



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
7:00 p.m. Monday, June 29, 2009

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

Members present: M. Vermetten (Chair), B. Carstens (Vice Chair), C. David, S. Feringa, R. Hardin, D. Krause, D. White, J. Zollinger
Members excused: P. Yamaguchi
Staff Present: S. Vreeland, Township Manager/Recording Secretary
J. Hull, Zoning Administrator
M. Grant, Legal Counsel

INQUIRY AS TO CONFLICTS OF INTEREST: Vermetten said he has a potential conflict of interest with the discussion about deep injection wells because he represents O.I.L. and the discussions are coming to a detailed enough point that it would be best for him to recuse himself. White indicated a potential conflict of interest on the same topic.

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

- 1. Consent Calendar:**
Motion by Carstens, support by White to approve the Consent Calendar as presented including:

Receive and File:

- a) Draft Unapproved Minutes of:**
 - 1. 06-02-09 Board Meeting**
 - 2. 05-13-09 Marina Advisory**
 - 3. 05-15-09 Heritage Advisory**
 - 4. 06-04-09 Parks and Recreation Advisory**
- b) May 2009 Township Law News**
- c) Planning & Zoning News May 2009**

Action:

- d) Approve minutes of the 05/18/09 Planning Commission Meeting**

Motion carried unanimously.

- 2. Correspondence**
 - a) 06/05/09 Letter from Acme Township to Steve Smith, Village at Grand Traverse, re: VGT Phase I SUP/Site Plan Review Process: Received and filed.**
- 3. Limited Public Comment:** None
- 4. Preliminary Hearings:** None
- 5. Public Hearings:** None
- 6. Old Business:**
 - a) Continued discussion regarding deep injection wells:** Vermetten and Grant spoke about today's meeting and agreed that at this point he may have a conflict of interest. Grant indicated that because there could be a motion setting something in progress,

he advised Vermetten that because he has informed the township that he represents one of the companies that has sought a disposal well permit (O.I.L.) within the township there is at least potential that he has an interest in the outcome. White owns property and has leased grounds to Evergreen. If they become involved in deep injection wells there could be a concern, but at this time nobody is aware that Evergreen has such plans. Grant advised that White's situation could go either way at this point. If either gentleman wants to participate in the discussion they can ask for a unanimous vote of the Commission that it is appropriate. Vermetten recused himself and moved to the audience for the discussion, turning the gavel over to Carstens.

White asked the Commission for its opinion on his position.

Motion by Hardin, support by David to find that White does not have a conflict of interest regarding deep injection wells. Motion carried unanimously.

Grant spoke about his June 19 legal opinion as to whether the township may regulate waste disposal wells through zoning or otherwise. In brief, his opinion is that while the state has not been entirely explicit in the matter, because the state regulates so many aspects of waste disposal wells, including proximity to houses and environmental features, screening and other land use issues, the state has effectively reserved this authority to itself. There is a grey area; there is no case law on the subject.

Grant also addressed the question of "what is hazardous waste" by providing the statutory definition. The proposed well in Acme is not a hazardous waste well. If someone sought to turn it into one, they would have a whole new set of regulations to work through.

Krause does not feel that an additional level of bureaucracy is needed if the state has such stringent standards. David believes the state standards exceed anything the township might adopt. White concurred. Zollinger asked whether the state standards seem comprehensive; Grant said he couldn't speak to the question of whether the state simply gathers extensive information or if they actually evaluate it in great detail and occasionally deny a permit if the responses warrant. It appears that all the bases are covered. Zollinger concurred with Krause, David and White. Hardin asked if it is possible for the township to prohibit deep injection wells in certain zoning districts; Grant stated that the law is not explicit one way or the other. The state Zoning Enabling Act specifically prohibits the local zoning of mineral production wells, but it does not specifically prohibit waste injection wells. However, there is an implicit prohibition in that the state has thorough regulations. The state decides what powers townships have and do not have; townships have no inherent powers. We are generally given the power to zone, but are pre-empted in some cases. Hardin noted that it appears that the township most likely does not have a say over what is disposed of in a waste disposal well; Grant promoted caution. Hardin feels that if there is no solid ground for the township to decide where waste wells may be placed, the Commission is limited and taking a chance at best. Feringa believes waste wells are regulated by the state and that the township does not have any real authority beyond that. David noted the last paragraph on page 3 of Grant's memo, which states that the township cannot enact an ordinance that conflicts with state regulation as another example of his position. Carstens noted another passage in the memo stating that townships are given broad powers to regulate for public health, safety and welfare, but that the powers *may* be pre-empted by the state.

