



ACME TOWNSHIP **SPECIAL** PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. **TUESDAY, OCTOBER 16, 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, D. White, L. Wikle, P. Yamaguchi
Members excused: None
Staff Present: S. Vreeland, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
C. Bzdok, Legal Counsel
M. Grant, Legal Counsel
J. Iacoangeli, Consulting Planner

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

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

1. **Limited Public Comment:** Vermetten mentioned that former Planning Commission Chairman Herb Smith passed away this morning. Memorial arrangement details will be available at a later date.
4. **Proposed Ordinance Amendment #138: Explanation and Public Question and Answer Session:** Vermetten stated he called the meeting because discussions out and about in the community led him to believe that the proposed ordinance amendment is not well understood. He has assembled the Planning Commission, in-house staff, legal counsel and consulting planner John Iacoangeli to explain the ordinance and answer questions about it.

Hull summarized Amendment #138 as replacing the current Open Space Development (OSD) and Mixed Use Development (MUD) ordinances. OSD is a key housing development tool, as the state requires that townships have ordinances permitting all allowable development density to be concentrated on half or less of a tract of land. Township may offer density bonus incentives to use the ordinances, but are not required to do so. Our current OSD ordinance allows for a 20% density bonus for clustering and providing a minimum 50% open space, and allows additional density bonuses for amounts of open space over and above 50%. A landowner can also transfer building density from another piece of land to a development property, placing a conservation easement on the parcel from which density was transferred.

The MUD ordinance is designed to allow for a mixture of land uses on a piece of property. Housing could be combined with offices and retail and service establishments. This ordinance does not provide strict development density guidelines.

Amendment #138 would replace the OSD and MUD with a range of three development options. "Clustered housing" removes minimum lot sizes and allows attached and semi-detached dwellings in places where normally only single-family detached homes would be allowed. It differs from the existing OSD ordinance in that there is no automatic 20% density bonus just for clustering – to obtain the bonus the required minimum 50% open space must be kept in active agricultural production. "Conservation Subdivision" allows for more traditional-style subdivision layout with minimum lot size requirements but greater than normal design flexibility. "Planned Unit Development (PUD) allows for mixed land uses and

for density transfers from A-1, Agricultural zoned properties to properties with other zoning designations. Properties need not be adjacent for density transfers to occur between them.

Gordie LaPointe, Plum Drive asked if properties must be adjacent for density transfers to occur between them; Hull replied that they do not.

Carrie Nelson, Paper Birch Drive, asked if the open space portions of the properties must be kept under conservation easement in perpetuity; Hull replied that they do. Easements are drawn up and recorded with the Register of Deeds.

Iacoangeli stated that two years ago the state revised the planning and zoning statutes to clarify many issues, including how cluster housing options must be made available and how density may be transferred between properties. He noted that all land owners are able to divide their land through the land division process, or through traditional development means pursuant to the zoning ordinance for their zoning district. The Amendment 138 options provide additional options for landowners to consider, involving the ability to concentrate all of the built environment on a fraction of the parcel and preserving open space or agricultural operations on the balance. The PUD option is available on commercial, industrial and residentially zoned properties. In any of these districts there can be mixed commercial/residential developments, and in the first two districts there can be purely commercial mixed use developments. Provisions in the existing OSD ordinance, such as those discouraging development on sensitive natural features such as steep slopes, wetland and floodplains are continued into the proposed amendment in slightly different language but in substantially the same form as they currently exist. The entire goal is to provide flexibility in land use design.

