



**ACME TOWNSHIP PLANNING COMMISSION MEETING
ACME TOWNSHIP HALL
7:00 p.m. Monday, March 26, 2007**

Meeting called to Order with the Pledge of Allegiance at 7:00 p.m.

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

Members excused: E. Takayama

Staff Present: S. Corpe, Township Manager
J. Hull, Zoning Administrator
J. Iacoangeli, Consulting Planner
C. Bzdok, Township Counsel

1. Consent Calendar:

Motion by Krause, support by Carstens to approve the Consent Calendar as presented, including:

Receive and File:

- a) Draft Unapproved Minutes of:
1. **03/06/07 Regular** Board of Trustees Meeting
 2. **03/12/07 Shoreline Preservation** Advisory Meeting
 3. **Planning & Zoning News March 2007**

Action:

- b) Approve minutes of the **02/26/07 regular** Commission meeting.
- c) Review and approve agenda, inquiry as to conflicts of interest: No conflicts of interest expressed. Krause asked that correspondence item A, letter from Robert Kewaygoshkum for discussion under Old Business.

Motion carried unanimously.

2. Correspondence:

- a) **Letter from, Robert Kewaygoshkum,** Tribal Chairman of The Grand Traverse Band of Ottawa and Chippewa Indians, dated March 16, 2007
- b) **Memorandum** dated March 19, 2007, from Dennis Aloia, County Administrator
- c) **Forum from the Record Eagle** dated March 17, 2007, written by Ron Olson, CEO of the Economic Development Corporation of the Grand Traverse Band of Ottawa and Chippewa Indians.

3. Special Presentations: None

4. Preliminary Hearings: None

5. Public Hearings:

- a) **Public Hearing regarding SUP/Site Plan Application #2007-01P, a cheese factory for Bart Nielsen at 9018 US Highway 31 North:** Mark Lewis from Inland Seas Engineering and Bart Nielsen were present in support of the application. Mr. Lewis stated that agency review letters have not yet been received and asked that the public hearing be continued to the April meeting.

Public Hearing opened at 7:06 p.m.

Ann Rundhaug, Bunker Hill Road, asked where the subject property is located. Mr. Lewis demonstrated the location on the old "Shaw Homestead" just south of Yuba Park Road. Mrs. Rundhaug noted the previously a housing development was approved for this project.

Public Hearing closed at 7:10 p.m.

Motion by Carstens, support by Yamaguchi to continue the public hearing at the April Commission meeting. Motion carried unanimously.

- b) **Continuation of public hearings regarding proposed Development Options and Business Districts regulation amendments to the Acme Township Zoning Ordinance:** Hull reported that the business district proposed amendments are largely the same as they have been for the past several months with the exception that any reference to cell tower regulation has been removed and will be addressed through upcoming amendments to the township Personal Wireless Services Ordinance. Bzdok reported that towers must be permitted as necessary to fill in gaps in coverage. Rather than permit them in many areas and find out when an application comes along if a gap in coverage exists, he is suggesting that the township perform a study to see where current gaps exist and create overlay districts where towers may be permitted. There are currently three sites in the township where new antennae could be co-located. David is concerned that if an overlay map is developed and a new applicant disputes the findings as to coverage for existing providers, the new applicant will successfully object and be permitted to locate where they want anyway to create their own competitive service coverage area. Bzdok stated that the study is precisely to combat this – to find out where we would have to permit them and allow them only in those areas. The township would not be in a reactive position where it must refute a claim that the location is needed, but in a stronger position whereby an incoming applicant must accept or refute our data. Hardin asked Wikle if coverage areas that can be reached from each location will tend to be similar for each carrier or different; she stated they are similar. She believes the technology will be such that cell towers will become obsolete within 15 years. Hull noted that all cell phone providers operate within the same general bandwidth spectrum leased to them by the federal government.