Carstens noted that some people attended the public hearing on the proposed

well at Mill Creek School. Several requested copies of the public input that was given, but this information has yet to be received. He also noted that the State has cut back on nearly every department, so their ability to monitor waste wells will likely be limited. His concern is the definition of pollution (the dictionary states that pollution renders something unfit for living things). He considers pollution something that can make one ill or be fatal. He is concerned about how they define “hazardous waste” and whether it is a form of gamesmanship. Carstens is also concerned about the fact that the state seems very concerned about the actual construction and design of waste wells, but that there seems to be little concern about the impact of a potential well failure on neighboring properties. One court case mentioned at the public hearing stated that the impacts on neighbors must be considered. He has heard that the formation the well would go into may not be entirely stable.

Zollinger respects these concerns, but believes the true issue is whether or not it appears the township has the ability to enact a law that will provide a greater degree of protection. Carstens stated that Grant’s memo does not address whether the township can regulate the transport of materials to and from a well site and asked for Grant’s input. Grant does not know much about how waste water is trucked and how likely spills can be. He does not believe trucking the waste falls under the statutes he has examined, and he has not examined any applicable state or federal standards. Carstens is concerned over the possible range of materials that could be injected down the wells; Grant disagreed with him to some extent by noting that there are categories of hazardous and non-hazardous waste.

Vreeland understood that the materials we will receive from the public hearing will include only a recitation of the public input received, and not any response to the questions raised.

Hardin noted that if waste is going to be trucked somewhere for disposal, it will be trucked the same way whether it is going to a deep injection well or to somewhere else. How could the township regulate transport to one disposal site, but not to another? If the state is not regulating it, how can the township? Who would be expert enough to not only advise creation of an ordinance but perform adequate ongoing monitoring and enforcement? He remains unconvinced that there is reasonably anything the township can enact and enforce, despite the fact that all the questions Carstens raises are very good ones. Carstens agreed that it is likely not within the township’s purview.

When Hull sees that there is a grey area in something, it can be hard to determine what the odds are of a particular outcome. Grant believes there is a greater likelihood than not that the state would pre-empt the township in this matter and that it would be an uphill battle in court. Despite this, if the township felt strongly that the state has not adequately covered an issue, it might choose to further explore the question. David believes that the resources required to furnish a firm scientific background for our requirements are lacking.

White asked if there have been any court cases related to non-hazardous waste

injection wells. He is aware of one in Alba regarding a proposed hazardous waste injection well. Grant is not aware of any such cases at the current time. He stated that the Alba well is a non-hazardous waste well application, and the case is pending in Circuit Court, but the case does not address the issue of pre-emption as the local government has not attempted to regulate the situation. He understands there will be pre-treatment of the waste when it comes out of the ground.

Motion by Krause, support by Zollinger to recommend to the Board of Trustees that Acme Township has no jurisdiction regarding deep injection waste wells. Motion carried by a vote of 5 in favor (David, Feringa, Krause, White, Zollinger) and 2 opposed (Carstens, Hardin).

- b) Possible master plan amendment: viewsheds, and possible ordinance amendment: PWSO: There has been ongoing discussion about whether the township would like to amend the Master Plan regarding viewsheds, and if so how. Previously the Commission asked for information about how other local governments deal with viewsheds and the question of tower height vs. tower frequency. The amendment of the Personal Wireless Services Ordinance (PWSO) depends to some degree on the outcome of this discussion. Hull has provided a draft revised PWSO for consideration at the same time as the viewshed discussion is ongoing.

