

**City of Escanaba**  
**PLANNING COMMISSION – OFFICIAL PROCEEDINGS**  
**December 13, 2018**

**MEETING CALLED TO ORDER**

A regular meeting of the Escanaba Planning Commission was held on Thursday, December 13, 2018, at 6:00pm in Room C101 at City Hall, 410 Ludington Street, Escanaba, MI 49829.

**ROLL CALL**

Name	Present	Absent	Name	Present	Absent
Chair Kel Smyth	x		Comm. Dominic Benetti	x	
Vice-Chair Christine Williams	X		Comm. Paul Caswell	x	
Sec. Brian Black	x		Comm. Richard Clark		x
Dep. Sec. James Hellerman	x		Comm. Craig Gierke	x	
			Comm. Stephen Davis	x	

A quorum of the Planning Commission was present.

**ALSO PRESENT**

City Administration	Others
Blaine DeGrave, Planning & Zoning Administrator	Peter Schau, Rep. For PI Tower & Verizon
Roxanne Spencer, Confidential Secretary	Dan Phalen, resident
Patrick Jordan, City Manager	Joe Kaplan, resident
Ron Beauchamp, City Council Liaison	
Marc Tall, Mayor	
Ralph Blasier, City Councilman	

Approximately 5 additional unnamed individuals were present.

**MINUTES**

A motion was made by Williams, seconded by Caswell, to approve the November 8, 2018 minutes as submitted. **MOTION PASSED** with unanimous ayes.

**AGENDA**

The agenda was approved as presented.

Williams suggested that all references from here forward be changed from “windmill” to “wind turbine”.

**CONFLICT OF INTEREST DECLARATIONS**

Williams indicated that she lives within a city block of one of the agenda items, but does not think there is any financial gain to her, so she does not believe there is a conflict of interest.

Gierke indicated that he sold Verizon and other cell phones for a number years, but has been retired for four years, so he does not believe there is a conflict of interest.

**UNFINISHED BUSINESS** - None

**PUBLIC HEARINGS**

- 1. Site Plan Review: 1619 18<sup>th</sup> Avenue South (Ness Field) – Proposed Communications Tower Facility**

Blaine DeGrave read the following position paper into the record:

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**CITY OF ESCANABA  
SITE PLAN REVIEW REPORT  
CASE NO. PC-121318-01  
REFERENCE: Communication Tower**

**DATE:** December 13, 2018

**PROPERTY OWNER/APPLICANT ADDRESS:**

City of Escanaba	PI Tower Development, LLC and Verizon Wireless
410 Ludington Street	P.O. Box 578790
Escanaba, MI 49829	Chicago, IL 60657

**TYPE OF REQUEST/ DESCRIPTION OF PROPOSED PROJECT:**

This proposed project and location is for the construction, installation and operation of a new wireless communications tower located at 1619 18<sup>th</sup> Avenue South (Ness Baseball Field) which will serve as a supporting structure for both the applicant's communications equipment as well as a light standard for the existing field lights serving the baseball field and also for the City of Escanaba's near-future water and electric utilities communication equipment.

**CURRENT ZONING:**

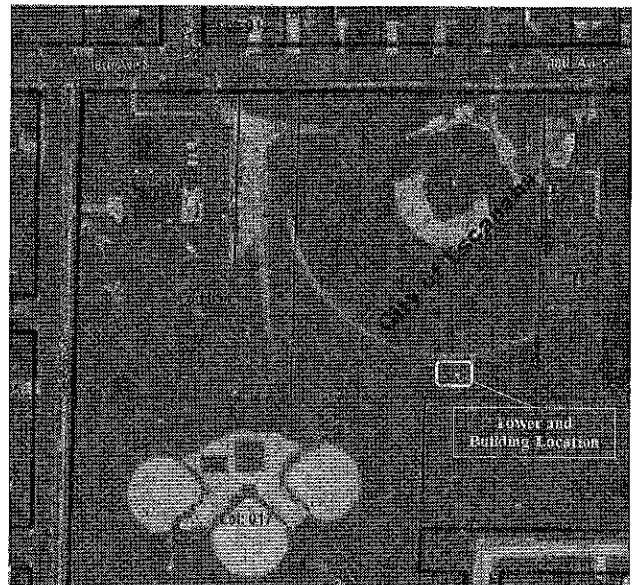
"O" Open Space District

**ORDINANCES:**

- Ordinance No. 1028 - Escanaba Zoning Ordinance
- City Code of Ordinances, Chapter 7, Article 3 - Wireless Telecommunication Facilities

