



ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
6:30 p.m. Tuesday, June 7, 2005

Meeting called to Order with the Pledge of Allegiance at 6:30 p.m.

Members present: B. Boltres, D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama

Members excused: F. Zarafonitis

Motion by Kladder, support by Dunville to enter closed session to discuss litigation in CCAT v. Acme Township vs. The Village at Grand Traverse, LLC. and Meijer, Inc. because discussions in open session could have a detrimental impact on the township's financial interest. Motion carried by unanimous roll call vote.

Meeting recessed at 6:32 p.m.

Meeting reconvened at 7:07 p.m.

Motion by Kladder, support by Dunville to re-enter open session. Motion carried by unanimous roll call vote.

SPECIAL PRESENTATION: Dunville presented an award to Charlotte Wright in honor of and gratitude for her 50 years of service as an election worker. When she began Neil Knopf was the Clerk. She has missed very few elections over the years.

INQUIRY AS TO CONFLICTS OF INTEREST:

A. CONSENT CALENDAR: Motion by Kladder, support by Takayama to approve the Consent Calendar as presented, including:

RECEIVE AND FILE:

1. [Treasurer's Report](#) through 05/31/05
2. [Clerk's Report](#) dated 05/27/05
3. Draft unapproved minutes of the [05/23/05 Planning Commission meeting](#)

ACTION:

4. Approval of [regular Board meeting minutes for 05/10/05](#), [special Board meeting minutes for 05/19/05](#) and closed session meeting minutes for 05/19/05
5. [Accounts Payable](#) in the amount of \$171,097.24 through 05/27/05 including \$86,201.25 for GT Metro Fire
6. Approve development name "Ridge Top" and road names "Ridge Top Drive" and "Sherry Lane Drive" for the Hedden development at the intersection of US 31 N. and Kay Ray Roads

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT:

Chuck Walter, 6584 Bates Road, asked if it would be appropriate to let the public know the basics of what will be discussed during closed session? Also, many people only know what is going on regarding litigation status and relations between the township, CCAT and development applicants through the newspaper, which can be inaccurate. Bzdok stated that the closed session involved a discussion of the status of litigation between the three parties Mr. Walter mentioned. Mr. Walter stated that perhaps the

Board could mention the fact that a decision is expected from the judge within two weeks.

C. **CORRESPONDENCE:** None

D. **PUBLIC HEARINGS:**

1. **Consider adoption of proposed Noise Ordinance:** There has been a State Attorney General ruling that counties may not enforce noise ordinances. The new County Prosecutor informed the County of this, and drafted a proposed ordinance that the County Prosecutor's office and Sheriff's Department would be willing to help enforce if townships would like to adopt it. Bzdok reported that counties used to be able to enforce noise ordinances, but the recent State AG ruling has changed this. Previously Bzdok offered some comments regarding the proposed draft, noting that at present a "reasonable person" standard for what is and is not a disturbance is enforceable. There is one dissenting opinion on the current State Supreme Court stating that there should be a decibel level limit. Bzdok initially recommended a decibel level standard, but the County is currently unwilling to enforce one and the township is not equipped to. In the meantime he is suggesting that only the reasonable person standard be utilized. An amendment to add a decibel standard can occur later.

Kladder expressed a concern that the proposed ordinance does not set different limits for differing times of day or different days of the week. He has experienced disturbance from construction noise at odd hours, or water pumps for sewer projects running for a week at a time. What if a business with live entertainment were to be sited near a residential district? Kladder read the proposed ordinance for the public.

Public Hearing opened at 7:25 p.m.

Margie Goss, 4105 Bay Valley Drive, stated that "Smart Growth" and "New Urbanist" initiatives are promoting dense clusters of housing. She does not believe that a noise ordinance that does not recognize how close people will live to residential, commercial and agricultural sources of noise is appropriate, and the proposed draft would be troublesome. What is necessary is for people to be good neighbors and to communicate with each other about special events that might impact others. She is concerned that "we are ordinating ourselves to death" and becoming "mean and nasty with each other."

Mr. Walter asked if any noise complaints have been received by the current administration. Nobody indicated that there had been. Mr. Walter believes that it is a mistake to create an ordinance for which there appears to be no need. He noted that agricultural operations are exempted from the ordinance but common residential noise is not. What about people plowing snow and the beeping from backing heavy equipment? He believes the ordinance is premature until complaints are received, and that people should work together without government interference.