Grant's research was not exhaustive, but in general has found that many jurisdictions limit tower height to that below which beacon lighting for airplanes is not required. He also discussed viewsheds with Gordon Hayward, Peninsula Township's Planner. In Peninsula Township the idea of drawing viewshed areas on maps has not been a huge issue, as the cell tower at Mapleton is generally providing adequate coverage to the township. He provided some basic editing ideas to the current stand-alone ordinance that are not substantive, but are designed to promote inclusion of the cell tower standards in the regular Zoning Ordinance. The revisions would keep residential and agricultural areas outside of defined scenic viewsheds open to potential tower location, subject to the ability to require co-location on existing towers or structures where practical.

Zollinger asked a question about setback requirements, which would seem to require a 150' setback from lot lines for a 200' tall tower. Does this match with minimum required lot sizes stated in an earlier paragraph? Grant believes that to comply with setbacks in certain zoning districts, the required lot size would have to be larger than the stated minimum. In Section 13.3.10.a.e which discusses service buildings, there is discussion about additional users in existing service buildings. As far as he knows the service buildings are pre-fabricated to certain standard sizes off-site and trucked in. Since we would want to limit the number of structures as much as possible, is it prudent to limit building size to only as large as required for the equipment. While providers generally prefer to have their own individual buildings, it might be possible to encourage them to share buildings that are divided clearly into separated spaces. Zollinger appreciated that the ordinance seeks to regulate the tower and not the antennae, which can vary in size and shape based on the technologies and frequencies used.

Section 13.5.2.a discusses evidence of ownership of the property on which a tower is to be placed. Recently there was a court case revolving around restrictive covenants on a property, so Zollinger wondered if the township should require evidence of those as well. Grant believes not, as the township does not have the authority to

enforce such covenants. Hull noted that in the case cited the covenants in question had not been appropriately recorded, so we wouldn't have caught them anyway.

Hardin highlighted a section regarding scenic viewsheds and discussing designated township tower location areas. The township has not to date designated such areas. At present there are two towers in the township, plus antennae on the tower and water tower at the Resort. Grant stated that the township appears to have desired to use a variety of means to limit tower location in a scenic viewshed to the maximum extent possible. Hardin noted a requirement that towers in viewsheds be located if possible as close to an existing structure if possible. Does the ordinance seem to be requiring the applicant to find a structure to locate a tower near, or to create such a structure? Grant believes the former. David noted that the language offers three options for siting, including relative to landscaping.

Feringa asked if the decision has been made whether or not to continue to regulate viewsheds; Carstens also believes this issue is still up in the air. Hardin noted that the township has already used the viewshed map in the Master Plan to affect the placement of the tower near the Yuba Creek Natural Area (YCNA). He believes that the question is really how many viewsheds should be defined, where, and how should they be defined and described. Should there be a detailed definition and boundary, or should future Planning Commissions be left a wide range of discretion? Vermetten noted that individual Commissioners were sent to examine the township and ponder these questions, and that they all decided that any further definition of viewsheds would be too difficult to pursue and to leave the existing Master Plan viewshed map and description in place. Hardin also noted that while cell towers and wind generation towers will be treated separately, it would be difficult to regulate one based on viewsheds but not the other. Carstens believes that viewsheds could be defined by selecting GIS coordinates and taking a photograph to infinity from them. Vermetten believes that some ambiguity is a good thing in an ordinance, to allow leeway for changing times and technologies and evaluating each situation on its own merits.

Hull identified several state guidelines for siting wind energy systems. One criterion is visual impact, and discusses avoiding federal, state and locally-defined key view protection areas.

A possible next step would be for Grant to use his draft ordinance amendment and the conversation this evening to prepare for a public hearing on the zoning ordinance front. If the Commission desires to amend the viewshed section of the Master Plan, a separate master plan amendment process should be undertaken. Hardin hopes that a review of the description of what is in the viewsheds is included in future Master Plan updates.