**DETERMINATIONS:**

The original zoning application was denied due a communications tower not being allowed in an Open Space district. On October 17, 2018 the Zoning Board of Appeals granted a variance on a Land Use request by PI Tower Development, LLC and Verizon Wireless to permit the construction and operation of a Wireless Communications Facility and Support Structure to be located at 1619 18<sup>th</sup> Avenue South, the Ness Baseball Field. Votes from the board were unanimous. With the Board of Appeals decision, all land use issues have been approved and satisfied.



In accordance with the requirements found in Chapter 18, Section 1803.1.1.3 Official Review, the city administration conducted a site plan review meeting on Monday, May 7, 2018. Present were City Manager Patrick Jordan, Electrical Superintendent Mike Furmanski, Water/Wastewater Superintendent Jeff Lampi, Interim City Engineer Wendy Taavola, Public Safety Director Rob LaMarche, Planning and Zoning Administrator Blaine DeGrave, and Executive Assistant Lisa Glish.

In accordance with the requirements found in Chapter 18, Section 1803.1.1.4. Approval; Referral, City Administration has deemed the site diagram completed and is referring the plan to the Planning Commission for review of site plan based on developmental criteria.

All fee and notification requirements of the Ordinance have been accommodated.

## **DUTIES OF THE PLANNING COMMISSION**

In accordance with the Escanaba Wireless Telecommunications Facilities Ordinance, Sec. 7-98 – Approval Process, the planning commission shall review and consider the application at a public hearing. At the hearing, interested persons may appear and offer information in support or opposition to the proposed application. The planning commission shall consider the following in reaching a decision:

- a. *Development criteria.* The complete tower antenna use application shall be reviewed for compliance with the development criteria set forth in section 7-96; and
- b. *Tower siting conditions.* The planning commission may recommend alternative development criteria, impose conditions or add restrictions on the application as it deems necessary to reduce or minimize any adverse effects and to enhance the compatibility of the wireless communication facility with the surrounding property, in accordance with the purposes and intent of this article, provided the alternative development criteria, conditions or restrictions are reasonable and capable of being accomplished. The inclusion of additional conditions, development criteria or restrictions shall be by specific inclusion in a motion for approval.

In accordance with Chapter 18, Section 1803.3, Planning Commission Review, once a site plan is forwarded to the Planning Commission, the Planning Commission shall review the site plan and shall approve or deny the site plan according to the requirements of this Code within forty-five (45) days of submission of said plan.

In accordance with Chapter 18, Section 1803.4 Site Plan Approval, should the Planning Commission approve the site plan, the applicant, the owner of record, or the legal representative thereof, the Planning Commission Chairperson and one other member of the Planning Commission shall each sign four copies of the approved site plan. The Planning Commission shall transmit one signed copy of the plan and any conditions attached to the Code Official, and one signed copy each to the office of the City Clerk and the applicant. One signed copy shall be retained in the Planning Commission file.

In accordance with Chapter 18, Section 1803.5.1, Site Plan Rejection, should the Planning Commission reject the site plan (NOT the use), the property owner may appeal the decision to the Zoning Board of Appeals.

## **COMPLIANCE WITH DEVELOPMENT STANDARDS:**

In accordance with the Escanaba Wireless Telecommunications Facilities Ordinance, Sec. 7-96 – Development Standards, the following items have been reviewed

- Height Review - Per local airport manager/staff, concerns about the height have been addressed. (See attached State of Michigan Tall Structure Permit and Delta County Airport Letter).
- Setback Standards for Wireless Communications Facilities with Support Structures (must meet setback requirement of underlying zoning district ("O" Open Space)
  - 1605.1.1 – Front Yard Requirement – Building – Meets front yard setback requirements.
  - 1605.2.1 – Minimum Side Yard – Meets the minimum 10' setback requirement.
  - 1605.3.1 – Rear Yard Requirement – Building – Meets the minimum 30' setback requirement.
- Landscaping & Shrub Specifications & Standards – Existing vegetation on a wireless communication facility site may be used in lieu of required landscaping where approved by the code official or designee. The facility will be located in Open Space with sufficient existing vegetation as determined by the Code Official.
- Aesthetics, placement, materials and colors.
  - Compatibility – The tower, antenna array, and structures are compatible with the surroundings, including matching the shed roof with roofing on the existing structures at the ball fields and being similar in height to existing light towers.
  - Lighting – Meets the development standards.
    - Lighting for the ballfield will be placed on the tower to replace lights lost due to the removal of the existing light pole.
    - FAA required lighting will include red pulsating lights at night and white strobe lights during the day.