Lewis Griffith, 5181 Lautner Road, stated that the law currently requires a misdemeanor to carry a consequence of \$100 fine and/or 90 days in jail. The proposed ordinance carries a fine of \$500. Is this legal? He would want to see proof in writing. Mr. Griffith had a problem with a dog making loud noise because it needed to be fed at one point, but when he called the Sheriff's Department was told that there was nothing they could do about barking dogs. Regarding Kladder's statements about water pumps on construction sites, they must be run 24 hours per day and cannot be operated only during business hours. Mr. Griffith

agreed with Mr. Walter that absent any complaints the ordinance seems unnecessary.

Rachelle Babcock, 4162 Bartlett Road, stated an understanding that the state no longer enforces noise ordinances and expects it to be done on a local level. Kurtz stated that only townships, cities and villages seem to have retained this power.

Bzdok stated that the ordinance was suggested by the County Prosecuting Attorney. Previously if someone had an issue they called the Sheriff's Department to ask for assistance. A deputy would ask the offending party to tone down the noise. The Prosecuting Attorney and Sheriffs can't do this any longer. This is not an attempt to create new legislation, but to replace an extinct ordinance and allow people who enforced it to enforce the new rules. All of the language in the document, including the proposed fine (which is a maximum and a lesser penalty can be enforced) came from the Prosecuting Attorney's office.

Deputy McKinley stated that the ordinance makes unacceptable noise a civil infraction. It would only become a misdemeanor if someone refused to comply with a deputy's request.

Public Hearing closed at 7:37 p.m.

Kladder stated that he was not seeking to have water pumps for construction shut off at night but to ensure that such necessary actions would have the same type of exemption as an agricultural operation. He also stated that it would be nice to think that all neighbors are good neighbors. However, one time when he asked a next-door neighbor to turn down some loud music, instead they turned it up and played it all night long. This lasted for a long time. He asked Deputy McKinley if many complaints are taken; he replied that there are often loud party, fireworks and construction noise complaints taken. Most of the time people respond to a request from a deputy to quiet down; he is unaware that the ordinance ever had to be forced. Even absent a noise ordinance, as our Community Policing Officer he would serve the community by responding to requests for assistance in this regard. Deputy McKinley is concerned that the ordinance would be used as a weapon between feuding neighbors. It is also true that if an offender refused to comply and is on his own property there would be nothing he could do. If the person is on public property they could be cited for disorderly conduct.

Takayama expressed agreement with Mrs. Goss that it would be nice if everyone could get along and communicate. However, this township is growing; in fact the three individuals who spoke in opposition to the ordinance favor growth. A civil ordinance to replace one that is expiring seems like common sense to him; retaining the status quo.

This is almost identical to ordinances being considered by other townships in the county. Kladder asked if the County would still be willing to enforce the ordinance if adoption were delayed for an extended period of time. Kurtz is uncertain. Kurtz favors adoption of the ordinance, and checking with our CPO periodically to see what types of complaints are being handled.

Motion by Boltres, support by Takayama to adopt Acme Township Noise Ordinance #2005-03. Motion carried by unanimous roll call vote.

2. **Consider approval of proposed Junk Ordinance:** Circumstances surrounding the proposed junk ordinance are similar to those surrounding the noise

ordinance. Kladder read the proposed ordinance for the public. It is exactly as proposed by the County Prosecutor.

Public Hearing opened at 7:48 p.m.

Mr. Walter asked if farmers will be grandfathered in if they have old farm equipment on property not visible from neighboring properties? Would someone be able to take aerial photos and prosecute? The Board noted the provisions of the ordinance which define how it must be possible to see the materials.

Ms. Babcock asked what will happen as the township becomes more built up and houses are closer to the junk piles on farmland. Bzdok stated that since the County would enforce the ordinance, they would have to make a determination. One factor would be how and whether the Right to Farm Act would apply.

Kladder asked if an existing junk pile would be a grandfathered situation. If he added new material to the grandfathered junk pile, would that be legal? Bzdok and Boltres stated that there is no grandfathering clause in the proposed ordinance. Decisions about what to enforce or not enforce would be up to the County. If the County did not enforce an existing junk situation, how does that affect the situation?

Mr. Griffith stated that there was a junkyard between Manton and Cadillac. New materials were received into it until the owner died. Here in Traverse City, Louis LaFranier still has some junk on his family's old junkyard at the corner of Garfield and Hammond. Mr. Griffith himself keeps some heavy equipment on his airport property to maintain a grandfathered status, stated that he would add to it if he wanted to, and defied anyone to challenge the right to do so. He compared the situation to putting up a new stop sign and trying to ticket people who didn't stop at the corner the day before the sign was raised.