Gene Veliquette asked if “the siting criteria on page 3 of 15 mean what it says.” There are 8 items on a list to which he refers. Bzdok stated that it does “mean what it says” and that it’s important to combine that list with the paragraph that precedes and explains it, which says “to the extent practical” that those criteria should be employed. Mr. Veliquette asked about a 100 acre farm with a scenic vista and road frontage on a ridgeline, and if it could be developed at all. Vermetten and Bzdok said that it could be indeed, and Vermetten read the full first paragraph of Section D. Siting Criteria. Hull displayed a posterboard with a list of standards and procedures for determining which parts of a property should be in preserved open space under the existing OSD ordinance, and which should be included in preserved open space under the proposed amendment. He further noted that currently the determination about which natural features are to be protected on a given parcel is the prerogative of the Board of Trustees subject to Planning Commission recommendation, subject to dialogue with the property owner. The lists of natural features to be considered for protection under the new and old ordinances are substantially the same. Under the new ordinance, determination of which areas on a property to protect with conservation easement is made the same way as under the current OSD ordinance. The only difference is there is no explicit mention of the dialogue with the property owner, which can reasonably be assumed.

Theresa Bak, 7108 Hawley Road, expressed concern that the list is so restrictive that if several of the features exist on a property that no development would be allowed there. If there are multiple features on one parcel, Hull stated that during the planning process the most important on the list will be selected for conservation. Vermetten noted that the point being made is that this aspect of the law is not changing – what conservation analysis requirements are proposed for tomorrow already exist today. Mrs. Bak asked if she would have to come to the Planning Commission for permission to build a single house on a ridgeline on her property; Hull replied she would not. This list of considerations only applies to a landowner who is seeking to create a residential neighborhood development of multiple houses, not just to build one house as allowed by right. A landowner can always use the Land

Division act to create parcels of land and build single houses on each new parcel simply by obtaining a Land Use Permit at the township office. Bzdok drew a picture, explaining how a landowner, for example in the agricultural district, can divide their land through land division into five acre parcels in the same amount and in the same way as they have always been able to do. The proposed ordinance amendment adds to the list of development options which might be beneficial to some landowners. They allow the same number of houses to be developed, but they can be moved around to avoid areas of the property that would otherwise be unbuildable and prevent the landowner from achieving the maximum density allowable by zoning. The new ordinance is in addition to the rights landowners already have and will continue to have. The list will not prevent people from developing on land split by land division. Base development rights have not and do not change. If you decide to use the creative option, in exchange the township seeks a benefit to the environment, landowners and community. Iacoangeli noted that under the cluster housing option the number of allowable development units increases in consideration for providing the preserved land.

John Dickerson stated he has recently returned to the Acme area from Suttons Bay. He spoke with Hull on the phone. He asked if the amendment is a line-item edit or a repeal of an existing rule and replacement with another; it is the latter. Mr. Dickerson stated that his father used to draft laws for Indiana; Hull noted that he owns a copy of his father's book. Mr. Dickinson's concern is that legal drafting is a skilled profession, and a good practitioner makes written laws comprehensible to everyone. He believes the current draft clearly fails in being understandable and usable. Without meaning to slight, he feels that the current meeting and handouts are counterproductive, and that only a redrafting in clarified form can be truly effective and appropriate.

Gayle Hanna, Midland and a local property owner understands Mr. Dickerson's point. She believes the amendment should clearly state that property owners still have all of their existing use by right entitlements; people are upset because they don't see this in writing. Vermetten took this a good point. Bzdok noted that this is a proposed ordinance amendment and an amendment to only a specialized section of the Ordinance. The base rules for each zoning district are still in tact and in the body of the full ordinance. The handouts are not the entire zoning ordinance but only the portions proposed and what they would replace. Mrs. Hanna understood this point, but wonders if the majority of the public does. Bzdok noted that if the ordinance amendment is ultimately adopted it will be clearly one part of the larger whole. Ordinances are living, breathing, evolving documents. This is one chapter in a larger book. Vermetten noted that in every area of the state in which he has practiced, ordinances are evolving documents, and because of their nature they can become somewhat of a "hodge-podge." He also read from the second paragraph of proposed Ordinance Section 8.3, which starts: "The Township encourages the use of land development options, rather than conventional developments..." This is a reference to the fact that other options do indeed exist.

