



**ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
6:00 p.m. November 14, 2006**

Meeting called to Order with the Pledge of Allegiance at 6:00 p.m.

Members present: B. Boltres, D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama, F. Zarafonitis
Members excused: None
Staff present: S. Corpe, Township Manager/Recording Secretary
C. Bzdok, Legal Counsel

Motion by Kladder, support by Zarafonitis to enter closed session to discuss pending Meijer Inc. v. Acme Township litigation and ongoing settlement negotiations in CCAT v. Acme Township v. The Village at Grand Traverse LLC and Meijer, Inc. because discussion in open session could have a detrimental impact on the financial interests of the township. Motion carried by unanimous roll call vote.

Public meeting recessed at 6:04 p.m.

Motion by Kladder, support by Zarafonitis to resume public session at 7:04 p.m. Motion carried by unanimous roll call vote.

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA: Motion by Kladder, support by Scott to approve the agenda as presented. Motion carried unanimously.

A. CONSENT CALENDAR:

Motion by Takayama, support by Zarafonitis to approve the Consent Calendar as submitted, including:

RECEIVE AND FILE:

1. **Treasurer's Report** as of 10/31/06
2. **Clerk's Report** through 10/31/06
3. Draft Unapproved Minutes of
 - a. **10/10/06 Parks & Recreation** Advisory Meeting
 - b. **10/12/06 YCNA Steering** Advisory Meeting
 - c. **10/17/06 Infrastructure** Advisory Meeting
 - d. **10/18/06 Finance** and **Communications Subcommittee** meetings of the Shoreline Advisory
 - e. **10/30/06 Planning Commission** meeting

ACTION:

5. Approval of minutes from the **10/03/06 regular** Township Board meeting
6. Approval of **Accounts Payable** of \$339,355.67 through 11/03/06

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT:

Virginia Tegel, 4810 Bartlett Rd. thanked the Board for their work in the past year, whether she always agrees with it or not. She asked if anyone has noticed increased traffic on Bunker Hill Road since construction has begun at the US 31/M-72 intersection, and if we can ask the Road Commission to do a traffic count. She also asked what the procedure is for planning for the Maple Bay Farms area, if the township has been asked to participate.

Lou Ann Brohl, 4125 Holiday North Ct. thanked the Board, as she has noticed surveying on Holiday Road and the recent patching is somewhat of an improvement.

C. CORRESPONDENCE:

1. **09/29/06 letter from Charter Communications regarding price increase for analog basic cable television service:** Kladder expressed concern that the analog-only price increase is an attempt to pressure people into moving to digital service, and this can prove a hardship for people on a fixed income. He is concerned about the lack of competition in the marketplace.

D. SPECIAL PRESENTATIONS:

1. **Results of Fiscal Year 2005-06 Audit – Plante & Moran PLLC:** Katie Thornton and Sam Niemi from Plante & Moran presented the audit for the previous fiscal year. There were three parts to the materials were provided. Ms. Thornton drew attention to the qualification letter, in which we received the highest possible ranking of “unqualified.” She then walked through the graphs. Total General Fund assets at 06/30/06 were \$936,571, 95% of which is cash and investments. Liabilities (payables and accrued liabilities) were \$53,144. Total revenues increased approximately \$100,000 over the 04-05 fiscal year, partially due to a donation of new voting machines by the state and \$10,000 of insurance proceeds related to a township vehicle accident, \$11,000 from the Traverse City Area Public Schools for the cost of special elections, and changes in charges for services and licensees and permits. Interest income grew from \$0 to \$31,057, which was particularly lauded by Kladder. Ms. Thornton indicated that a reclassification from the previous year combined with active cash management to provide the increase. General Fund Expenditures decreased by approximately \$160,000, largely due to the implementation of a newer planning and zoning application fee and escrow policy whereby applications pay their processing costs. There was also a nearly \$40,000 reduction in general government expenditures. Some onetime expenses for the TART and capital outlay in 04-05 were not present in 05-06.

Another graph provided a four year history of the fiscal year-end General Fund balance. Between 04-05 and 05-06 the Fund balance increased by approximately \$56,000. Ms. Thornton noted that our Fund surplus is somewhat more than one year of operating expenses, where most governmental units attempt to maintain about 25% of a year's operating expenses.

