



**ACME TOWNSHIP PLANNING COMMISSION MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. Monday, July 24, 2006**

Meeting called to Order with the Pledge of Allegiance at 7:01 p.m.

Members present: M. Vermetten (Vice Chair), B. Carstens, C. David, R. Hardin, D. Krause, E. Takayama, L. Wikle, P. Yamaguchi

Members excused: J. Pulcipher

Staff present: J. Hull, Zoning Administrator
S. Corpe, Township Manager/Recording Secretary
J. Jocks, Legal Counsel

1. Consent Calendar:

Motion by Wikle, support by David to approve the Consent Calendar as presented, including:

Receive and File:

- a) **Draft Unapproved Minutes of**
1. **07/11/06 Regular Board of Trustees Meeting**
 2. **07/10/06 Shoreline Preservation Advisory Meeting**
 3. **07/13/06 ZBA Meeting**
 4. **Gosling Czubak Insight newsletter**
 5. **Planning & Zoning News June 2006**

Action:

- b.) **Approve minutes of the 06/26/06 regular and 07/10/06 special Commission meetings**
- c.) **Review and approve agenda, inquiry as to conflicts of interest:** Agenda approved with no conflicts of interest noted.

Motion carried unanimously.

2. Correspondence:

- a) **Letter dated 7/7/06 from Andy Andres, Jr.:** Takayama feels that definition within the Personal Wireless Services Ordinance of areas within the township to which the township would prefer to direct tower and antenna development is in order. Corpe stated that Hull has been speaking with counsel Chris Bzdok's office regarding an update to the ordinance, and that discussion about tower location sites could be incorporated into that effort. Krause expressed concern that the township may not have the technical expertise to choose effective tower locations; Corpe suggested that Russ Harbaugh or another similarly qualified RF engineer might be retained to assist in this regard. David concurred with the need, stating that he would seek assurance that the township could enforce the ordinance and deny proposed tower locations outside of defined areas. Mr. Andres stated that his goal is not to be anti-business or anti-cell tower, but to ensure that siting is effective and appropriate within the context of the overall land use goals of the community. He feels that there will be increased pressure for antenna locations within the township and we should be prepared. Hull suggested passing the discussion to the Infrastructure Advisory, since it seems to him that cellular services are a form of infrastructure. Vermetten recommended forwarding the Andres letter to the Infrastructure Advisory with a request that they report back to the Planning Commission at a later date.

3. Limited Public Comment:

Gene Veliquette stated that he is speaking in favor of better cell phone coverage. He changes service providers frequently due to an abundance of dropped calls and static in connections. Cell phone service is critical to his agribusiness operations.

4. Annual Election of Officers:

Nomination by Krause, support by David for Vermetten as Chairman. Nomination carried unanimously.

Vermetten stated that over the past few years he has often been on the different side of a debate than Carstens, but that he respects Carstens greatly as being dedicated, thoughtful and prepared.

Nomination by Vermetten, support by Krause for Carstens as Vice-Chairman. Nomination carried unanimously.

Nomination by Takayama, support by Vermetten for Krause as Secretary. Nomination carried unanimously.

5. Public Hearings:

a) **Public Hearing (continued) – SUP/Site Plan Application #2006-06P by National Tower, LLC, c/o Cellere to locate and construct a cell tower just east of the Holiday Inn Express, 3536 Mt. Hope Road, Acme, Michigan:** Mr. Steve Fox, legal counsel to Cellere addressed the Commission. He noted that since the last meeting an issue has been raised by the Johnson Family Limited Partnership regarding deed restrictions on the subject property. It is his assertion that this matter is not one that the Commission may properly consider.

As to scenic viewsheds, Mr. Fox and Cellere do not agree with the Commission's interpretation of the scenic viewsheds identified in the Master Plan. Regardless, it is his position that the requirements for tower location have been met by his client.

As to aesthetics, Mr. Fox believes that a galvanized tower will be the least intrusive presentation visually, as opposed to painting the tower. Hull has recommended that the north side of the tower be painted a lighter shade than the south side of the tower, and the applicant is willing to accept this requirement if imposed. Also as to aesthetics, all wires running to the tower will be underground and as with the tower in Yuba there will be extensive landscaping.