Ms. Goss stated that "one man's junk is another man's treasure." Some local artists are using discarded materials to create beautiful sculpture. She would not want her neighbor to stockpile junk, and on occasion perhaps she has had junk on her property while she was adding to her home. Today things look better at her house. Again she feels that the township should rely on good neighborly relations rather than on trying to punish one another.

Scott noted that the County used to have these ordinances and used to enforce them. They said the same things the proposed new ordinances say. The State said the County couldn't enforce them anymore, so the County is offering the opportunity to the townships to do so. The nature of enforcement that has already been in place will continue unchanged. The deputies need the power to be able to assist people when neighborly relations break down.

Ms. Babcock appreciates the State's approach, giving more control to smaller communities so that they can tailor rules to their needs.

Public Hearing closed at 7:58 p.m.

Motion by Boltres, support by Kladder to adopt Acme Township Junk Ordinance #2005-04 as written.

Kurtz again suggested that reviewing the situation with the CPO at the end of the summer to see if any adjustments to the ordinance are needed would be a good idea. Kladder suggested October for the review.

Motion carried by unanimous roll call vote.

E. NEW BUSINESS

1. **Discuss proposed amendment to the Acme Township Retirement Plan:** Kurtz directed the Board's attention to a proposed Resolution. Dunville reported that it was discovered that non-elected employees are currently excluded from participation in the retirement plan. Kladder asked Corpe if he felt that it was intentional to excluded hired employees. She stated that she can't speak to the original intention, but that it was always represented to her that she would be eligible to participate, and when she attained a year of service she was enrolled in the plan by the officials. Henkel stated that in 1985 when the plan was created there were no full-time employees. He was the first, and has already participated in the plan. The goal of the proposed amendment to the plan is to recognize what has already occurred.

Kladder read the proposed Resolution for the public's benefit.

**Motion by Kladder, support by Takayama to adopt Resolution #R-2005-08.
Motion carried by unanimous roll call vote.**

Mr. Walter stated that he feels that the plan should be further amended to clarify the requirements for being considered "full time," particularly relative to Trustees. He was told he was not eligible to participate in the plan as a Trustee, though at times he spent long hours on the township's behalf.

2. **Discuss potential amendment to Fee Escrow Policy:** Takayama asked if allowing 14 days would still allow us to pay our vendors promptly; Dunville stated that it would. Scott recommended 14 days as the time period after discussion at the last Board meeting relative to fees owed by Meijer Inc. Most vendors will give us 30 days to make payment, so we should still have a 2-week margin for comfort.

Takayama asked what would happen if we invoiced an applicant and continued work during the 14-day period when we were awaiting payment. At the end of the 14 days, if the applicant could or would not pay, how would we ensure that any service providers to whom we owed funds for continued work are paid? The township would have to ensure the bill is paid and collect from the applicant, possibly in court, later. Kladder felt that the correct action was taken at the last meeting but that the 14-day period is a good solution to a poor situation. Scott read the proposed resolution for the public.

**Motion by Scott, support by Dunville to adopt Resolution #R-2005-07.
Motion carried by unanimous roll call vote.**

3. **Consider approval of proposed revised contract for legal services from Olson, Bzdok & Howard:** Kurtz stated that the first draft of the proposed budget for the 05-06 fiscal year indicates that general (non-litigation, non-application specific, non-zoning ordinance drafting) legal service fees for the coming year would be \$1,000/month. When originally interviewed, Bzdok recommended entering into a flat fee agreement for general legal services. The proposed amendment to the township's existing contract with his firm would institute this practice. The monthly fee would include all non-litigation, non-application specific services, (non-zoning ordinance drafting) including attendance at meetings on an as-needed basis. He stated that his firm will track the amount of time spent; if services rendered cost substantially more or less than \$1,000/month he will

request an appropriate adjustment up or down to the monthly rate when it is time to discuss contract renewal at the end of the calendar year. The goal is to ensure that legitimate needs for legal coverage are met without worrying about how every small question will impact the budget.

Kurtz noted that the budget is in a preliminary stage and may be adjusted. He suggested that the proposed contract revision be reserved until further into the budget discussions.