Motion by Carstens, support by Zollinger that the Personal Wireless Services Ordinance be set for public hearing for inclusion in the Zoning Ordinance as suggested by Grant. Motion carried unanimously.

- c) **Continue discussion on affordable housing:** Hull noted that the Commission has been working towards developing some concrete ordinances that promote affordable housing. The Commission received input from the Board that it would be desirable to proceed, even though the issue could be politically charged. As staff he is seeking the Commission's direction to work with Krause, the affordable housing issue seat, to begin pulling together resources to draw up a draft ordinance that can be discussed and refined by the full Commission. Carstens has been attending some affordable

housing symposiums and has a strong relationship with Sarah Lucas, the person at the NW MI Council of Governments who works with affordable housing. He does not know if they work with strategies including the use of land trusts. Traverse City has been very innovative in this regard, and has created several affordable housing infill developments along or near the TART. Carstens would like to work with staff and Krause on the committee preparing a first draft. Krause believes that density, physical attributes and location within the landscape of the community are the key issues to be addressed. David asked if it truly seems possible that the township can encourage such development rather than simply regulating it; Krause believes that by enhancing developer profitability through regulation we can do just this. By building according to standards the township promotes, additional density can be achieved, lowering the per-unit cost and promoting success.

Currently, the only properties Vreeland is aware of that were potentially available for the township to purchase and place into a land bank program were two lots in LochenHeath that do not have a road or water or sewer infrastructure to them. These would not seem appropriate for affordable housing development. Grant noted that the properties Carstens referred to along the TART trail were sold to the city housing authority at a very low price. Vermetten finds that those developments have enhanced the TART and are generally well-planned and maintained. He is uncertain that the market and the need currently exist for affordable housing development and regulation in the township, and generally favors creation of such ordinances when and as the market will bear. He agrees with Supervisor Kladder that such housing should be located within walking distance to jobs, stores, services and amenities. White disagrees that the need is not already present; we have been approached by potential affordable housing developers in the past. There is a current need in his opinion, and right now the only place designated for it is on Bates Road. Hardin noted that the areas defined must be appropriate: with access to sewer service and major road trunklines. The places where this will be appropriate will be very specific. Also, Hull has noted that many times the Commission doesn't hear about requests to build affordable housing because developer interest ends after their first contact with staff when they find out that the township doesn't have regulations in place that make it feasible without a significant uphill battle. He also wonders how we can define sub-areas in one or more zoning districts where higher density housing would be allowed when we had remove reference to specific neighborhoods that could have duplexes by right when other similarly zoned properties could not. Grant replied that in the prior situation there were no clearly defined criteria for why the areas were listed. In this case we can create an overlay or other means that depends on specific and measurable standards. David asked if someone could contact Steve Smith to see if his plans for the VGT still include a significant housing component and if he would be interested in having an affordable housing overlay be applicable to his development. Vermetten suggested that such contact might be inappropriate at this time.

Hull is willing to assemble a variety of local individuals who can be good resources for this initiative. We can learn from their experience about both best and worst practices.

Grant recommended that if more than one planning commissioner is meeting and deliberating on this issue, the committee should operate according to the Open Meetings Act.

Motion by Krause, support by David to form an Affordable Housing subcommittee of the Planning Commission to explore potential overlay zoning regulations.

Carstens hope that all options will be explored and not just zoning overlay regulations.

Motion carried by unanimous roll call vote.

7. New Business:

- a) **Discuss proposed local road repair priority ranking:** Vreeland reviewed her memo and attached potential road repair priority ranking and methodology. The Michigan Planning Enabling Act (MPEA) dictates that Planning Commissions should review major infrastructure projects proposed within their jurisdictions, particularly as compared to the dictates of their community Master Plans, and advise their township boards and those pursuing the projects as to how they fit the community vision. A road repair ranking would be generally beneficial as part of the upcoming township Capital Improvements Plan, and will help us advise local road agencies and potential repair funding sources as to what needs and opportunities we see for our community. A group of Acme and East Bay citizens are working towards short-term repair of particularly worn roads such as Holiday Road, and may be proposing that a road repair millage request be placed on an upcoming ballot. When asking people to vote for new millages, it is always best to be prepared to answer the questions: how much will it cost me? What benefit will I receive? Telling them in what order we might repair which roads and how much it might cost is critical to the process.