- Signage – Meets the development standards of having no signage except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state or federal regulations governing wireless communications facilities.
- Fencing – Security fence enclosure meets the development standards with a 7' high metal fence with privacy slats.
- Radio Frequency emissions/sound – At ground level, a third-party report shows that the emissions from the site are modeled to top out at 0.9% of the FCC Maximum Permissible Exposure (MPE) limits. (See attached Radio Frequency Exposure Report)
- Structural integrity – Meets the applicable development standards. (See statement on p.2 of 4-18-18 Application Letter from Peter Schau, Ton 80 Realty Services, paragraph 4)
- Co-location support structure design – Meets development standards with 3 separate antenna array locations.
- Co-location agreement – Meets development standards. (See statement on p.2 of 4-18-18 Application Letter from Peter Schau, Ton 80 Realty Services, paragraph 5)
- Federal requirements – Meets current FAA and FCC regulations according to submitted paperwork.

### **PLANNING COMMISSION ACTIONS**

In accordance with the Escanaba Wireless Telecommunications Facilities Ordinance, Sec. 7-98 – Approval Process, (e) Action. Following the public hearing and presentation of evidence, the planning commission shall take one of the following actions:

- (1) **Application approval.** Approve the application as submitted;
- (2) **Approval with conditions/restrictions.** Approve the application with conditions that impose conditions or add restrictions on the application as it deems necessary to reduce or minimize any adverse effects and to enhance the compatibility of the wireless communication facility with the surrounding property, in accordance with the purposes and intent of this article, provided the alternative development criteria, conditions or restriction are reasonable and capable of being accomplished. The inclusion of additional conditions, development criteria, or restrictions shall be by specific inclusion on a motion for approval;
- (3) **Application referral.** Refer the application for additional information or neighborhood input; or
- (4) **Application denial.** Deny the application in writing.

### **PUBLIC CONTACT:**

- Notice of Public Hearing was published in the Escanaba Daily Press Newspaper and meeting notices were mailed to the property owners within 500' of the project site.
- Staff report was posted on the City of Escanaba website for public review.
- The meeting agenda was posted on the City's official notice bulletin board and the City of Escanaba's website.

### **OTHER CONSIDERATIONS:**

Written comments have been received by staff prior to the October 17, 2018 Board of Appeals Public Hearing relating to the perceived health risks and reduction of property values.

Federal Communication Commission regulations state that:

1. "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities 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." [47 U.S.C. 332.(c)(7)(B)(iv)]
2. "Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." [47 U.S.C. 332.(c)(7)(B)(iii)]
  - a. As further outlined in the Michigan State University Extension Land Use Series article "*Limits and parameters on local and state regulation of wireless communication 2015 Update*": "For a case to be made that there is an adverse impact on property values there must be expert testimony

on the record (at the public hearing). . . . The bottom line is claims about property value loss must be based on real data prepared by experienced professionals in that field. Also, the data must be based on research on that specific site – not general studies or reports. Since at least 1996 courts have been consistent in the requirement that one needs substantial evidence by a competent expert using real, local, data.”

**STAFF RECOMMENDATION:**

Staff is recommending approval of the site plan.

**BACK UP INFORMATION:**

1. Zoning Permit Application
2. Site Plan Drawings
3. Assessor’s Property Information Card
4. Board of Appeals Decision on Land Use
5. Pre-Site Plan Review Meeting Minutes of 5/7/18
6. State of Michigan Tall Structure Permit
7. Delta County Airport Approval Letter
8. Radio Frequency Exposure Report
9. Daily Press Public Hearing Notice
10. 500' Radius Property Owner notification Letter & Address List
11. Community Response Report

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Regarding the lighting of the tower, DeGrave noted that due to the reduction in height of the tower, lights are no longer required by the FAA. However, the developer is still willing to install the lights if desired. The airport manager has indicated that they would like the lights to be installed.