Water and Sewer Fund assets totaled approximately \$9.2 million, including capital assets representing the system infrastructure. Liabilities were approximately \$4 million, 97% of which is long-term debt with the rest being accounts payable and liabilities. Water and sewer system revenues rose slightly, about 10% to a total of \$694,029. Again there was a more than doubling of investment income thanks to new active cash management practices. Water and sewer system expenditures have remained fairly constant over the past two fiscal years, rising about \$20,000 to \$868,707. The 4-year history of the fund balance shows a growing annual decrease, dropping approximately \$400,000 over the past four years with over \$150,000 of the drop coming in the most recent fiscal year.

All funds except the Water & Sewer Fund totaled almost \$1.8 million at year end, primarily in cash and investments. Adding in all assets such as lands, buildings, vehicles, etc. the government wide assets total nearly \$7.5 million, with \$4.9 million in capital assets and nearly \$690,000 in our share of Metro Fire assets. Total liabilities total about \$76,000 with government wide liabilities totaling nearly \$85,000.

Mr. Niemi discussed the September 29 letter addressing the audit of internal controls. The letter has four parts: current year items, prior year items in process, prior year items implemented and new accounting and regulatory pronouncements. They realize that in a

small township staff members often wear many hats. He feels that the township moved in a positive direction procedurally during the past fiscal year, and the three reportable conditions are not intended to mean that a poor job is being done but rather to suggest ways to modify workflow to improve oversight and limit potential difficulties. In the 04-05 year they noted a lack of a bank reconciliation policy, and in 05-06 noted that a procedure was put in place part way through the year and needs fairly minor refinement. They noted a need to enhance segregation of duties to ensure that at least two different people view, handle and document all receipts to enhance reconciliation and establish that the funds are handled appropriately. They also discovered, after calling Fifth Third Bank, that the bank would permit anyone to initiate a wire transfer over the telephone to any bank account whether in the township's name or not. They recommend that the township place a wire transfer restriction with the bank that will only allow transfers to other township accounts, and will not allow a person making wire transfers to open new accounts. They also recommended additional documentation for wire transfer initiation and cross-verification between the Treasurer's and Clerk's offices.

Kladder asked for more detail about the second exception item about the funds receipts process. Mr. Niemi stated that previously mail that contained checks, perhaps for tax payments, would be placed in the Treasurer's box unopened, and the check would only be opened and handled by one person in the Treasurer's office. They have recommended that the office assistant open all of the envelopes containing checks, log them into a spreadsheet and retain the spreadsheet to compare to the Treasurer's records as needed. Kladder does not see the benefit in the enhanced procedure, believing it only creates more opportunity for theft. Ms. Thornton was clear that no problems with misplaced funds were found, but an enhanced procedure will help resolve potential situations where a taxpayer sends in a check which is cashed, but their tax account is not credited – it creates a more detailed trail and helps protect various individuals who handle funds from inaccurate accusations.

There are other items listed regarding the current year which are not "reportable" but were noted and for which procedural changes were suggested. First is a recommendation that all invoices be marked "paid" on their front to protect against accidental duplicate payment. They do recognize that more than one person reviews invoices before they are paid. They also noted that the accounts payable software does not easily produce a report that tells one what invoices received after the fiscal year end represent accrued liabilities in the fiscal year being examined. This is not critical, but does create a little more work tracking down items for the auditors. They recommend running an accounts payable report at year end, and then holding separate invoices that come in after the fiscal year end and creating manual journal entries to help them quickly and easily determine which items make up the total accrued liabilities. They suggested some enhanced cash receipt reconciliation between the office assistant's receipt book and the bank deposit slips from the Treasurer's office. It was also suggested that access to petty cash either be limited or that each employee have their own separate locked cash box and associated recordkeeping and reconciliation responsibilities to make it easier to track any discrepancies that might occur to a particular employee. Finally they suggested a change to how the property taxes are treated – asset/liability rather than revenue/expense, because we collect them but pass them right on to the County.

Items in process include the ongoing formation of a vacation policy, enhanced check disbursement approval, and required periodic password changes for computer network users.

Prior year items implemented include segregation of cash receipting duties and tax account processing, implementation of a budget for the Farmland Preservation Fund, hourly and salaried payroll classifications, journal entry documentation, policy manual creation and special assessment balances reporting.

The final portion of the letter discussed new terminology for the categories of items that would be brought to our attention in next year's letter.

Ms. Thornton thanked the township for its assistance in preparing the audit and felt there was significant improvement made over the previous year.

Motion by Zarafonitis, support by Takayama to accept the 2005-06 fiscal year audit as presented by Plante & Moran. Motion carried by unanimous roll call vote.