Krause noted that his road, Bay Valley, is not on the list. Vreeland will check with the Road Commission to see why it was omitted from the data the proposed ranking was built on, or if it is in their data under a different name as she has found with other roads in the past. The Commission also suggested breaking out Lautner Road into two line items, one for south of M-72 and one for the stretch from M-72 north to Brackett Road. The latter portion was just repaved last year thanks to a BIA grant through the GT Band of Ottawa & Chippewa Indians, and should not need any immediate work. This could change the weighed condition ranking for the portion south of M-72, and would certainly impact the estimated repair costs. Overall they found it a fairly-well constructed list, and reported positive feedback from township citizens as to our administration's involvement in their grass-roots road repair efforts to date.

Motion by Carstens, support by Hardin to recommend adoption of the proposed local road repair priority ranking as updated June 29 in pursuit of improving the roads in Acme Township. Motion carried unanimously.

- b) **Update on proposed Bates Road/M-72 Intersection Realignment:** Vreeland provided the Commission with an update on a public meeting held on June 15 for landowners along the Bates Road corridor south of Brackett Road. Approximately 20 stakeholders attended and the meeting appeared to be effective. All present raised their hands in favor of some sort of realignment solution for the intersection that would promote the ability to signalize it at some point in time. Most favored a configuration with a 90-degree turn, rather than an s-curve, feeling that it would promote traffic calming along the Bates and Sayler Road corridors as they extend towards Elk Rapids. With the potential commercial growth in the Bates and Turtle Creek areas along the M-72 Corridor, and with the construction of the winery on Sayler Road, everyone is expecting more traffic between Acme and Elk Rapids through what is, north of Brackett Road, the heart of our agricultural preservation area. The core steering committee will meet again later in July to discuss the public meeting and continue discussions as to whether and how a mutually-beneficial road realignment can be created and funded.

- c) **Acme Township Capital Improvements Program:** Vreeland, Treasurer Linda Wikle, and Carstens all recently attended a capital improvements plan workshop hosted by the American Planning Association and taught by a staffer from Wade Trim. Acme Township is required to develop and annually revisit a 5-year capital improvements plan (CIP), and will embark on this process for the first time later this year. The CIP will include prioritization and planning for public infrastructure such as regular road, sewer and water system maintenances and/or expansion, public parks (including the shoreline preservation project and farmland PDR programs), public building needs such as fire stations and township halls, etc.

The MPEA states that the Planning Commission shall prepare the plan unless the Board vests this responsibility in itself, the Supervisor or a Superintendent/Manager instead. The Commission would prepare the draft plan for final Board adoption. Items slated to be pursued in the coming fiscal year would then be budgeted into that fiscal year. As mentioned earlier, planning for capital improvements is a key way to realize township visionary goals expressed in the Master Plan, rather than having the Master Plan gather dust without implementation. This is the reason behind vesting this responsibility in the Commission, which is charged with much of the planning of the community's future.

The Board has not removed this responsibility from the Commission, so later in the fall or early winter administrative staff will work with the Commission to craft our first CIP. Creating the road repair ranking will give us a head start. A copy of the PowerPoint presentation from the training session was distributed. Tonight's discussion is only intended as an overview and introduction to begin familiarizing everyone with what is coming along as a task in the next few months.

- d) **Board request for policy regulating special recreational & business events:** Hull noted that this issue has come up because there will be a triathlon sponsored by the Resort Labor Day weekend, and Woodland Creek would like to hold a classic car show in late August. In the past the zoning ordinance has been very strict about not allowing outdoor events, but a past Board directed the staff to allow them on commercial properties at their discretion. The staff would prefer to have better guidance and a set of standards that can be applied fairly and universally. A set of regulations might be constructed as a stand-alone police power ordinance.