Carstens renewed his plea to permit transfers of development rights to, and mixed use PUDs should be permitted in the B-4 industrial district. Iacoangeli stated this was discussed several weeks ago. Typically residential units are found above warehouses in areas that are in the process of transitioning to fully residential areas rather than remaining as functioning factories or warehouses. Plenty of opportunities are already being provided for mixed use in other districts, so it seemed to be overkill to add it in the B-4 area. Carstens' thought was that there are some existing homes in the B-4 district and it might be good for those properties to be able to grow upwards and provide affordable housing. He is also concerned that mobile home parks are only allowed in one or two areas of the township, which again causes those holding lower paying jobs to live farther away from those jobs. Most people might not choose to live above or next to an operating industrial use, but Carstens recalls that he would have been willing to take any available housing that was decent when he was a student on a tight budget. Iacoangeli suggested that perhaps the question is less whether to allow housing mixed in with industrial uses but whether the industrial zoning designation currently in place is still appropriate given the land use patterns in place and proposed. Carstens countered that form based zoning is, in theory, less about whether uses can or should mix and more about designing the built environment to help uses mix.

David noted that the proposed B-1P regulations allow for adult day care facilities operated no more than 12 hours per day, but does not address full time adult residential care facilities. He also asked why doctors would be called out specifically in the item regarding professional offices; this is consistent with the way the ordinance is currently written and Hull noted that the parking space requirements differ for doctor's offices than for other types of offices.

Public Hearing opened at 7:44 p.m. as to proposed Business District Amendments

Noelle Knopf, 5795 US 31 N asked how the proposed town center fits with or is addressed in the proposed business district amendments. A Circuit Court judge nullified the former town center section of the ordinance. Vermetten replied that a mixed use development such as the town center would be addressed as a PUD under the development options. She also asked how a movie theater might fit into the B-2 and B-3 district ordinances. Vermetten observed that proposed Section 6.8.2 permits as a use by right "entertainment facilities (with auditorium). The Commission felt it would be best to very clearly define whether an "entertainment facility" includes a movie theater or not.

Ken Engle, 6754 Yuba Park Road, stated that the township should be very careful as to where residential units are permitted. It could be a health, safety and welfare concern to allow residential units in a B-4 area, and it could hamper the ability for an industrial business to operate 24 hours per day if there might be complaints from residential neighbors.

Public Hearing closed at 7:48 p.m. as to proposed Business District Amendments.

Iacoangeli proposed that entertainment facilities (with auditorium) be moved from the use by right classification in the B-2 district but remain as a use by right in B-3, and that the wording be amplified to add specific mention of movie theaters and cinemas.

Corpe asked if would be necessary to specify that commercial uses by right should follow the site development standards such as parking and landscaping requirements set forth in the SUP requirements section of the ordinance. Iacoangeli replied that the way the ordinance is codified there is some "piecing together" to bring together an understanding of all the elements required in a site plan for approval. Hull quoted the portion of the ordinance addressing the need for a site plan meeting the site design standards set forth in the SUP section of the ordinance. Bzdok stated that the wording "site plan submittal checklist adopted by the township Board of Trustees" will be replaced with language directly referencing the relevant sections of the ordinance addressing site design. He agrees with Iacoangeli that additional work needs to be done to update, clarify and re-codify the ordinance. Hull stated that there will be some additional minor "housekeeping" changes to the proposed draft. There are areas of the business district ordinances that are tied into the development options sections.

Motion by David, support by Hardin to recommend adoption of the proposed business district ordinance amendments subject to final housekeeping amendments. Motion carried by unanimous roll call vote.

Turning to the proposed development options ordinances, Iacoangeli stated that most recent discussion points dealt with density transfer options. Density transfer will be

allowed under PUD provisions. The receiving zone will be all of the residential districts, and the sending zone will be all A-1 zoned land. There was a question as to ensuring conservation and stewardship of land transferring development rights which was addressed by somewhat modifying language from the existing Open Space Development ordinance. One standard provision will apply to all open-space preserving development models. State planning and zoning enabling law requires that we provide a method for developers to cluster housing on 50% of their land with 50% as open space, and these Cluster Housing option meets this requirement. Lot sizes can be reduced without reducing the number of allowable housing units. Other options would allow for differing types of PUDs in different zoning districts ranging from fully residential through residential with limited retail development to a broader mix of land uses.