E. PUBLIC HEARINGS: None

F. NEW BUSINESS:

- 1. Consider recommendation from the YCNA Steering Advisory to consider offers for a non-developmental oil & gas lease:** Corpe gave a summary of her memo and the history of the contacts the township has received to date regarding a potential lease of oil & gas rights in the YCNA Natural Area.

Ken Fowler, Evergreen Preservation Group, stated that his group was formed from a land preservation group/farmers who worked together to develop a lease agreement and negotiate contracts. Zarafonitis asked him how a non-developmental lease would work. Mr. Fowler stated that some of the properties adjacent to the YCNA on the east have signed with his firm. Wells would be drilled on their properties, creating no impact on the sensitive YCNA lands themselves. This is not "directional" drilling. Oil tends to be in discreet pools underground under specific properties, but Antrim Gas is in rock structures comparable to a coral reef that looks like concrete. Gas molecules are trapped in the rock and can be moved by water. The gas is produced by Antrim wells over long periods of time at relatively low pressures and with great consistency. The Fruehof trucking company family first produced Antrim Gas in the 1940s to make rubber for tires during the war shortages; the original wells are still producing today. The firms approaching the township believe that Antrim Gas will be found in this area and want to explore for it.

If the township doesn't lease the rights to the YCNA, the gas will ultimately be extracted through wells on neighboring parcels without those neighbors having to share the royalties. Mr. Fowler believes the township should share in the revenues on any gas under the property. The benefit to signing additional lands to the producer is that they can create one well for each 80 acres tract laid out under contract.

The board referred to the well blowout in the 1970's that sent sour gas into the local aquifers. Hydrogen sulfide does not exist in Antrim Shale, so the risk of a similar situation occurring from the proposed drilling is non-existent.

A well is started by sending a mortar down to "frac" the well, creating cracks in the Antrim formation. Water is then sent down into the cracks. Gas and water come back out. Gas is compressed and sent into a pipeline; wastewater is sent to disposal wells. The water used to extract the gas does not come from the drinking water aquifers or surface waters, which are at strata above the Antrim formation, it comes from within the Antrim and is pumped back down.

Kladder asked if the State would work independently of the township, or if the two governments would work together to consider lease agreements, given that the township gave to the state a 1/6 interest in the minerals and royalties in the YCNA. This is a standard requirement for properties acquired using MDNR Trust Fund moneys, which are generated by mineral royalties. Corpe's understanding is that the state will receive 1/6 of whatever a township contract generates, and has a letter from the MDNR to Whitewater Township indicating that the state is not contracting independently.

Kurtz indicated that the township has received proposed lease agreements from two firms, Evergreen and O.I.L./Jordan. As competing bids they were not placed in the packets to preserve a level of initial confidentiality. Kurtz asked Bzdok if the lease agreements would have to be made public at the current time; Bzdok stated that they have not been made public to this point, although certainly the two companies must realize that they are dealing with entities with few non-public documents. If someone were to make a FOIA request, whether or not the documents should be released would be determined at that time.

Kladder expressed concern that preservation of the YCNA and its resources must be clearly spelled out in any potential agreement.

Kurtz noted that if the Board wishes to proceed they need to have an attorney review the documents and advise the Board how to proceed. Several attorneys well-versed in the oil and gas industry have been suggested and were listed in Corpe's memo. Bzdok stated that his firm, which specializes in environmental matters, is well-versed and capable in this regard. He stated that as regards the physical matters of the situation (how the exploration/production would be performed, how the land would be treated) he and his firm would be more than able to handle the matter. He stated that if the township seeks to negotiate the financial terms, he might refer us to Peter Zirnhelt.

Takayama asked how the township acquired the mineral rights. Bzdok stated that they were likely acquired in fee ownership with the land, and this may be a requirement for any lands purchased with MDNR funds as this would be the only way to guarantee the integrity of the land on an ongoing basis. Kladder stated that land scores more highly for MDNR funding if the mineral rights come with it.

Bzdok stated that if the matter is referred to his firm, his job will be to ensure that the terms both parties require are placed in the document in iron-clad form. He still needs input from the township as to what the township values that should be incorporated in the terms of the agreement. He already has some additional proposed language that can be considered.

Motion by Boltres, support by Zarafonities to send the matter to Olson, Bzdok & Howard for review and further advice.

Bzdok stated that absent the formation of a committee, he would look to Kladder and to Ron Reinhold to provide advice on what would be in the township's best interests. Kladder asked if we should advertise more widely for other competing bids.