*Chairperson Smyth opened the public hearing.*

Smyth invited Peter Schau, representative for PI Tower/Verizon to present his case. He indicated that the site plan is essentially the same as was presented to the Planning Commission at the July 12, 2018 meeting, with the exception of the tower height which has been reduced to 95 feet. He believes that all development standards have been met and all outstanding issues have been addressed.

*Smyth opened the floor to further public comments.*

Joe Kaplan, of 2315 Lake Shore Drive, stated his concerns about the nuisance of living within the vicinity of daytime white strobe lighting and nighttime red flashing lighting. He also indicated his concerns with the lighting interfering with migratory birds. He noted that as the tower height has been reduced, it appeared that FAA lighting requirements were therefore eliminated and asked for confirmation and clarification as to what lighting is required and what would be installed specifically. He has no other issues with the site plan and is in support of the tower, as long as it does not require lights.

Dan Phalen, of 1720 21<sup>st</sup> Avenue South, referred to Sections 1303.1, 1403.1, and 1503.1 of the zoning ordinance which allow placement of wireless communications towers in Light Manufacturing, Industrial Park, and Heavy Manufacturing districts under Special Land Use Permits granted by the Planning Commission. He then indicated that Chapter 16 on Open Space districts lists many principal uses permitted by right and also several special land use permit allowances, but not wireless communication facilities. He believes that Section 407.1 on Incorporating Uses Allowed that states “When the regulations of a zoning district incorporate the uses allowed in a different zoning district, only those uses listed in the section entitled “uses allowed” are incorporated and not any of those uses allowed by special land use permit or any other special zoning permission” supports his opinion that the Zoning Board of Appeals was wrong in allowing a land use variance. He also cited Section

1607.1 – Building Height which indicates that in an open space district, no building may exceed 35 feet in height with certain exceptions. He also referred to Section 7-98 of the Escanaba Wireless Telecommunication Ordinance, regarding the approval process and tower siting conditions, and stated that he does not believe the tower will be compatible with surrounding properties as they are all single family homes. He also believes that the Federal Telecommunications Act of 1996 does not override local zoning according to Section 704. He contended that parks are set aside for the recreation of citizens and that this tower is not benefitting people in the south side of Escanaba only, but will benefit residents of Ford River. He closed by suggesting the tower could be located on Portage Point and would provide adequate coverage.

*Chairperson Smyth asked for further public comments and, hearing none, closed the public hearing.*

DeGrave addressed the question raised about lighting, stating that while the lights are no longer required, the tower developers are willing to install them if desired and that the airport manager is requesting that lights be installed. Discussion followed about the height of other things in the vicinity, most notably the lighting tower for the football stadium light tower, which is 92 feet high and is located between the football and baseball field (where the proposed tower will be located). Discussion also took place about whether the proposed tower was in the flight path to the airport.

Davis asked for clarification on the Zoning Board of Appeals' decision to grant a land use variance and whether that decision has been appealed. DeGrave stated that an appeal has been filed in Circuit Court, but that this meeting's proceedings have nothing to do with that land use variance approval and subsequent appeal, but rather only the site plan and related development standards review.

Benetti asked if there are currently lights on any of the tall structures in the area. DeGrave confirmed there are no safety lights on any of those structures.

*Chair Smyth allowed Ralph Blasier, City Councilman, to make a comment.*

Blasier suggested that shielding could be installed to minimize light nuisance concerns to surrounding houses. Discussion followed whether it would be likely to happen.

*Smyth stated a reminder that the public hearing is now closed and discussion was limited to Planning Commission members only.*

Hellerman stated that he did not see a problem leaving the lights off the tower, but is open to discussion. Benetti indicated that as there is no lighting on current structures, and as the FAA does is not requiring any lights, then he suggests leaving the lights off the tower. Williams agreed.

Gierke commented that he has worked within distance of several communication towers and has never seen any negative affects personally. He then pointed out the need to look at future development of City to continue to improve wireless and internet connections as residents and businesses use these systems extensively as a matter of course now. Hellerman pointed out that while he agrees with this assessment, the Planning Commission's task for this meeting is solely site plan review.