Mrs. Bak echoed the sentiment that having the other entitlements more specifically spelled out would be beneficial. She expressed concern that the Planning Commission might eliminate the uses by right. Vermetten stated that such a thing cannot legally be done. The Land Division Act is state law, and the Planning Commission can't supercede it.

Mr. Dar Feener feels that the ordinance is "on the right track" but that more needs to be done. He thinks about the changes in the areas south of Traverse City, and the way the Silver Lake Road area has developed, and hopes for something different for Acme Township. There is a regional visioning meeting in Traverse City tomorrow night. He also asked how the township ensures that the conservation requirements are met if the development options ordinance is used; Vermetten replied that the Planning Commission, Board and staff do so. Hull offered the opinion that the threat of lawsuits to the township can be beneficial, because it's one of

the things that keeps the township mindful of following the rules it sets. If a citizen believes the township hasn't follow a rule, a citizen can sue.

Randy Kamps, Bartlett Road, stated that there is always a quid pro quo. He understands this ordinance as a way to achieve a greater level of density of development than would be allowed by right, subject to conditions on the property. Mr. Kamps would like to see an avoidance of legal action and use of a consensus approach to development issues. He asked whether the amendment is needed to conform to changed state zoning laws. Iacoangeli stated that the two-year old state zoning act requires that townships provide a clustering option for landowners. The proposed ordinance amendment provides a clustering option consistent with the requirements of the state law. Vermetten stated that in his experience as a lawyer, "laws are written in black and white and exercised in gray." Reasonable minds can and do differ on interpretation.

Hull noted that the entire zoning ordinance is available through the township offices. The current discussion relates to only about 15 of the total 187 pages. He is not a township resident, and as an employee the question of whether or not the ordinance is ultimately adopted will not affect his job much. He is here with no other agenda than to help people understand what the new ordinance is, and how it is the same or different from portions of the ordinance as it already exists.

Ken Engle, Yuba Road, feels we can all agree that the determination of the relative conservation values of items on the list is subjective. It seems to him that the way the ordinance is drafted is very open-ended. If he as a landowner cannot reach consensus with the township, would it lead to a lawsuit? If he does reach consensus with the township, but a third party in the township disagrees does that lead to a lawsuit? Hull stated that one goal is to prevent arbitrary action on the part of the township. Anyone can bring a lawsuit, and it might or might not be for a reason others find worth. The ordinance provides a way to control the action of the township. Bzdok stated that some things are not ambiguous. He noted that page 49 of his copy of the ordinance sets for the minimum lot size for each property in each zoning district. Each zoning district has a section of the ordinance and a list of uses by right. In all but the industrial districts, residential uses are on that use by right list. In direct response to Mr. Engle, all zoning ordinances provide for flexibility, and all flexibility requires discretionary judgement calls. That authority is put in the hands of township officials from a diversity of backgrounds who understand their communities and make the best decisions they can. Some things in every zoning district are not subject to discretionary decision-making.

Nels Veliquette, Traverse City asked who would use the proposed ordinance, and for what purpose? To receive a density bonus one must keep the open space in agriculture; but the ordinance does not appear to specify whether a homeowners association would ensure this, or whether the land must just be farmed until the development is approved and/or built, and then it can become fallow? He mentioned a 25 acre parcel of land owned by Roy Challender on Bunker Hill Road, asserting that the way the proposed rule is written there's no reason he would prefer to use it and go through a public process rather than using land division by right. He does not feel the ordinance as written provides meaningful incentives to go through the public process, preserve farming and encourage denser development to locate near the urbanized core. Bzdok stated that one change in the state zoning enabling law was to permit transfer of development densities. The township has a farmland preservation program with a voted millage. The ordinance adds to this the ability to transfer density from the agricultural zone into more urbanized areas where one might wish to promote additional density. On a willing buyer/willing seller, free market basis people can buy and sell development rights. The ordinance proposes a one-way transfer – development rights could move from the agricultural district to residential and commercial districts but not from the latter to the former. The township can provide opportunity for the marketplace, but nobody can force

people to use it.