Philip Corey, Land Manager for O.I.L. stated concern over things he had heard. He is a geologist and geophysicist, and believes he has heard some things that "won't work." He says Antrim shale gas may not travel very far. The industry has drilled many wells he says prove that there is no communication between wells that are 1,320 ft. apart, but there is between wells separated by half a mile. To say that one would only drill around the edge of a property would constitute to him an "economic waste." O.I.L. drills lateral wells – as distinct from directional wells – as long as several thousand feet. If an economic waste is committed by adding land that may not physically produce, it dilutes the value to the surrounding landowners and is unfair to them. To Mr. Corey this should be a simple matter. He sees no surface issues, just money issues. Most of a lease is directed towards what happens on the surface, the other 10% deals with money. If money is the only thing to consider, what more is there to discuss other than how much money is on the table? He feels this is the only real consideration: which company provides the desired economic outcome. He feels the State would have a problem with unitizing a large area but only placing wells around the perimeter, and that it might violate regulations against

committing a waste. He said it's hard to tell precisely where gas is coming from underground, but that if one is trying to drill from more than half a mile away one is probably missing a lot of resources. He feels a horizontal well under the YCNA would be necessary and can be done with no surface impact. He also stated that marketing the gas is critical along with the exploration and extraction. All firms hire third parties that specialize in that aspect of the business. The ability to get the best price for the product is predicated on the reserves that can be dedicated to the contract; a trainload gets a better price than a pickup load and demonstrates the ability to make good on the contract.

Kladder asked how attorney review costs would be covered; they would fall under the monthly retainer.

Motion carried by unanimous roll call vote.

2. **Consider recommendation from the Parks & Recreation Advisory to approve Wade-Trim bid to complete a site plan for Yuba Park Road boat launch improvements :** The Parks & Recreation advisory was formed to take up the matter of boat launch improvements as its first task. A proposal has been received from Wade Trim to complete work originally started in 2004 as outlined in the staff memo, and the Parks & Recreation advisory is recommending that the proposal be accepted.

Boltres asked if consideration has been given to offering a 99 year lease to the DNR to develop their own launch. There is a need for additional quality public launch sites on the east side of East Grand Traverse Bay; the current southernmost facility is in Elk Rapids. He feels that it would be a waste of funds for the township to spend more money on a project he feels was ill-conceived from the outset. Corpe noted that the township does not currently own the waterfront road ends; the Road Commission does. Following the fatal accident at a Long Lake road end, there is reason to think they may be interested in divesting themselves of such road ends. The township might or might not be able to convey part of Saylor Park to another entity, given the terms under which it was donated to the township.

Boltres believes that no further funds should be spent on the project until we ask the DNR if they would design and develop a launch themselves. They don't have one on this area of the bay. He believes that if we proceeded in this fashion perhaps the DNR would refund some or all of the \$21,000 already expended on the project. Corpe stated that our contact for the grant has said to date that if no further progress is made according to the original grant terms that none of the funds expended will be refunded to the township.

Motion by Zarafonitis, support by Takayama to continue discussion to the December meeting to allow Boltres time to explore additional options through the DNR.

Kladder feels that while most of the discussion on this matter has been about the financial side, it should be kept firmly in mind that boat launch improvements are genuinely needed and desired by township citizens.

Motion carried unanimously.

3. **Consider resolution to remove SKHW as liquor co-licensee with Schelde Enterprises for TraVino Restaurant:**

Motion by Boltres, support by Zarafonitis to adopt Resolution #R-2006-18 supporting removal of SKHW, LLC from the TraVino liquor license. Motion carried by unanimous roll call vote.

4. Consider **potential 2006-07 Budget Amendments**: Corpe gave a brief overview of the proposed budget amendments. The township is about one-third of the way through the 2006-07 fiscal year, and is tracking as expected in most categories.

Motion by Boltres, support by Dunville to adopt Resolution #R-2006-19, 2006-07 Budget Amendments as presented. Motion carried by unanimous roll call vote.

G. OLD BUSINESS:

1. **Update on status of road easement connecting Wild Juniper Trail and Five Mile Road**: Bzdok introduced Mike Grant from his firm, who has worked with Corpe on this matter. She summarized her memo. Brad Zucco and Robert Nalley, owners of the lots crossed by the easement, have offered the easement to the township; Corpe asked Grant to elaborate on where the township stands in relationship to this offer. The township cannot assume ownership of a public road, but it can serve as a conduit to have a road become part of the Road Commission's public road system. The process involves an offer of the road area from at least 51% of the frontage owners, having the Road Commission state willingness to accept the road and specifying the design standards and conditions, and having the Circuit Court rule on whether or not the road is a "highway by user." Any necessary improvements can be paid for through a special assessment district on benefited parties.