Krause asked for clarification on application processes. He feels he understands the PUD consideration process. As to cluster housing, he understands that a preliminary site plan must be reviewed by the Planning Commission and then sent to the Board, but asked who would approve a final site plan. The Planning Commission would still review both preliminary and final versions of a site plan and recommend approval to the Board of Trustees, at which time final agreement documentation would be prepared. Krause did not see where the Planning Commission would also review the final site plan for Conservation Subdivisions. Iacoangeli reviewed the text and believes some of it was accidentally omitted from the full text during the codification process – it appears approximately a page of text is missing. Also, the heading on the table on page 6 of 15 needs to be changed so that the heading text is visible.

Pulcifer feels the siting requirements for cluster housing is more restrictive than for conservation subdivisions and asked why. Iacoangeli stated that the first three conditions for cluster housing come directly from state legislation. Pulcifer's specific concerns are with 8.3.2D, Siting Criteria. He is concerned that the 8 criteria may conflict with one another and leave no developable areas on a particular site, or that some of them such as the avoidance of development at the peak of ridgelines eliminate the desirable portions and much of the economic value of the site. Iacoangeli replied that the goal is not to prevent development near a ridgeline, only directly atop it for environmental reasons as well as for preventing total destruction of airsheds and scenic views. In contrast, Vermetten believes the township is attempting to provide numerous creative options that will allow it to work creatively with landowners in looking at a specific piece of property. He is concerned about wording such as "as practical" or "encouraged." These items are factors in the analysis process but are not necessarily set in black and white, leaving a lot of room for discussion and negotiation in unique situations. Pulcifer believes the same sort of criteria are not in the other development options and wonders why; Iacoangeli replied that the siting criteria are more stringent in the cluster option because one is compressing 100% of the development onto 50% of the available space, which is different than how the other sections operate. If development is to be compacted as required by state law, it should be done in a way that respects sensitive areas.

Pulcifer asked why density bonuses were removed from the cluster housing option. Iacoangeli stated that it was nice to have an incentive, but in practice many sites applying under the existing OSD ordinance have not been able to truly make use of the incentives. One incentive left in place is a 20% density bonus for leaving some of the land in agricultural preservation, consistent with township agricultural preservation goals.

Hardin asked about previous discussion about how to make agribusiness operations

viable through the PUD provisions. Vermetten stated that this issue was discussed by himself, Iacoangeli, Hull and Bzdok. They were concerned about the possibility that PUD provisions geared towards agribusinesses might also be open to broader and more generic uses not in keeping with the master plan or the original intent of such provisions. They recommend that it would work better to formulate specific ordinances for specific types of agribusiness circumstances, which is what lead to the formulation of the existing winery ordinance.

Carstens felt confusion about the meaning of the language in proposed Section 8.3.2A(a)iii. Bzdok stated that it comes straight from state statute and he feels it is poorly written.

Public Hearing as to Development Options opened at 8:33 p.m.

Ms. Knopf asked about PUD matrix on page 8 of 15. She notes that PUDs allowable in the R-3 district include residential with limited commercial (1) and (2) but do not allow mixed use development, commercial or industrial uses. Iacoangeli stated that there is supposed to be an indicator that mixed use development is allowed in the R-3 district that was omitted. Ms. Knopf also agrees with Pulcipher regarding the restrictiveness of the design guidelines for cluster housing. If all of us are gone in 10 years, and those who come after have only the text of the ordinance to go by, won't they believe that all of the items must be met rather than them being guidelines, and shouldn't it be reworded as guidelines? Bzdok noted that the land can be used in a use-by-right manner without respect to the objectives. He is comfortable that as written the siting criteria are an expression of the objective to have flexibility in exchange for protection of certain natural features. Hull understands the criteria to be discretionary in nature; that the township uses them as ways to evaluate an application that are not arbitrary in nature and ensure that discretionary requests are made according to objective standards. He does not believe people in 10 years will have a difficulty understanding the intent. Bzdok asked if it would be helpful for 8.3.2D, the opening paragraph, final statement ends "meets x or more of the following site design and layout objectives" or "some or all of the following site design and layout objectives." The phrasing can be tweaked to make it clear that some subset of the eight objectives should be met, all if possible but not necessarily. Saying "some or all" legally denotes that the list is not a checklist where all must be met; meeting only one could be sufficient. Pulcipher felt this addressed the concern he raised. Iacoangeli suggested removal of the word "meet" and substitution of the word "address." The point is that the list is not a "trigger" for approval; it is a basis for reasonable cooperation between the township and landowner towards a mutually beneficial situation. Bzdok stated that the cooperation the township can expect is generally proportional to the authority it has through use of binding language in the ordinance. He suggested that if the word "address" it should be accompanied with "to the extent feasible or practical" to strengthen the township's position. Iacoangeli stated that the items in this section are not the "qualifiers" for whether or not clustering can be used; those came earlier. These criteria are used after the determination that clustering is allowable has been made to determine whether the proposed site design is appropriate.