As to tower height, the proposal is for 180' with a 5' lighting rod atop. They would prefer a 250' tower, but it would have to be lit for aviation safety, or they would prefer a 199' tower. Cellere has requested the absolute minimum tower height that can be used by Verizon, the planned antenna locator.

As to co-location, at the last meeting Cellere was asked to again review the possibility of co-location at the Grand Traverse Resort. Mr. Fox noted that a letter countersigned by a Tribal representative was previously submitted, and further investigation has borne out the statements in that letter that co-location is not feasible. The ordinance does not permit the township to require that Cellere seek other potential location sites, and in any even there are none between the proposed tower site and the Resort that are feasible for Verizon, or that would not also be in a viewshed.

A posterboard was displayed containing the zoning map of the township. All areas

where the ordinance does not permit tower location were cross-hatched out. On a second board, the same information was overlain with the scenic viewsheds identified in the Master Plan, demonstrating that nearly all portions of the township eligible for tower location may be within one defined viewshed or another. Following posterboards contained photographs from several vantage points into which the tower was inserted to demonstrate what it may look like in real life. One of the photographs was taken from inside a living room on Bunker Hill Road. A 60' average tree height was assumed for most pictures. There were five pictures taken at varying distances from the proposed location site.

David asked if the proposed tower would look similar to the existing tower in Yuba, and was told it would. Photographs were also provided of how the Verizon shelter at the bottom of the tower would appear. David asked if the proposed tower would be able to lease space to other antennae for co-location. The tower as proposed could hold up to five antennae, and could be lengthened and/or strengthened later to contain more.

Hull asked if the 5' lighting rod is required, and was told that it is. He asked if the tower could be slightly taller and still not be lit, and it could be. Hull asked if having the tower be the absolute minimum height necessary to Verizon could mean that co-location of other antennae difficult; it could.

Takayama expressed disappointment that none of the demonstrative photographs were taken from the Wellington Farms area, as his major concern was for residential landowners who own view properties. Mr. Fox stated that the photographs were specifically designed to address the Master Plan viewsheds, which does not include a view from the Wellington Farms area. Takayama countered that the applicant did deviate somewhat from the viewsheds by addressing the views from certain properties on Bunker Hill Road. He expressed some confusion about the legality of the deed restriction and what the impact would be. The deed restriction was not recorded when the land was sold. Jocks stated that this issue should not be considered by the Planning Commission at all. Review should be limited to the ordinance and whether the application meets the requirements. He would prefer not to speak to the issue of whether or not the deed restrictions are in force, which is a private matter between the landowner. Hull confirmed that the matter is irrelevant to the public process; he only included Hullman's letter because it was addressed to Vermetten and therefore seemed to be addressed to the Planning Commission. Deed restrictions are a private matter.

Krause stated that at the last meeting the deemed the proposed landscaping to be inappropriate, but he has not seen a revised landscaping plan as part of this month's presentation. Mr. Fox recalled that the motion spoke specifically to study of co-location issues. A landscaping plan was submitted with the original application, and there was discussion about juniper trees. Mr. Fox stated that the applicant is willing to accept application conditions amending the landscaping plan already presented as discussed.

Yamaguchi asked about the picture of the Yuba site, and asked if chain link fence with barbed wire is standard to such installations, which it is. She asked if it would be possible to employ methods to improve the appearance of the fence. The applicant stated that the fence will not be visible from any roadway, but only from the Holiday Inn property. Krause stated that the landscaping he is discussing will screen the fence from view.

Hardin asked about the appearance of the antenna on the tower itself.

Wikle performed a site visit, and has been giving some thought to businesses that might locate on the cul-de-sac. She asked why the tower didn't consider purchasing a lot farther back in that area. The applicant asked how large the lot is; Corpe noted that the land in question is all still one big lot owned by the Johnson Family Limited Partnership. The applicant also noted that the area about which Wikle inquired is either zoned residential, and therefore off-limits according to the ordinance, or is too close to a residential area.