Smyth clarified that this hearing is for a site plan review and reviewed the four action options available to Planning Commission: approval, approval with conditions/restrictions, referral for further information, or denial.

DeGrave addressed Phalen's statements concerning the approved land use variance. He stated that because a communication tower is not an allowed use in an open district, he did initially deny the permit. The developer then applied for a use variance from the Zoning Board of Appeals (ZBA) who granted the variance for placing a communication tower in the Open District. Subsequently, an appeal of the ZBA decision has been filed in Circuit Court. Smyth clarified that that it is not the Planning Commission's role to judge the decision of the ZBA, but only to review the development standards in relation to a site plan.

Williams asked DeGrave for the reference to the section of the ordinance regarding the Code Official's authority to waive the landscaping requirements. DeGrave stated it was in Section 7-96 (d) (3) of Escanaba's Wireless Telecommunications Facilities ordinance. Williams expressed her concerns that landscaping is still required. She is ok with the waiving of the requirements in this case, since there are screening slats in the fencing, but wants to make sure that landscaping waivers are not automatically granted, especially in relation to communication towers. DeGrave clarified that it was just his recommendation, based on the fact the tower is out in the middle of the field and not close to any roadways to be seen. Schau noted that in a preliminary meeting at the site which included multiple City departments, that at the Recreation Department did not want any additional vegetation added that would reduce the ease of maintenance and that the screening solution agreed upon was adding slats to the fencing.

**Gierke made a motion, seconded by Davis, to approve the site plan of the communication tower at 1619 18<sup>th</sup> Avenue South as presented with the exclusion of the strobe lights on the tower. A roll call vote was taken and the MOTION PASSED with unanimous ayes.**

### **NEW BUSINESS**

#### **1. Approval: Election of Officers for 2019 – Chair, Vice-Chair, Secretary, and Deputy Secretary**

Gierke commented that he believes it is good practice for boards to change officers regularly. There was general agreement among Planning Commission members.

Smyth called for nominations for the election of officers.

**Williams made a motion, seconded by Gierke, to re-elect Kelvin Smyth as Chair. MOTION PASSED with unanimous ayes.**

**Davis made a motion, seconded by Smyth, to re-elect Christine Williams as Vice-Chair. MOTION PASSED with unanimous ayes.**

**Williams made a motion, seconded by Black, to elect James Hellerman as Secretary. MOTION PASSED with unanimous ayes.**

**Black made a motion, seconded by Hellerman, to elect Craig Gierke as Deputy Secretary. MOTION PASSED with unanimous ayes.**

#### **2. Approval: 2019 Planning Commission Regular Public Meetings Schedules**

Discussion took place concerning possible lack of quorum being present for the February and November meeting dates due to Valentine's Day and Deer Hunting Day. The consensus was that these holidays would not interfere significantly enough to necessitate changing the schedule, and that as administration checks for quorum verification a month in advance, any necessary meeting date adjustments could be made at that time.

**Williams made a motion, seconded by Benetti, to approve the 2019 Planning Commission meeting dates as presented. MOTION PASSED with unanimous ayes.**

#### **3. Discussion: Zoning Map Review of North Lincoln Road Corridor**

Smyth asked if any information had been sent back out after compiling initial responses from the Planning Commission. DeGrave noted that he has been in discussions with Engineering & Assessing departments to come up with a system to zone the sections along the North Lincoln Road corridor consistently as one type of district such as Commercial, at a distance of 100-200 feet from the roadway (known as strip zoning). Gierke noted that he would like to see that corridor be designated as Light Manufacturing. DeGrave countered that some of the allowed uses under Light Manufacturing districts would perhaps be undesirable along the corridor and suggested that the Planning Commission look closely at those allowed uses before

making a recommendation. Hellerman added that designating something as Commercial would not exclude light manufacturing-type uses, but could be approved as a special land use permit. Smyth asked if DeGrave could present a plan for review at either the January or February meeting, including 3<sup>rd</sup> Avenue North, 6<sup>th</sup> Avenue North, and Stephenson Avenue. Davis asked if zoning history could be included also. Hellerman asked if there would be any legal issues with affecting property values if we change zoning designations. DeGrave stated that he would consult the assessor on this issue and have a plan ready for review at an upcoming meeting.