F. OLD BUSINESS

1. **Discuss first draft of proposed 2005-06 Budget:** The Board was previously provided with worksheets containing proposed budgets for the General and various Special funds for the period from 07/01/05 – 06/30/06. In the current year we expect to finish with approximately a \$200,000 deficit (current year revenues minus expenditures). The first draft of a proposed budget for next year proposes approximately a \$30,000 surplus. An extensive narrative and other supporting documents was provided to assist the Board members in understanding how the proposed figures were generated. These materials are posted to the township website and can be reproduced on request at the township hall.

Kladder stated he had reviewed the materials and found most of his questions answered. He does feel that the fee we charge for cemetery plots is very modest and does not cover our maintenance costs, and that this should be reviewed for possible increase.

Kurtz noted that all employment expenses have been allocated to cost centers where they are generated. In previous years the retirement plan, health insurance and FICA/Medicare costs were placed in separate cost centers.

Kladder asked how many elections the Election Cost center includes. Dunville and Corpe replied that one election-worth of costs was budgeted. The only upcoming consolidated election date we are certain will be used is August 2, and the thinking was that if there will be additional elections the budget can be amended and increased as needed. Scott expressed concern, particularly as it appears that a fire protection millage question will be needed on a later election date during the fiscal year. He wanted to ensure that our ability to pay for fire protection will not be jeopardized by an inappropriate delay.

Kurtz noted that department heads projected expenses for their cost centers. Significant decreases were made to proposed repairs and capital expenditures for the township hall. A dramatic drop in expected planning expenses for consulting planners and legal assistance is due to having expenses related directly to development applications run through the escrow fund.

Kladder felt that the budget was easy to read and well-explained. He is sure that amendments will be needed through the year, as all budgets have an element of unpredictability.

- a. **Set additional discussion meeting dates if necessary:** none proposed
- b. **Set public hearing/adoption date:** Dunville stated that notice of the public hearing must be in the newspaper 6-10 days prior to the public hearing. Once sent to the paper the notice cannot be published in less than 10 days, so the meeting must be 10-14 days from now. **The meeting was set for Wednesday, June 22 at 7:00 p.m.**

2. **Update regarding status of SUP/Site Plan Approval Application #2004-23P by POW Investments, LLC:** Corpe provided a memo and some materials demonstrating the discussion that she has had with representatives for the applicant during the past month regarding possible alternatives for water service that would allow final approval and development of Windward Ridge to proceed expeditiously. Kurtz has had a discussion with Sandy Pownall, the developer. Mark Lewis, Chairman of the Infrastructure Advisory has assisted as well. Water service issues were identified as a priority issue for the advisory, which held its first meeting Friday, June 3 and is holding a second meeting on June 13.

Takayama asked if thought has been given to obtaining water for Windward Ridge from LochenHeath and what that might entail. Corpe stated that the DPW raised the point that there are coming to be more than a few localized systems in the township, and coordination and minimization of the number might be desirable. There is also the question of whether or not the township wants to become a water utility. Takayama is uncertain that it would be wise for the township to operate a fully-fledged water utility. To him it seems one thing to assume responsibility for a localized system and another again to begin operating a water system for a broader area. It might necessitate additional staffing.

G. REPORTS

1. **Sheriff's Representative Report – Deputy Matt McKinley**
2. **Zoning – John Hull**

H. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:

Mr. Walter responded to Takayama's concerns about offering a water utility. Mr. Walter believes there are people in the township that would be willing and able to manage such an operation. With the increasing larger developments there comes an increasing need for high-pressure fire suppression. Mr. Walter also asked how many meetings with Tribal representatives have been held to date; Kurtz replied that there have been 2. Mr. Walter asked if they have been productive; Kurtz replied that for preliminary meetings they have been. Mr. Walter asked that he be kept apprised of developments, as he has one of the most significant pieces of industrially-zoned properties in the township which is about 20' away from the existing Tribal water line. He has been approached by potential developers.

Gene Veliquette asked for an update on the status of the lawsuit and the Meijer, Inc. application. Kurtz replied that oral arguments regarding the lawsuit were held yesterday and a written ruling from Judge Rodgers is expected within two weeks. Corpe stated that public comment took up the entirety of the time available for the Meijer application at the last Planning Commission meeting. The application is on the agenda for June 27 for Commission deliberation. After the last meeting, representatives from Meijer approached the township's consulting planner and asked if he'd like to meet with them to discuss the site plan concerns in his report. Since that time the township's consultant has been trying to set up that meeting but has had no response from the Meijer team. No new or revised application materials have been received either.

Meeting adjourned at 9:08 p.m.