Public Hearing re-opened at 7:44 p.m.

Vermetten noted receipt of a letter from Darby Boatwright Dewey opposing the proposed cell tower location.

Andy Andres, Jr., 4946 E M72, representing the Andres Family, stated that there are public viewsheds, but also large amounts of private viewshed, some of which includes views of the bay. His letter has asked for the township to take objective action to define appropriate tower sites, but now wishes to speak from a subjective perspective. He is not anti-tower, but he is opposed to the proposed tower location. There is an effort underway to do some long-term planning for various properties including the Johnson property, and he does not believe it is in the township's best interests to have to have this planning done around the proposed tower. His family recently cleared 800' of view bays on property they own, and the tower is a disappointment to their plans.

Ann Rundhaug, 3733 Bunker Hill Road, noted that the pictures of how the tower might look were taken with leaves on the trees, and wishes a decision could be delayed until pictures without leaves could be taken. She realizes her house is in a valley and doesn't have bay views, but she is concerned for the residents of Pleasant Ridge and Wellington Farms.

Andy Andres, Sr. 4946 E M72, referred to the property where the bay views were just cleared. This property has been in his family for a very long time – close to a century. He is thinking about building a house up there. After paying taxes at least during his 74 year, now his house will have to look at most of the height of the tower.

Alta Bennett, 3721 Bunker Hill Road, has a home next to the Holiday Inn Express and 13 acres of vacant land nearby. She feels this is a very bad location for a tower. She was approached several years ago and refused to permit location on her land.

Owen Sherberneau, 7883 Peaceful Valley Rd, asked if the Commission had asked for a review of an RF study at the June meeting where this was last discussed. Hull recalls that the first issue to be settled was whether or not co-location at the Resort could be obtained. If it could, then an RF study to determine whether the signal would have been usable at the Resort would be performed. It became apparent that the Resort could not offer co-location to the applicant, so the second part of the question became moot. Reasons why the co-location could not move forward include: that the applicant needs 24 hour independent access to the antenna site but the Tribe is unable or unwilling to grant such access for security reasons; that the necessary equipment building to be placed on the ground is too large for the piece of property on which the Resort water tower sits, and structural modifications would be needed to the water tower to accommodate the larger-than customary, new-technology antenna array.

Hull noted that when he spoke to the Tribal water authority representative approximately two weeks ago, he was told that Cellere was still actively visiting the site and considering whether co-location could work. It appears that a sincere effort was made.

Mr. Veliquette hopes that truly better signal service can be obtained, as cellular phone technology can be not only convenient but life-saving. He hopes that the proposed tower isn't too short.

Public Hearing closed at 7:55 p.m.

Harding is concerned that building at the minimum height required Verizon will result in the tower being unsuitable for other antennae to co-locate, resulting in a one-tower, one-antenna situation. Mr. Fox stated that another service might be able to locate below Verizon on the tower, depending on how that service has structured its network. The applicant could also return to the township to seek approval for additional height on the tower, and that the township might view the application favorably if it would prevent construction of a new tower.

Takayama asked if the tower as constructed will be structurally able to be lengthened later, and it will be. He also referred to earlier questions about tower grounding and the potential impact of a lightning strike on neighboring property owner water wells. He is certain that if an issue arises the cellular provider or tower company's insurance will cover a claim, but asked if anything can be done to lessen the likelihood of a problem. The applicant stated they have a sophisticated grounding system designed that will keep soil conductivity below 5 ohms and function effectively.

Motion by Carstens, support by Krause to recommend approval of Application #2006-6P to the Board of Trustees.

Wikle believes that landscaping requirements should be specifically mentioned in the motion. Hull concurred that at a minimum the previous discussion about landscaping should be referenced. Also the ordinance permits/requires the tower to be painted, and this requirement should be addressed, and Hull needs to have the Commission specifically state for the record whether or not the tower is deemed to be within a viewshed.

Motion withdrawn by Carstens with support from Krause.