Hull reminded the public that the question of whether or not to adopt the amendment will be voted on in January. He agrees with Mr. Veliquette that it won't solve all of the township's farmland preservation issues. The real question is whether the ordinance section is more or less preferable to the ones that it would replace.

Bea Edmond, Paper Birch Lane, asked if the ordinance amendment would create more density. Hull stated that this is incorrect. Clustering will allow the same number of homes to be developed in a smaller land area.

Mr. Gene Veliquette asked if the new ordinance is more restrictive because it does not allow land area covered by natural features such as ponds or lakes to be counted towards the allowable amount of density. Setbacks and stormwater management features used to be able to be considered part of the 50% open space, but he does not believe they are countable that way now. Bzdok stated that roads could be considered for being in preserved open space, but to his knowledge no development plan of that nature was approved.

Art Bak, Hawley Road, asked if wetlands can be counted towards open space; they can.

Nels Veliquette noted the language that "open space must have conservation value" on page 14 of 15 of the proposed ordinance, and under Section P, Preservation of Open Space, paragraph 1 assigns conservation value to water bodies but paragraph 2 says that areas of open water might not be countable towards open space requirements. He is unsure how this fits together. Hull stated that the body of water can be in the open space area, and all of it counts towards the 50%, but only part of the area covered by the body of water helps determine the allowable density on the property. It would be undevelopable land under a use by right, but is given partial density credit.

Mrs. Bak asked how the creation of new lakes in LochenHeath would affect their development. Bzdok stated LochenHeath is subject to existing Special Use Permits with different conditions.

Noelle Knopf, 5795 US 31 N supposed a property that has, as its only significant natural feature, a scenic viewshed. Could she build homes on the vista overlooking the bay? Grant stated that a by-right development could develop along the vista. No matter what's on the property, the use by right to develop on it exists. Only if one of the special development options is chosen as an alternative to a use by right would the question of protecting the portion of the property with the most conservation value come into play. For the most part, the same list of considerations exists in the proposed ordinance as exist today. Vreeland noted that along with use by right, a development can still be achieved without respect to conservation easements through special uses such as site condominium subdivisions. Iacoangeli stressed that use of the proposed ordinance is optional and not mandatory.

Mrs. Hanna stated that education is preferable to regulation or coercion. This meeting is a positive step she appreciates, but the public also has to realize it needs to educate itself. It is always preferable to litigation.

Vermetten provided a brief recap of the discussion to date. He compared the situation to a game of baseball. There is a big book of rules on how to run what is basically a simple game. The zoning ordinance is similar – lots of pages of rules to express the idea that landowners have many methods available to utilize their land. It is not a perfect document, and it is a constantly changing document. Self-education and voting with one's heart are important, and he hopes people will show up regularly for township planning meetings. Public input helps

the Commission and Board make better decisions.

Hardin has not heard more than once this evening the question of why one might want to use the proposed ordinance. From his perspective he views it as a way to enable people rather than restricting them, particularly on unique properties where it would be difficult under traditional rules to develop to the maximum allowable density. It's a way to help be creative in unusual situations rather than stopping people from developing their land – at least that's how he approached it.