**4. Discussion: Wind Turbine Ordinance**

Williams referenced the wind turbine information sent out to Planning Commission members for review previously and whether members felt they had enough time for review to make a suggested ordinance at this time. Gierke noted his primary concerns are height requirements and setback requirements from residential properties. Hellerman supported the idea of including proportional requirements. Benetti indicated he does not necessarily want to allow any wind turbines in city limits. The question was raised whether we could prohibit them. Williams volunteered to write a wind turbine ordinance to present at the next Planning Commission meeting for a decision on recommendation to Council.

City Councilman Blasier commented that he would like to be pro-active in creating a wind turbine ordinance before any applications would be submitted so as to protect the neighborhoods.

**5. Project Updates**

- a. **Zoning Board of Appeals Hearings/Decisions**
  - There is an upcoming use variance request from U-Haul on January 7, 2019.
- b. **Delta County Planning Commission Update:**
  - Williams reported that they approved changes to their by-laws and ordinance which have been moved to County Board for approval. They have also submitted a request to enter into a Master Plan phase and have an RFQ for assistance in the Master Plan process.
- c. **Zoning/Land Use Permit Update:** DeGrave updated the Planning Commission with the following information:

**ZONING PERMITS REPORT  
January 01, 2018 thru December 12, 2018**

4	NEW RESIDENTIAL	\$	1,282,000
20	RESIDENTIAL REMODEL	\$	304,789
3	NEW COMMERCIAL	\$	3,735,000
6	COMMERCIAL REMODEL	\$	1,625,000
2	CHANGE OF USE	\$	-
1	HOME OCCUPATION	\$	-
1	LAND USE PERMIT	\$	-
8	DEMOLITION PERMIT	\$	80,600
45	<b>TOTAL</b>	<b>\$</b>	<b>7,027,389</b>

- d. **Goal Progress Review – Information Packet on Form-Based Codes**
  - Smyth referenced the packets that were distributed on Form-Based Codes. DeGrave noted that the goal of getting training within 6 months. Williams suggested that at February meeting we have bulleted discussion points based on the form based



codes added to the agenda. Smyth asked if could also have someone come to give a training presentation at that meeting as well.

**e. Training Updates**

- Smyth asked Spencer for an update on training hours logged by Planning Commission members. Spencer indicated there were quite a few who had not yet achieved their annual required four hours, and that members should contact her with any additions and updates prior to the end of December for inclusion on the annual report.
- Gierke questioned whether the four hours a year was necessary if someone has already had extensive training previously. Williams commented that it should be continuous training.
- Williams suggested that the American Planning Association is a good resource for online training. DeGrave noted that there is a cost of \$115, plus \$65 per member, with additional fees for each training (which is discounted for APA members).
- Discussion took place as to what counts as training. It was generally agreed that while time spent in review and preparation for specific agenda items was not training, certain materials read and studied for new knowledge in the areas of planning and zoning is acceptable.

**COMMISSION/STAFF COMMENTS**

**1. Update on Enforcement of Work Begun Prior to Site Plan Review.**

Regarding this matter, DeGrave spoke with City Manager, who had spoken with some City Council members who indicated they did not want to go back and give citations/fines for the Chamber project, but encouraged them for violations on future projects. The strong consensus of Planning Commission was that a blind eye should not be turned to the violations on the Chamber project, and they want something presented in writing noting the violations, but does not need to include fines. Discussion ensued as to whether fines are required, and if there is flexibility as to the amount. DeGrave noted that he will check into it.

**Caswell made a motion, seconded by Black, to advise the City Council that the Planning Commission believes it is important to put the contractor for the Chamber project at the fairgrounds on notice that they have violated the appropriate procedures and that doing so in the future could result in fines. MOTION PASSED with unanimous ayes.**


**GENERAL PUBLIC COMMENT**

Joe Kaplan, of 2315 Lake Shore Drive, thanked the Planning Commission for alleviating his concerns on tower lighting and taking appropriate action.

**ADJOURNMENT**

The meeting adjourned at 7:25pm.

  
~~Kei Smyth, Chairperson~~ *Christina Williams*  
Escanaba Planning Commission - *Chairperson*

  
Blaine DeGrave, Planning and Zoning Administrator  
City of Escanaba