Motion by Krause, support by Yamaguchi to recommend approval of Application #2006-6P to the Board of Trustees, conditioned upon revision of the landscaping plan as indicated during Commission discussions, finding that the tower is not within a defined protected viewshed, and finding that the tower need not be painted.

David concurs with the motion, but is uncertain how the Commission can say that the tower is not in a primary viewshed and asked about Krause's reasoning. Carstens would be willing to make a motion recommending approval of the application even though the tower may well be within a defined protected viewshed. He does not believe the Commission can speak to whether the tower is within a viewshed when there are many different points of view and perspectives. Several individuals have spoken and said they consider the tower to be within a viewshed, but these statements may not be sufficient to deny the application. Krause noted that the viewsheds under

discussion are those defined in the Master Plan, and those seem very broad. Everything, everywhere is in someone's personal viewshed. The Master Plan seeks to identify views primarily from positions along M-72 and US 31.

Vermetten believes there are personal viewsheds everywhere that are individual. To him the discussion has centered on Master Plan viewshed #6, and recalls extended discussion about the scope of that viewshed. Echoing Krause's statements and Hull's report, the relevant viewshed is the one defined in the master plan of a golf course.

Takayama believes the Master Plan is seeking to define and protect viewsheds for travelers as they enter the Grand Traverse Region along main roads in Acme. His concern is for the number of people who will be viewing the tower from their view properties, for which they paid a premium price. If it were only one or two landowners the concern would not be substantiated, but for him the sheer number of potentially impacted landowners is the issue.

Motion carried by unanimous roll call vote.

- b) **Public Hearing regarding SUP/Site Plan Application #2006-05P, open-space residential development for Cherries R Us at 9018 US Highway 31 North:** Russ Clark from R. Clark Associates presented the application for development of what the applicant terms the "Shaw Property" on US 31 North on the west side of the Yuba Creek Natural Area (YCNA), as well as several proposed properties from which some building density might be transferred. Mr. Clark displayed a site plan of existing development and significant vegetation on the 11-acre Shaw property. Access to the YCNA overlook is immediately to the north. There is a steep slope on the east side of the property down into the YCNA, containing some scattered naturally-occurring "pioneer tree" species. The existing Shaw House would be left intact, while two detached garages would be removed to make room for proposed access to new houses. Photos in the Powerpoint presentation depicted views of the bay from the subject property to the west, as well as views to the east and southeast. MDOT has approved an access location from US 31 for five new housing sites plus the existing Shaw House; the existing two curb cuts would be removed. The Health Department has determined that soils are suitable for a common septic system on the southwest portion of the site. The eastern portion of the site would be a commons area for the homeowners subject to restrictions as to the use of the land and removal of vegetation. Additional commons areas would be provided surrounding the Shaw House.

Sending Parcel A (28-01-006-007-01) is 70 acres of agricultural property that could transfer two housing units, leaving 12 units of density. Sending Parcel B on Brackett Road is next to the Everflowing Waters Campground on the north side of the road (28-01-225-012-01), contains 67.5 acres of agricultural properties and could transfer 2 units and retain 12 units. Yuba Creek crosses this property. The site is inherently entitled to 2 units of density; providing conservation of 50% open space allows for a third. Two more units of density are desired to be transferred to the site.

A soil erosion control plan was displayed. This plan was submitted to the Drain Commissioner's office, and a letter has been obtained stating that the plan is suitable. A landscaping plan shows the required two street trees per lot being clustered at lot corners. Proposed lot lines, required building setbacks and potential house footprints are displayed. Eleven trees placed along the north side of the proposed new access road would screen it from the YCNA parking lot view.

Proposed elevations displaying the character of the architectural requirements that would be imposed were provided.

Hull stated that in his report he discussed the concept of providing for some landscaping on the west side of the proposed lots that would soften the view of the homes from the YCNA without completely blocking views from the homes down into the valley; such landscaping has not been provided. Hull also noted that if 50% of the land areas is conserved an extra unit of density is not automatically obtained, and the Board will have to approve the transfer of 3 units of density to the site rather than two (the ordinance requires special dispensation from the Board to transfer density over and above 100% of the native property density). If the open space were increased to 60% the density bonus calculations would change and the special dispensation from the Board would not be required.