Gene Veliquette does not believe that the ordinance truly provides more options. What in the ordinance does provide more options? Why does the proposed ordinance allow for only 5% commercial development in an agricultural district? Iacoangeli stated that a PUD with 5% commercial space in an agricultural district would allow a cluster of houses with a small commercial outlet, such as a convenience store to serve their daily needs. Currently such a store would not be permitted in the agricultural district. Right now a PUD is not allowed at all in the agricultural district, so the proposed ordinance does provide new opportunity in this regard. The current OSD allows detached dwellings in the agricultural district, but the proposed ordinance allowed attached or semi-detached dwellings. Hull added that not everyone in a township is a farmer. Behind the McDonaks and other businesses along US 31 the only viable option is strip malls, but the proposed ordinance would allow for a mixture of uses including some residential. A mixed use development on a large parcel of land cannot currently earn a density bonus, and in fact there is no clear statement of what the allowable densities area. The new rules better define the allowable amount of density and provide a way to add to it by purchasing density from the agricultural district. He spoke with Robin Greene, a developer of the prototype conservation subdivision. One thing he learned is that designing roads to cover areas where soils are more suitable can significantly reduce road development costs, and the flexibility in the proposed ordinance would allow for that sort of creativity.

Nels Veliquette asked for a definition of “gross square footage;” Iacoangeli stated that it refers to the buildings that would be built. So, in a PUD in the agricultural district one could develop commercial space equal to 5% of the square footage of the houses. This would seem to encourage monster-sized houses to maximize the commercial space. Bzdok observed that the agricultural section of the ordinance provides a list of allowable commercial operations by special use or by right in the agricultural district. For certain types of businesses the underlying zoning regulations might be the more intelligent way to go. Iacoangeli stated that the calculations don't require build-out of the houses to know how big the store should be – the sizes would be established through the public hearing process. Iacoangeli stated that farmland preservation initiatives statewide appear to be failing. Many communities have tried to protect farmland by requiring large minimum lot sizes such as 10 acres. Rather than protecting farmland this has created huge houses on large lots where there is landscaping up close to the building but most of the lot is left unused for any purpose. A strategy that works better, and is incorporated in the proposed ordinance, allows a working farmer who wants to sell off a portion of land to provide access to the property, planning the allowing housing units for one corner of the property while keeping the rest of the property in active agriculture. The landowner would be able to both develop and farm the land where it was only farmed before, gaining immediate income for continued farming operation. The community must decide which option it feels is better for itself.

Mr. Engle asked about the transfer of development rights. Iacoangeli explained that an agricultural landowner could sell their development rights for use elsewhere in the township and preserve some or all of their land in agricultural. Mr. Engle also asked how rounding of decimal places would work in density calculations; generally .5 and higher is rounded up. Mr. Engle asked if a density bonus would be sellable along with base density. Hull responded that if the township approved a clustered housing project with density larger than the underlying

zoning would allow

Nels Veliquette noted that the proposed ordinance amendment would eliminate the current ability to transfer density between agriculturally-zoned properties. He also expressed concerns about what would happen when one farmer creates a clustered development next to a working farmland. It is well-established that housing and active farming conflict with one another. It would become more difficult to work the farmland, and it in turn would be developed, but the clusters of housing would be separated on the two tracts of land to put the houses near open space rather than other houses. The overall ultimate effect would be snaking pods of development that would ultimately discourage working farmland. Clustering on a property by property basis might not work as well as clustering on a community-wide basis.

Jim Dixon, Arrowhead Court, feels that the question of whether the developments created through various ordinance options are good or bad will be settled by whether or not people buy and develop land in them. It would tend to be a self-correcting problem.

Mr. Engle feels that one way to improve the ordinance would be to provide greater incentives to transfer development out of the agricultural districts than for clustering development within them. Bzdok gave the example that perhaps if two units could be developed in the farmland district, those two units could become three development units if sold for use in a more central area. Vermetten asked if this could be addressed with other ordinance amendments later this year; if adopted the ordinance could be “tweaked” as ordinances tend to be from time to time.

Andy Andres, Jr., Traverse City, thanked everyone for attending this evening and noted that a vote will be coming up. The people in this room are better prepared to cast an educated ballot, but how do we extend the education beyond this group into the larger community? Vermetten recalled Mrs. Hanna’s comments – the information is available on-line or at the township hall and all voters should educate themselves on the issues. This township tends to engage deeply in the public process. Mr. Andres asked about what would happen if the proposed ordinance is defeated in order to meet state law; Bzdok stated that the current OSD ordinance would still need to be modified somewhat to meet all the requirements of current state law.