Margy Goss, 4105 Bay Valley Drive thought she heard Bzdok mention economic benefit as a variable when considering various development options. She feels that the question of economic benefit to a landowner must be addressed side-by-side with economic benefit to the township. Vermetten feels that any landowner who develops is seeking to maximize economic benefit to themselves. Mrs. Goss believes that many of the requirements in the ordinance address public benefits of various sorts but

are not designed to help a landowner enhance their economic benefit. Vermetten believes that by providing several creative options for land development patterns this is precisely what the township is doing. Krause stated that the Planning Commission is here to address public health, safety and welfare on behalf of the township and not economic benefit to select individuals. Iacoangeli concurred with Vermetten that the development options create a wider range of opportunities for creative and innovative development that will help landowners meet their objectives. Carstens believes there is value in maintaining natural beauty and resources.

Mrs. Goss also had a question about “complexity of the PUD process.” She perceives multiple expensive levels to an approval process and wonders if we are serving landowners well by making it so expensive for them to economically benefit from their land. Vermetten felt in response he would echo both Krause’s earlier comments and his own. The Commission must address the health, safety and welfare of the entire community, representing all the landowners of the township. While the PUD process may be cumbersome, it does provide landowners with creative opportunity to develop the land creating the largest potential return on investment. Hull believes that one problem in our community is that the SUP and site plan process are intertwined as they are. The new process would enable an applicant to present a conceptual plan for approval to the township and find out early on if their general concept will work, and if so can defer the expense of full engineering plans to the second step of the process. While there may be some concern over a lengthier process it may be more cost and generally effective in the long run. Iacoangeli stated that it is generally a more preferred process for developers because they can defer construction-level plan preparation.

Mr. Engle returned to the cluster housing siting criteria question, criteria #2. He stated that the importance of buffer areas between residential development and agricultural operations cannot be overstated. Also, on page 8 of 15 he sees that PUDs with less than 5% gross square footage in agricultural-related commercial use are permitted in the agricultural district. Why is the commercial area so limited? It might be beneficial to allow farmers more latitude to develop agribusiness space. He also asked if it would be possible to consider conservation easements already in place on agricultural properties. For instance, he has a piece of property with a 66.5 acre wetlands conservation easement. He cannot build on this area, but he did not give up the development rights associated with it. Additionally, if use of some of these options requires maintenance of 50% of the land in active agriculture, what happens when some of the land in active agricultural production is on a residential lot. Bzdok stated that a clustered subdivision would have building envelopes and “meaningful” open space areas defined. The fact that an active agricultural use is close to a building envelope would be evaluated and could certainly be “meaningful.” Iacoangeli drew a picture to illustrate the point that housing can be clustered between agricultural use areas on land not as agriculturally viable.

Ms. Knopf asked if the requirement for a buffer between residential and agricultural uses would apply between the residential and agricultural uses in a clustered project. Iacoangeli stated that the buffer is required between a project and an adjacent landowner, not within one property being developed as a unit. Ms. Knopf thought that the buffer areas were safety factors related to spray and noise.

Public Hearing regarding proposed development options closed at 9:12 p.m.

Motion by Carstens, support by Yamaguchi to recommend approval of the proposed development options ordinance as revised based on discussion this

evening to the Board of Trustees. Motion carried by unanimous roll call vote.

6. **New Business: None**

7. **Old Business:**

- a) **Letter from, Robert Kewaygoshkum, Tribal Chairman of The Grand Traverse Band of Ottawa and Chippewa Indians, dated March 16, 2007:** Concurrent with this meeting, the County is holding a public input session at the Governmental Center. Commissioners can't attend due to the schedule conflict, but he feels it's important for there to be some discussion here tonight.