Krause recommended that the 11 trees proposed for the north side of the new roadway to buffer it from the YCNA parking area be transferred to the east side of the proposed lots to provide the softening Hull discussed. He perceives that there is no problem with existing views of the Shaw House from the YCNA parking area.

Carstens is concerned about how the determination was made about which portions of the site should be open space. The open space must have conservation value, and the ordinance places a value on having open spaces providing continuity. Having open areas contiguous to one another provides for wildlife corridors and greater human usability. Carstens believes all the open space should be contiguous to the YCNA, rather than having a common area on the west side of the proposed new road near the Shaw House that is separated.

Carstens has also heard that the Grand Traverse Regional Land Conservancy (GTRLC) may have made an offer to purchase the eastern half of the property, and would like to know what bearing this might have on the situation. He wondered if a conservation easement could be given to the GTRLC later. Hull stated that if the Conservancy purchases the land as proposed, all but the existing Shaw House would be placed under easement and no other homes would be built. Hull has also heard a rumor that the Conservancy made an offer but is unaware of its status. He has heard the Conservancy offered to buy a portion of the land that would leave too little with the Shaw property to meet the township's land division requirements (minimum 5 acre lot size in the Agricultural district). Carstens is also concerned that the proposed residential lots include the steep ridgeline in the middle of the property, although he sees this proposal as an improvement over having a home built on a five acre lot encompassing the eastern side of the property.

Krause agreed to some extent with Carstens, but sees conservation value in having open space around the Shaw House to serve as a visual buffer for the US 31 corridor traffic. David concurred, feeling that conservation value extends to facets beyond wildlife habitat. Hull also demonstrated that the proposed open space on the west side of the property is contiguous to the YCNA above the ridgeline to the south of the property.

Vermetten concurred with the points of view expressed. He asked if the proposed lot sizes are the minimum they can be for the proposed homes, and if the lot lines can be brought back up above the ridgeline. Smaller lots with closer homes would also create more of a neighborhood feel and put more of the land into open space. Hull noted pages 4-5 of his report, stating that the Open Space Development ordinance will permit any size lot that will be permitted by the Health Department. That being

said, there are some practical limitations on how small the lots can be created by the minimum setback requirements. Mr. Clark observed that building envelopes could be defined within the lots that would prohibit development on the ridgeline.

Takayama has expressed concerns from early on about a two-story colonial home, as seen from above the ridgeline, plus a walk-out basement appearing as a three-story building from the YCNA. He would favor moving the houses west on the site, possibly still allowing walkout basements but essentially on a ranch building resulting in only two-stories.

Krause appreciated Vermetten's suggestion to tighten up the housing distances, which would solve for most of the concerns expressed by various individuals. The houses would also be less visible from the YCNA because they'd be farther west above the ridgeline.

Carstens also asked that if the homes have any access to the Yuba Creek valley it be directed to the north or south rather than straight to the east. He would prefer to discourage people from walking down the slope into the YCNA, mentioning that the township is specifically not developing a pathway from the parking lot into the valley in this area. Mr. Clark noted that there is a natural pathway down from the Shaw Property down the ridge.

Mr. Gene Veliquette, Cherries R Us, is present instead of Nels Veliquette who is working on the cherry harvest. He is concerned about the suggestions the Commission is making, feeling that the plan they originally brought to the township was deemed by staff to conform to the township Master Plan. He has a certain mortgage on the property, and his agricultural operation is trying to add value to its land holdings, but he views the requests of the Commission as decreasing the value of the land in a way that is "abhorrent" to him. The mortgage on his farms is over \$11 million, but the suggestions don't appear to him to be helpful in paying back his debt. He realizes that the Commission is not supposed to consider economic value, but feels that some of the provisions being discussed decrease his land value. Will the Commission attempt to prevent all property owners adjacent to the YCNA from walking across their properties into the area, or just him? He is concerned when there is discussion about not putting up things like cell towers when it might impact someone's view – are distant property owners' rights more important than the rights of the site owners themselves? The Conservancy made an offer to him that is less than the per-acre value being received on pasture land in Acme Township, which is why he turned it down.