White asked what the township does now relative to the VASA. They have never approached the township for a permit. He asked what the difference would be with the proposed triathlon; Hull supposed that while the VASA takes place within one property, the triathlon will require the use of public spaces. White also noted that there are bicycle rallies/races that use his road and get in the way of farming operations and asked how they would be impacted or addressed.

Vreeland stated that from her perspective the issues have always been more with special events on commercial properties rather than as an inherent part of the Resort's business operations or recreational events. Historically the community has strongly limited or prohibited outdoor sales and events on commercial properties, and specifically to prohibit things such as fireworks vendors from downstate or out of state who set up tents for several weeks in late June and July. Right now no special events are permitted, but some are desirable and healthy for the community, so staff is suggesting that we need to create the rules for saying yes to those that are considered appropriate. Grant noted that these may be once a year events, or once ever events. The car show proposed for Woodland Creek is not permitted by their

special use permit, while the horse show obtained a permit to have their event every year. There are reasons why mass gatherings may need to be regulated. Feringa noted that such events can place a burden on policing and emergency services and there needs to be accountability and liability. Hardin understands that staff is looking for a guidebook that enables them to demonstrate that they are making decisions fairly and equally and not based on personal preferences, and can help protect them if an event causes unforeseen problems. Also, some events originally planned as a one-time thing may be so successful that their originators want to make them annual events. He does not want to see itinerant businesses set up tents and call themselves an event.

Krause recommended that staff proceed to develop a proposed ordinance for additional consideration by the Commission. Zollinger suggested consulting the winery ordinance and its provisions for noise and other controls. Krause suggested that events be community oriented and not related to promoting the business. Zollinger disagreed, feeling that a reasonable number of business promotional events should be allowed. Vermetten would prefer not to limit events to only some sectors of the community whether business or recreational. He noted that the VASA and the Iceman have tents with ski sales representatives and other similar vendors, informational kiosks and activities. He is worried about anything that would promote one type of interest over another. Traverse City permits a wide variety of outdoor special events and he recommends consulting them to see how they handle this issue.

- e) **Possible Ordinance Amendment: Wind Turbines:** This issue is on the Commission's short-term goal list, and interest exists in wind generation within the township. Hull has provided some sample ordinances. Vermetten asked if we are close enough to the "grid" to have wind farming make sense; there are several power substations in the township. Carstens noted that Acme is not considered a super-prime wind generation zone, but there are opportunities in our area. Perhaps some of our farm or agricultural processing areas would wish to generate power for their businesses. Grant would start drafting an ordinance from information provided by the state and seek to integrate it into the rest of the zoning ordinance. The use is not specifically permitted in the township right now, so there is a potential exclusionary zoning concern to be addressed. Feringa reported that based on the wind studies done on the "Hoxsie property" portion of the Resort, they may wish to locate one or two wind generation towers there in the near future. There are new technologies coming along that will enable shorter towers. White noted that if current commercial wind generation towers might require a height of 300' to capture the best wind, they would be tall enough to have to be lighted for aviation and there would also be concerns about viewsheds similar to those that cause our cell tower ordinance to limit tower heights to 200'. Wind turbine heights are measured from ground to top of blade at highest point. Consideration also has to be given to local airport flight patterns.

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

Nels Veliquette, 311 S. Maple Street in Traverse City, spoke in relation to working on affordable housing ordinances. He recommended that the township form a citizen advisory committee on this subject. The New Urbanism advisory discussed this issue at some length, and forming an advisory can help advertise the effort to the general citizenship.

Zollinger noted that last November Vreeland wrote a memo about prioritizing the Commission's efforts. It would be a good idea to do a status update. Vreeland noted that the Commission should create a new project priority list for the new fiscal year, and is required to provide an annual report to the Board of Trustees, so these tasks will dovetail well together.

Meeting adjourned at 10:00 p.m.