
- Project would have a substantial adverse impact on the natural resources of the Township, including wildlife areas (violation of SUP criteria number 9)
- Wildlife areas and rivers are nearby and environmental concerns exist with diesel fuel on the site
- Exterior diesel tank is within close proximity to the railroad track in the event of a derailment
- Board member belief there is evidence to support the appeal
- The cell tower is a lease not an easement
- Public health "trumps" almost everything in the law despite what the statute says
- In law, substantial evidence is less than a preponderance and more than a scintilla and basically the court says it cannot be by whim or caprice
- Board member belief the upholding of this appeal is not on whim or caprice, but based on information provided to the Board during the hearing

- Statement that the maker of the motion is upholding the appeal (i.e., deny the cell tower) and, by reference, is including all the arguments given here tonight by members of the Board

**The maker of the motion requested the record show that is absolutely correct.**

Continued Board discussion:

- Board has heard testimony and each Board member offered discussion and debate
- Maker of the motion's belief it is clear in a majority of the Board member's minds that this is a lease, not an easement
- Maker of the motion's belief the applicant has attempted to "pull the wool" over the Board's eyes during the course of the events before staff and the Planning Commission
- Maker of the motion's comfort with the Board taking the position to sustain the appeal before it is based on all the information that has been presented to it and spoken about by each Board member
- Maker of the motion's statement that he would like it all to be incorporated into the motion

ROLL CALL VOTE: YEAS: Trustees Scales, Styka, Veenstra, Treasurer Brixie, Clerk Dreyfus

NAYS: Trustee Wilson, Supervisor LeGoff

Motion carried 5-2.

### 13. BOARD DISCUSSION ITEMS

Supervisor LeGoff opened Public Remarks.

Mark Hooper, 3653 Stagecoach Drive, Okemos, asked the Board to support residents in their petition to the Ingham County Road Department to abandon Forsberg Drive via resolution. If that action is not possible, he requested the Township Board revoke the November 16, 1999 action where the sketch plan was approved based on the condition that it contain a road connection to Forsberg Drive.

David Pierson, 1305 S. Washington Avenue, Lansing, on behalf of the applicant for Ember Oaks, noted his client has spent significant additional time speaking with the residents of Ember Oaks. He noted Dr. Bingman's earlier remarks showed the applicant has addressed the concerns within Ember Oaks relative to what is planned for the future. Mr. Pierson stated Duff and Keith Schroeder are committed to the quality and kind of development that has previously been constructed in earlier phases. While acknowledging there was a petition sent to the ICRD pertaining to the connection to Forsberg Drive, he noted state law dictates what entity decides the specific connections and directs the ICRD and the Township to address those issues in the plat. Mr. Pierson indicated the Township's ordinance relative to a planned residential development (PRD) are different and displayed the criteria on the overhead projector. He asked the Board to address the PRD first while the Forsberg Drive road issue is settled.

Supervisor LeGoff closed Public Remarks.

#### A. Planned Residential Development #15-97015 (SP Investments Limited Partnership) Amendment to the Planned Residential Development Sketch Plan – Ember Oaks

Board, staff and applicant's attorney discussion:

- In reviewing Section 109 of the Land Division Act, it appears the sketch plan is not set in stone and has no legal standing
- Sketch plan is a preliminary step
- Preliminary and final plat have legal standing
- Board member preference to approve the sketch plan with full acknowledgment the street

- issue will be resolved during the preliminary plat phase
- Board member suggestion to place the sketch plan on for action at the next Board meeting
  - Board member suggestion to suspend the rules and approve the sketch plan tonight and make a motion to state the Board's position on Forsberg Drive
  - Board members suggestion to send communication to the ICRD on the Board's position regarding Forsberg Drive
  - Board member preference not to amend the agenda now to deal with this issue tonight
  - Board member reminder there is a sketch plan in force and an existing preliminary plat
  - Board member belief the question before the Board is whether to change the preliminary plat
  - Township Board increased the setback requirement from the pipeline (60 feet) and resulted in the number of lots being in the existing plat reduced from 111 to 107
  - Amendment is before the Board to change the plat in order to increase the number of lots in the existing plat from 107 back to 111
  - Issue is the connection to the Ponderosa Estates subdivision via Forsberg Drive
  - No second connection from Ember Oaks to Ponderosa Estates
  - Street further north "going" to the east was located there because state law requires when is subdivision is platted, the preliminary plat cannot "isolate" land
  - Approval of the PRD sketch plan has no bearing on the Forsberg Drive connection
  - 85 acre vacant parcel to the north is owned by someone and would be completely cut off from any road access
  - Preliminary plat for Ember Oaks and Ponderosa Estates required connections per state law
  - Forsberg Drive is the only connection from Ember Oaks to Ponderosa Estates
  - Attorney for the applicant does not agree with earlier public comment about the agreements concerning the Forsberg connection
  - Proposed connection to Jolly Road is a better under the "new" proposed plat
  - Board member belief the larger stormwater detention pond at the north end of the property does not reduce the number of lots, but reduces the depth of the lots approximately 50 feet
  - Applicant's attorney explanation that the stormwater detention pond as mandated by the ICRD requires a rearrangement of some of the lots in order to adequately address the drainage
  - Staff has spoken with the Chief Engineer and the Managing Director of the ICRD who have not had a chance to review the petition to vacate to see if it is valid
  - Issue will be addressed during consideration of the plat
  - Approval to vacate will require a modification of the preliminary plat

**Trustee Scales moved to approve the PRD #15-97015 sketch plan before us. Seconded by Trustee Wilson.**

Board discussion:

- Board must adopt a change in its procedures in order to make this discussion item an action item
- Parliamentary inquiry on the number of votes required to suspend the rules to change Discussion Item #13A to an action item
- Board member inquiry if the Board has a rule on this issue
- Robert's Rules indicates a motion is in order at any time when there is no motion on the floor
- Board member inquiry as to what rule is being suspended
- Adequacy of a motion v. resolution
- The normal process has always been to have a resolution
- Board member belief the motion is out of order because the agenda first needs to be amended to place this item on for action
- Board member belief the previous motion is out of order until the agenda is amended
- This item has been on for discussion for three (3) consecutive meetings
- Board is only considering passage of the sketch plan

Board rules and procedures relative to a motion to suspend the rules: (Questions for the Attorney (See Agenda Item #10))

Q. Since this was on the agenda as a discussion item, don't we have to amend the agenda to turn it into an action item?

A. First of all, I just asked Sandy if she had a copy of the Rules and Procedures of the Board, and she doesn't, so I can't [inaudible].

Q. Well, isn't this covered by Robert's Rules of Order?

A. If you are governed by Robert's Rules of Order, Robert's Rules [inaudible] that in terms of a motion to suspend the rules so you, when you adopt your parliamentary procedures, you decide what level of super majority you want to have; two-thirds is what sometimes happens, 60% is sometimes what happens. Two-thirds is kind of the rule of thumb because they figure if you are going to suspend the rules, you ought to have at least two (2) people in support of doing it for every one (1) who is opposed. That's just kind of "back of the envelope practice." I don't know what your particular policies say, but if you put this on and your practice has been to have it for deliberation without action, then you're going to suspend the rules if you're going to take action, which would require a motion to suspend the rules in whatever super majority your policies require is the majority you have to have. Then you take up the motion that the rules are suspending.

Continued Board discussion:

- Board member belief the previous motion is out of order
- Request for a ruling by the chair if the motion is out of order
- Board member belief that in order to suspend a rule, you must have a rule in the first place
- Township Board has historically followed Robert's Rules on a consistent basis and Robert's Rules requires a two-thirds vote to suspend the rules
- Township Board adopted Robert's Rules of Order as part of the Board's deliberation policies

**Supervisor LeGoff ruled the motion out of order.**

**Trustee Scales appealed the ruling of the chair.**

ATTORNEY COMMENT: [while returning Board policies and procedures to Trustee Scales] There is nothing in here about parliamentary procedures.

Continued Board discussion:

- Board member belief the rule being discussed is Robert's Rules, and that would not be the rule the Board is suspending, but a rule which states that if an agenda item is on for discussion, it must be left on the agenda for discussion unless a motion is made to move it to action
- Board member reminder there is a Board rule that no item can be considered for action after 10:00 P.M.

ATTORNEY COMMENT: May I make a suggestion? As I look at the agenda, you have action items and you put them out on your agenda to notify everybody you're going to take action. You have deliberation items, and you put them out on your agenda to notify everybody you're going to deliberate which implies you are not going to take action. So, if you're gonna move something from deliberation to action, you're going to have to do something like suspend the rules. It would seem to me that when you are going to move something from deliberation to action, because you are doing something fairly significant, you kind of let the public know you weren't going to do it. You probably need a super majority, which is what suspending the rules typically requires (something like a two-thirds vote). You are taking a fairly dramatic move of taking something

that is deliberative and now you are going to make it an action item. So let me offer this suggestion, and if you are all in agreement, you call follow it or you can reject it. Somebody make a motion to suspend the rules so that we can take up Item #13A and if it passes with two-thirds, then you can take action on #13A.

**Trustee Scales moved to suspend the rules to take up Ember Oaks. Seconded by Trustee Wilson.**

ROLL CALL VOTE: YEAS: Trustees Scales, Wilson  
NAYS: Trustees Styka, Veenstra, Supervisor LeGoff, Clerk Dreyfus,  
Treasurer Brixie  
Motion failed 2-5.

- C. Extension of Special Use Permit #13-12051 (Douglas J) Scott Weaver, 4609 Comanche Drive, Okemos, requested an extension for SUP #13-13051. He stated that although the process is slow, he is making progress on the project.

Board discussion:

- Community is eagerly awaiting the proposed development
- Project is on the northwest corner of Okemos and Hamilton Roads
- Project will positively transform downtown Okemos
- He has met with the Township Manager on several occasions
- Need for a deadline to be placed in the resolution which allows the extension
- Applicant's belief that all power lines need to be buried, but it comes at a cost
- Applicant's commitment to participate in the cost of burying the power lines
- Several other communities fund all of the public infrastructure
- Minor amendment was granted prior to the expiration of the SUP date of September, 2014 so it is extended for an additional year

**It was the consensus of the Board to place this item on for action at the September 1, 2015 Board meeting.**

- D. Personnel Policy Manual – Draft  
Human Resources Director Marx suggested the Board be allowed four (4) weeks to vet the draft personnel policy and provide feedback.

Board discussion:

- Board member suggestion to allow Board members to submit questions in writing directly to the Human Resources Director
- Suggestion to develop a process where the questions are sent to the Director and she develops a summary of those questions to share with the Board in an effort to avoid duplication
- Concern with the policy regarding the prohibition of tobacco products on all Township premises, which would include a pack of cigarettes in an employee's car

14. PUBLIC REMARKS

Supervisor LeGoff opened and closed Public Remarks.

15. FINAL BOARD MEMBER COMMENT

Manager Walsh expressed his appreciation for the support of the Board on his annual performance review.

16. ADJOURNMENT

Supervisor LeGoff adjourned the meeting at 11:36 P.M.

---

ELIZABETH LEGOFF  
TOWNSHIP SUPERVISOR

---

BRETT DREYFUS, CMMC  
TOWNSHIP CLERK

Sandra K. Otto, Secretary