Krause does not believe that the requests the Commission is making will decrease property values, particularly the desire to move the house sites slightly closer together. Vermetten agrees with Krause that the economic value would not be decreased, after noting that he has served both sides of the development question. He believes they might actually be enhanced. He noted that the development is proposed to be a site condominium, but could be just as well be a full condominium development with all common area and no privately owned lots. He noted that Mr. Clark stated that the dark brown areas that are proposed house footprints are for illustrative purposes only and not guaranteed as the exact house placements. The lots could be made smaller and still provide adequate setbacks, and he feels that much economic value is added and a winning situation created for everyone.

Hull stated that when first proposed, the Commission was barely willing to discuss the proposed concept. He has spent much time, discussion and political capital trying

to get the Commission to entertain the proposal, and he offered apologies to the applicant if by doing so he diminished his land value.

Public Hearing opened and closed at 8:53 p.m., there being no public comment.

Mr. Veliquette does not believe Hull is trying to destroy the value of the property or that he need apologize. He believes the matter is out of Hull's hands.

Mr. Andres Jr. asked if the Conservancy can look for matching funds to make a deal happen by looking for matching funds, and if Acme could help. The Commission feels their appropriate role is to consider the application and not to try to broker a deal the property owner is unwilling to enter into.

David asked if moving the building envelopes farther west would tend to eliminate the potential for houses that are 3 stories on the east side.

Motion by Krause, support by David to ask the applicant and R. Clark to revise the proposed site plan based on this evening's discussion, continuing the public hearing on Application #2006-5P to the August 28 meeting.

Takayama does hope for the Commission to do what it can to protect the YCNA.

Mr. Clark stated that, based on the characteristics of the land, only the second lot from the north on the east side of the property represents a significant concern in terms of a view from the valley up and the size of homes. The topography of the northernmost lot does not place the homesite on the significant ridgeline, and the southern ridge lot will already be screened by trees.

Mr. Clark asked about whether there are concerns about the proposed density transfers or preferences for which property the transfer should come from. Vermetten felt both properties were suitable for transfer. Hardin felt that transfer should be from proposed Parcel B rather than Parcel A, both because transferring the density away from the creek would be preferable to transferring it from an orchard, and because Parcel A being farmland may have other options for preservation or density transfer. Wikle felt Parcel B was perfect for the transfer, and Vermetten concurred.

Carstens feels that moving the center home farther west, with appropriate landscaping a walkout basement might not be a problem. Seeing some of a house is not a problem if it is softened by landscaping. For him the conservation value of the open space remains the key question, rather than density being an issue. Vermetten feels all three homes proposed for the ridge area would still be able to have walkouts but not appear huge from the valley below.

Motion carried by unanimous roll call vote.

6. Old Business:

- a) **Consider adoption of proposed Resolution #R-2006-PC2 opening a public comment period and setting a public hearing regarding the proposed Future Land Use Map amendment to the Master Plan:** Corpe summarize her memo verbally.

Motion by Takayama, support by Hardin to adopt Resolution #R-2006-PC2 as amended to set the initial public hearing date as September 25, 2006. Motion

carried unanimously.

7. **New Business:** None

8. **Public Comment/Any other business that may come before the Commission:**

Mr. Andres, Jr., 4946 E M72, has many questions about the proposed Future Land Use Map, and he hopes that the Commission will take due time in the review. Many members of the public may have concerns and questions to be carefully addressed, since they will be concerned with how the map affects future use of their property. Vermetten agreed, and wondered if we might want to find a larger venue for the meeting. Corpe will try to find a way to gauge the extent to which the public will wish to attend, make an educated guess and make arrangements. Vermetten felt that The Williamsburg was a good venue for some of the map creation sessions and perhaps could be used again.

Meeting adjourned at 9:11 p.m.