Boltres asked about the concept of "prescriptive easement" or "adverse possession." Mr. Grant stated that the former term refers to ongoing use of a property as a throughfare, while the latter involves actual fee transfer of title to land. The former would apply, but not the latter. Bzdok stated that previously he carefully avoided making an official pronouncement on the issue, but Mr. Davison felt he had already made one as evidenced in a letter he wrote to his neighborhood clients. Bzdok does believe a prescriptive easement exists. Mr. Zucco asked who the prescriptive easement would belong to; this would be the key outstanding question.

Kladder asked if the road could become a private road open to public use. Grant responded that the township would not necessarily have a place in such a process, although it could have a say in the standards to which the road be constructed and maintained if a private road ordinance were developed.

One Northpointe resident noted that the easement is used by a wide variety of public and private vehicles. Mr. Kurt Horton, Holiday Road, proposed that if Holiday Road were repaired perhaps the easement would get less traffic.

Polly Watson-Cairns asked about doing a Supervisor's/Assessor's Plat to formalize the road. Bzdok recommended against this as overly cumbersome, and he and Corpe observed that one way or the other the road would have to become either a Road Commission-ac

Motion by Scott, support by Zarafonitis, to formally ask the Road Commission for its requirements to bring the Northpointe easement up to a public acquisition standard. Motion carried unanimously.

2. **Continued discussion about potential expansion of mandatory curbside recycling district**: The board was provided with information from Kelly Ignace, the county Resource Recovery Manager in the form of a memo and a map of existing and proposed curbside recycling district areas. Corpe and Ignace have identified some concerns about the map, which will be revised. Corpe reported that the question raised last month about perhaps expanding the area in which waste haulers must offer curbside recycling to the entire township represented Ms. Ignace's response to a resolution the board passed in April 2006. This resolution set forth the elements the Board felt were crucial to any new

solid waste plan for the county, and one of the items was to make curbside recycling available to everyone. The county is not pushing for the decision to be made, just facilitating a response to our earlier request. Whether or not the district is expanded is not expected to have an effect on whether or not the recycling drop-off at the Holiday Shopper in the township would remain or be closed. The County is required to maintain at least 6 of the current 9 drop-offs in operation through the end of the recycling contract with American Waste in 2008. 1 or 2 of the locations are already slated for closure, and while nothing is cast in stone Ms. Ignace expressed doubt that the Acme location would be slated as a potential third.

During last month's discussion of this issue, the Board asked for information on whether and how much residential trash collection rates would rise if the entire township was included in the district. Corpe asked Office Assistant Nancy Edwardson to call all the local haulers to find out. Only Waste Management responded, and their response was that rates would not necessarily rise. Ms. Ignace has pointed out that they could change their minds at any time, and she feels a rate increase on newly-included residential properties is more likely than not. Edwardson also asked Waste Management how many of Acme's households they serve and how many are currently offered curbside recycling; the firm said they either would or could not provide the information. Ms. Ignace reports that Waste Management has 80% of the county-wide market share.

Given the lack of additional data regarding the likely immediate impact on residential landowners, and a general desire to look at more comprehensive solutions to solid waste needs (including a desire to examine whether a township-wide contract, either alone or partnered with other local municipalities, could yield enhanced curbside service and/or lower rates to citizens), consensus was reached to table discussions on this issue at present.

H. REPORTS

1. **County Commissioner's Report** – **Larry Inman**: received and filed
2. **Parks and Maintenance** – **Tom Henkel**: received and filed
3. **Sheriff's Deputy** – **Bob Sillers**: received and filed. Boltres commended Deputy Siller for issuing 144 traffic citations last month, second only to Garfield Township. He did that as one officer, while Garfield has 12 officers. Deputy Sillers stated that he did not write all of the citations; this is the total for all deputies within the township boundaries. There are 38,000 cars per day on average on M-72; traffic is heavy and increasing.

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

Nels Veliquette addressed the oil and gas leasing issue, disagreeing with Mr. Corey's statements. He urged the township to dedicate any revenues from leasing to the acquisition of additional lands and enhancement of natural resources in this important natural corridor. He believes that there is much more to the matter than money. The agreement with the trust fund states that we will not develop any acquired mineral rights on, in or under the YCNA, and that we will not allow development from neighboring properties that would impair or diminish the usefulness of the property. He found Mr. Corey's attitude unimpressive.

Meeting adjourned at 9:42 p.m.