Gene Veliquette asked if a PUD would have to meet the conditions of an open space development. Iacoangeli stated that no specific amount of open space has to be provided as a condition of the PUD. Three of six possible objectives must be met to create a PUD, and creation of open space is one that could be used but doesn’t have to be one of the three used.

Mr. Dickinson asked if an objective standard can be established by future office holders that is different from the standards established by current office holders today. Many of the people trying to make up their minds about the proposed ordinance, and have a real question about how arbitrary the regulations might be. There are solutions to questions or problems with the current ordinance, and they won’t come from people “with an axe to grind.” The true question is creating a meeting of the minds between the administration and the public, and the way to do that is clear and appropriate use of language in drafting ordinances. This should be the focus rather than litigation. Bzdok observed that re-writing the entire ordinance opens the question of referendum. Every ordinance amendment opens this question, just as the current one has. Each time there will be someone pleased and someone upset. For now it seems to him a better course to work on sections at a time rather than the whole ordinance. Mr. Dickinson believes that recodification would not qualify as an ordinance amendment subject to referendum. His father did just that with the federal codes, and it didn’t require approval from the legislature or the President. It would edit language but not change content. Bzdok believes it would still be subject to referendum.

Nels Veliquette referred to page 3 of 15 of the proposed ordinance, Section D paragraph 2, which discusses maintaining existing fields, meadows, croplands, pastures and orchards as much as practical, and creating buffers to minimize conflicts between disparate land uses. His question is whether the development should provide the buffer area or the farmer; it would be the developer. Mr. Veliquette noted that in Section F, item 2 there is a detailed discussion of what is sufficient buffering between different development densities. Why is the discussion of buffering between agricultural and residential use so much more vague than that for between different residential uses? Iacoangeli stated that the flexibility in the former could be more useful to a farmer so that the buffering required can be varied according to specific agricultural conditions and needs rather than establishing an inflexible dimension that might not be effective in a certain circumstance. Mr. Veliquette suggested that some more guidelines might be good because developers might try to claim that they need to provide less buffering to increase usable land area than would truly be needed to prevent complaints by future residents against the farmer.

Krause asked if a clustered housing development can be created in an R-1 district that uses density transferred from an agricultural district; it can. Bzdok noted that PUDs are the only legal way to transfer density in Michigan. PUDs and clustering can be combined.

David feels it important to recognize that there are many different viewpoints and motives among the township citizens. The Commission is not here to encourage or discourage development, but to manage growth and livability. Decisions will not please everyone.

Wikle appreciates having so many people present this evening. She has been able to see the expressions on peoples' faces change as the discussion progressed and understanding changed. We are all neighbors and want a solution that as advantageous as possible to the community as a whole.

Yamaguchi has viewed the proposed ordinance as an enabling tool. If adopted it can be amended in the future as needed or desired by the community.

Carstens received a postcard in the mail stating that the Planning Commission would explain the proposed ordinance; he has been glad to attend this evening and learn with everyone else.

Vermetten echoed the sentiment that he learns something from every meeting. He thanked Iacoangeli for attending this evening. The best thing members of the public can do is read the existing and proposed new ordinances and make up their minds accordingly. The outcome of the vote will be what it will be, and the purpose of this evening has been to explain the ordinance. He hopes it has been helpful and provided an opportunity to ask questions.

Hull stated that the staff is available to field questions for the public; it's one of the best parts of our jobs.

Vreeland noted that the Board meeting planned for tomorrow evening to decide which Trustee candidates to interview has been cancelled. All four applicants will be interviewed on October 23 at 7:00 p.m. There will also be a public hearing on the proposed fire protection special assessment levy for this year.

Carstens encouraged everyone to attend the Grand Vision public meeting tomorrow night.

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

Meeting adjourned at 9:20 p.m.