Krause is specifically concerned that the Tribe's plans for a large retail shopping area on 145 acres adjacent to Turtle Creek Casino – and more specifically he is concerned about the 77 of those acres within Acme Township – violates the township's Master Plan. The plan calls for a town center closer to M-72, with satellite neighborhood centers in Yuba and Bates. It does not call for a large retail shopping area near the township line nor in any other place in the township other than the proposed town center area.

David concurred with Krause, and he expressed concern that there is no meaningful way to lodge our concerns or have input with the federal government. It is commonly known that such trust status applications are rarely disapproved.

Krause hopes that the township's relationship with the Tribe is a friendly one and that it strengthens over time, but he feels strongly that the township should “put its foot down” as to the conflict with the master plan.

Carstens observed, and Corpe confirmed, that Whitewater Township's master plan calls for a village center area adjacent to some of the land for which the trust status request has been made. He noted that Turtle Creek is already a commercial development, and perhaps there is a benefit to concentrating further commercial development in that area if it delays commercial development elsewhere along the corridor. Carstens observed that the Tribe backed away from plans for a sport shooting facility, perhaps in response in part to public comment.

Vermetten expressed respect for Krause's point of view, although he thinks that what is happening at the County this evening is not so much a give-and-take as an informational meeting. The process underway is a federal process subject to specific federal codes. It is a concern that we will be unable to ask for traffic and market studies relative to the potential development, or to have a binding say in how the development is shaped.

Yamaguchi supported Krause's point of view that his concerns should be on the record. Her concerns are less about loss of tax revenue than contradictions between the proposed development and the township master plan. She hopes the township's official response to the BIA expresses this in strong terms.

Krause has no doubt that the trust application will be approved; he only hopes the township will ultimately have a voice in planning and zoning concerns relative to the development.

David asked for clarification about the County meeting this evening. Will Tribal representatives be there, or was the Tribal letter saying they would not? Corpe stated that the meeting tonight is for the general public to express their views and concerns.

She assumes the Tribe will be well-represented there as is their custom. On Wednesday the County Commission will work towards formulating their response. Most of the Acme Board of Trustees is at the public input session this evening, and this possibility was posted last week.

Bzdok stated that Bill Rastetter is a local lawyer of counsel to his firm. Mr. Rastetter has long represented the Tribe in certain matters, and for that reason he and his firm are not involved in discussions at the township regarding the situation, nor are they representing the Tribe or any other entity in the matter. The first time he heard of it was when he read of it in the newspaper.

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

Vermetten noted that the public comment period at the beginning of the meeting was inadvertently left off the agenda.

Ms. Rundhaug asked about the status of the Shaw Homestead. Corpe stated that the existing approval for housing is still a viable option for Cherries R. Us if the cheese factory doesn't pan out. There may also be an attempt to acquire a portion of the property for addition to the Yuba Creek Natural Area.

Judith Danford Tank, Whitewater Township, attended the county public input session this evening. She appreciated comments regarding sprawl development along the M-72 Corridor that were made. She asked if the proposed PUD ordinance amendments are being forwarded to the Board, which they are. The County Commission will meet at 7:00 on Wednesday to formulate their response to the BIA's five questions. She feels it might be helpful if some of the Commissioners could attend and comment. John Petoskey was very clear in stating that we are at the first step of the fee-to-trust process, so she feels it important to learn more about what the full process involves. Whitewater is learning that the process differs somewhat from when land is being put in trust status for a casino.

Corpe mentioned that Waste Management has just raised its rates for residential trash service to all county residents from about \$70/quarter to about \$92/quarter in response to the recent move by some townships to require them to offer curbside recycling. We understand that the other local licensed haulers have not also raised their rates. If anyone wants to shop around, phone numbers are available on the township website.

Carstens asked how the township might learn more about the fee-to-trust process and how it differs for a commercial situation from a casino situation. Ms. Tank suggested calling Representative Dave Camp's office as one option.

David asked a further question about some of the ordinance amendments discussed this evening. It was noted that details about cell tower ordinances will be left to a different document, but he wonders if there is a problem leaving "communications facilities" as a use in various commercial districts. Bzdok stated that we have a personal wireless services ordinance that will soon have a new overlay district component based on where additional coverage is needed. There will be no confusion with the zoning ordinance.

Meeting adjourned at 9:23 p.m.